

ADOPTED RULES

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

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 133. HOSPITAL LICENSING SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §133.55

The Texas Health and Human Services Commission (HHSC) adopts new §133.55, concerning Workplace Violence Prevention.

New §133.55 is adopted with changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2931). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The new section is necessary to implement Texas Health and Safety Code (HSC) Chapter 331, added by Senate Bill (S.B.) 240, 88th Legislature, Regular Session, 2023.

The new section requires general and special hospitals to establish a workplace violence prevention committee or authorize an existing committee to develop the hospital's workplace violence prevention plan. The new section specifies the required membership for a committee. The new section requires a hospital to adopt, implement, and enforce a written workplace violence prevention policy and plan to protect health care providers and employees from violent behavior and threats of violent behavior occurring at the hospital.

The new section requires the committee to annually evaluate the written workplace violence prevention plan and report the results of the evaluation to the hospital's governing body. The new section requires each hospital to make a copy of the hospital's workplace violence prevention plan available to each hospital health care provider or employee while providing protection from the release of information in the plan that would pose a security threat if made public.

The new section establishes minimum requirements for a hospital to respond to workplace violence incidents and creates protections for individuals with respect to reporting incidents of workplace violence.

COMMENTS

The 31-day comment period ended June 3, 2024.

During this period, HHSC received comments regarding the proposed rule from the Texas Hospital Association (THA). A sum-

mary of comments relating to the rule and HHSC's responses follows.

Comment: THA stated it supported HHSC rulemaking efforts to implement SB 240.

Response: HHSC acknowledges this comment.

Comment: THA recommended HHSC revise §133.55 to require a hospital to comply with the requirements in HSC Chapter 331 instead of detailing the requirements in the rule.

Response: HHSC declines to revise §133.55 because stating the requirements facilitates understanding of and compliance with the rule for those not familiar with the statute and where the statute is located.

Comment: Regarding §133.55(b)(2), THA asked how HHSC would enforce the physician requirement for the membership committee if a hospital is unable to successfully encourage, after exhausting all good faith efforts, a physician to participate on the workplace violence committee.

Response: HHSC acknowledges this comment and notes HHSC would use its enforcement authority under HSC Chapter 241 to ensure compliance.

Comment: THA requested HHSC revise §133.55(c), regarding the establishment or delegation of the workplace violence committee, to clarify the rule does not seek to limit HSC §331.002(d) and allows a health care system to establish a single committee for all its facilities. THA noted SB 240 was specifically drafted to limit the administrative burden of multi-facility systems to comply with these important reforms.

Response: HHSC revises §133.55(c) to state, "A health care system that owns or operates more than one facility, as that term is defined by HSC §331.001, which includes a hospital, may establish a single workplace violence prevention committee for all of the system's facilities if:" for consistency with the statute. HHSC also changes "hospital" to "facility" throughout this subsection for consistency.

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; HSC §241.026, which requires HHSC to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals; and HSC Chapter 331, which requires licensed hospitals to adopt a workplace violence prevention policy and adopt and implement a workplace violence prevention plan in accordance with that chapter.

§133.55. *Workplace Violence Prevention.*

(a) In accordance with Texas Health and Safety Code (HSC) §331.002, a hospital shall establish a workplace violence prevention committee or authorize an existing hospital committee to develop a workplace violence prevention plan.

(b) A hospital shall ensure the committee includes at least:

(1) one registered nurse who provides direct care to the hospital's patients;

(2) one physician licensed to practice medicine in Texas who provides direct care to the hospital's patients; and

(3) one hospital employee who provides security services for the hospital if any and if practicable.

(c) A health care system that owns or operates more than one facility, as that term is defined by HSC §331.001, which includes a hospital, may establish a single workplace violence prevention committee for all of the system's facilities if:

(1) the committee develops a violence prevention plan for implementation at each facility in the system; and

(2) data related to violence prevention remains distinctly identifiable for each facility in the system.

(d) A hospital shall adopt, implement, and enforce a written workplace violence prevention policy to protect health care providers and employees from violent behavior and threats of violent behavior occurring at the hospital. In accordance with HSC §331.003, the policy shall:

(1) require the hospital to:

(A) provide significant consideration of the violence prevention plan recommended by the hospital's committee; and

(B) evaluate any existing hospital violence prevention plan;

(2) encourage health care providers and employees to provide confidential information on workplace violence to the committee;

(3) include a process to protect from retaliation health care providers or employees who provide information to the committee; and

(4) comply with HHSC rules relating to workplace violence.

(e) A hospital shall adopt, implement, and enforce a written workplace violence prevention plan developed by the committee. In accordance with HSC §331.004, the plan shall:

(1) be based on a hospital setting;

(2) adopt a definition of "workplace violence" that includes:

(A) an act or threat of physical force against a health care provider or employee that results in, or is likely to result in, physical injury or psychological trauma; and

(B) an incident involving the use of a firearm or other dangerous weapon, regardless of whether a health care provider or employee is injured by the weapon;

(3) require the hospital to at least annually provide workplace violence prevention training or education that may be included in other required training or education provided to the health care providers and employees who provide direct patient care;

(4) prescribe a system for responding to and investigating violent incidents or potentially violent incidents at the hospital;

(5) address physical security and safety;

(6) require the hospital to solicit information from the health care providers and employees when developing and implementing a workplace violence prevention plan;

(7) allow health care providers and employees to report workplace violence incidents through the hospital's existing occurrence reporting systems; and

(8) require the hospital to adjust patient care assignments, to the extent practicable, to prevent a health care provider or employee from treating or providing services to a patient who has intentionally physically abused or threatened the provider or employee.

(f) The written workplace violence prevention plan may satisfy the requirements of subsection (e) of this section by referencing other internal hospital policies and documents.

(g) At least annually after the date a hospital adopts a written workplace violence prevention plan required by subsection (e) of this section, the committee shall:

(1) review and evaluate the workplace violence prevention plan; and

(2) report the results of the evaluation to the hospital's governing body.

(h) Each hospital shall make available on request an electronic or printed copy of the hospital's workplace violence prevention plan to each health care provider or employee. If the committee determines the plan contains information that would pose a security threat if made public, the committee may redact that information before providing the plan.

(i) In accordance with HSC §331.005, after an incident of workplace violence occurs, a hospital shall offer immediate post-incident services, including any necessary acute medical treatment for each hospital health care provider or employee who is directly involved in the incident.

(j) In accordance with HSC §331.005, a hospital may not discourage a health care provider or employee from exercising the provider's or employee's right to contact or file a report with law enforcement regarding a workplace violence incident.

(k) In accordance with HSC §331.005, a hospital shall prohibit hospital personnel from disciplining, including by suspension or termination of employment, discriminating against, or retaliating against another person who:

(1) in good faith reports a workplace violence incident; or

(2) advises a health care provider or employee of the provider's or employee's right to report a workplace violence incident.

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 September 24, 2024.

TRD-202404581

Karen Ray

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Department of State Health Services

Effective date: October 21, 2024

Proposal publication date: May 3, 2024

For further information, please call: (512) 834-4591

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CHAPTER 135. AMBULATORY SURGICAL
CENTERS
SUBCHAPTER A. OPERATING REQUIRE-
MENTS FOR AMBULATORY SURGICAL
CENTERS

25 TAC §135.31

The Texas Health and Human Services Commission (HHSC) adopts new §135.31, concerning Workplace Violence Prevention. New §135.31 is adopted with changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2933). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The new section is necessary to implement Texas Health and Safety Code (HSC) Chapter 331, added by Senate Bill (S.B) 240, 88th Legislature, Regular Session, 2023.

The new section requires ambulatory surgical centers (ASCs) to establish a workplace violence prevention committee or authorize an existing committee to develop the ASC's workplace violence prevention plan. The new section specifies the required membership for a committee. The new section requires an ASC to adopt, implement, and enforce a written workplace violence prevention policy and plan to protect health care providers and employees from violent behavior and threats of violent behavior occurring at the ASC.

The new section requires the committee to annually evaluate the written workplace violence prevention plan and report the results of the evaluation to the ASC's governing body. The new section requires each ASC to make a copy of the ASC's workplace violence prevention plan available to each ASC health care provider or employee while providing protection from the release of information in the plan that would pose a security threat if made public.

The new section establishes minimum requirements for an ASC to respond to workplace violence incidents and creates protections for individuals with respect to reporting incidents of workplace violence.

COMMENTS

The 31-day comment period ended June 3, 2024.

During this period, HHSC did not receive any comments regarding the proposed rule.

HHSC revises §135.31(c) to state, "A health care system that owns or operates more than one facility, as that term is defined by HSC §331.001, which includes an ASC, may establish a single workplace violence prevention committee for all of the system's facilities if:" for consistency with the statute and edits made to another rule within this rule project in response to a stakeholder's comment. HHSC also changes "ASC" to "facility" throughout this subsection for consistency.

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; HSC §243.009, which authorizes HHSC to adopt rules regarding

ASCs; and HSC Chapter 331, which requires licensed ASCs to adopt a workplace violence prevention policy and adopt and implement a workplace violence prevention plan in accordance with that chapter.

§135.31. Workplace Violence Prevention.

(a) In accordance with Texas Health and Safety Code (HSC) §331.002, an ambulatory surgical center (ASC) shall establish a workplace violence prevention committee or authorize an existing ASC committee to develop a workplace violence prevention plan.

(b) An ASC shall ensure the committee includes at least:

(1) one registered nurse who provides direct care to the ASC's patients;

(2) one physician licensed to practice medicine in Texas who provides direct care to the ASC's patients; and

(3) one ASC employee who provides security services for the ASC if any and if practicable.

(c) A health care system that owns or operates more than one facility, as that term is defined by HSC §331.001, which includes an ASC, may establish a single workplace violence prevention committee for all of the system's facilities if:

(1) the committee develops a violence prevention plan for implementation at each facility in the system; and

(2) data related to violence prevention remains distinctly identifiable for each facility in the system.

(d) An ASC shall adopt, implement, and enforce a written workplace violence prevention policy to protect health care providers and employees from violent behavior and threats of violent behavior occurring at the ASC. In accordance with HSC §331.003, the policy shall:

(1) require the ASC to:

(A) provide significant consideration of the violence prevention plan recommended by the ASC's committee; and

(B) evaluate any existing ASC violence prevention plan;

(2) encourage health care providers and employees to provide confidential information on workplace violence to the committee;

(3) include a process to protect from retaliation health care providers or employees who provide information to the committee; and

(4) comply with HHSC rules relating to workplace violence.

(e) An ASC shall adopt, implement, and enforce a written workplace violence prevention plan developed by the committee. In accordance with HSC 331.004, the plan shall:

(1) be based on an ASC setting;

(2) adopt a definition of "workplace violence" that includes:

(A) an act or threat of physical force against a health care provider or employee that results in, or is likely to result in, physical injury or psychological trauma; and

(B) an incident involving the use of a firearm or other dangerous weapon, regardless of whether a health care provider or employee is injured by the weapon;

(3) require the ASC to at least annually provide workplace violence prevention training or education that may be included in

other required training or education provided to the ASC's health care providers and employees who provide direct patient care;

(4) prescribe a system for responding to and investigating violent incidents or potentially violent incidents at the ASC;

(5) address physical security and safety;

(6) require the ASC to solicit information from health care providers and employees when developing and implementing a workplace violence prevention plan;

(7) allow health care providers and employees to report workplace violence incidents through the ASC's existing occurrence reporting systems; and

(8) require the ASC to adjust patient care assignments, to the extent practicable, to prevent a health care provider or employee from treating or providing services to a patient who has intentionally physically abused or threatened the provider or employee.

(f) The written workplace violence prevention plan may satisfy the requirements of subsection (e) of this section by referencing other internal ASC policies and documents.

(g) At least annually after the date an ASC adopts a written workplace violence prevention plan required by subsection (e) of this section, the committee shall:

(1) review and evaluate the workplace violence prevention plan; and

(2) report the results of the evaluation to the ASC's governing body.

(h) Each ASC shall make available on request an electronic or printed copy of the ASC's workplace violence prevention plan to each health care provider or ASC employee. If the committee determines the plan contains information that would pose a security threat if made public, the committee may redact that information before providing the plan.

(i) In accordance with HSC §331.005, after an incident of workplace violence occurs, an ASC shall offer immediate post-incident services, including any necessary acute medical treatment for each ASC health care provider or employee who is directly involved in the incident.

(j) In accordance with HSC §331.005, an ASC may not discourage a health care provider or employee from exercising the provider's or employee's right to contact or file a report with law enforcement regarding a workplace violence incident.

(k) In accordance with HSC §331.005, an ASC shall prohibit ASC personnel from disciplining, including by suspension or termination of employment, discriminating against, or retaliating against another person who:

(1) in good faith reports a workplace violence incident; or

(2) advises a health care provider or employee of the provider's or employee's right to report a workplace violence incident.

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 September 24, 2024.

TRD-202404582

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Effective date: October 21, 2024

Proposal publication date: May 3, 2024

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 509. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §509.70

The Texas Health and Human Services Commission (HHSC) adopts new §509.70, concerning Workplace Violence Prevention.

New §509.70 is adopted with changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2940). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The new section is necessary to implement Texas Health and Safety Code (HSC) Chapter 331, added by Senate Bill (S.B.) 240, 88th Legislature, Regular Session, 2023.

The new section requires freestanding emergency medical care (FEMC) facilities to establish a workplace violence prevention committee or authorize an existing committee to develop the facility's workplace violence prevention plan. The new section specifies the required membership for a committee. The new section requires a facility to adopt, implement, and enforce a written workplace violence prevention policy and plan to protect health care providers and employees from violent behavior and threats of violent behavior occurring at the facility.

The new section requires the committee to annually evaluate the written workplace violence prevention plan and report the results of the evaluation to the facility's governing body. The new section requires each facility to make a copy of the facility's workplace violence prevention plan available to each health care provider or employee while providing protection from the release of information in the plan that would pose a security threat if made public.

The new section establishes minimum requirements for a facility to respond to workplace violence incidents and creates protections for individuals with respect to reporting incidents of workplace violence.

COMMENTS

The 31-day comment period ended June 3, 2024.

During this period, HHSC did not receive any comments regarding the proposed rule.

HHSC revises §509.70(c) to state, "A health care system that owns or operates more than one facility, as that term is defined

by HSC §331.001, may establish a single workplace violence prevention committee for all of the system's facilities if." for consistency with the statute and edits made to another rule within this rule project in response to a stakeholder's comment.

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; HSC §254.101, which authorizes HHSC to adopt rules regarding FEMC facilities; and HSC Chapter 331, which requires licensed FEMC facilities to adopt a workplace violence prevention policy and adopt and implement a workplace violence prevention plan in accordance with that chapter.

§509.70. Workplace Violence Prevention.

(a) In accordance with Texas Health and Safety Code (HSC) §331.002, a facility shall establish a workplace violence prevention committee or authorize an existing facility committee to develop a workplace violence prevention plan.

(b) A facility shall ensure the committee includes at least:

- (1) one registered nurse who provides direct care to the facility's patients;
- (2) one physician licensed to practice medicine in this state who provides direct care to the facility's patients; and
- (3) one facility employee who provides security services for the facility if any and if practicable.

(c) A health care system that owns or operates more than one facility, as that term is defined by HSC §331.001, may establish a single workplace violence prevention committee for all of the system's facilities if:

- (1) the committee develops a violence prevention plan for implementation at each facility in the system; and
 - (2) data related to violence prevention remains distinctly identifiable for each facility in the system.
- (d) A facility shall adopt, implement, and enforce a written workplace violence prevention policy to protect health care providers and employees from violent behavior and threats of violent behavior occurring at the facility. In accordance with HSC §331.003, the policy shall:

- (1) require the facility to:
 - (A) provide significant consideration of the violence prevention plan recommended by the facility's committee; and
 - (B) evaluate any existing facility violence prevention plan;
 - (2) encourage health care providers and facility employees to provide confidential information on workplace violence to the committee;
 - (3) include a process to protect from retaliation facility health care providers or employees who provide information to the committee; and
 - (4) comply with HHSC rules relating to workplace violence.
- (e) A facility shall adopt, implement, and enforce a written workplace violence prevention plan developed by the committee. In accordance with HSC §331.004, the plan shall:

- (1) be based on a facility setting;
- (2) adopt a definition of "workplace violence" that includes:

(A) an act or threat of physical force against a health care provider or employee that results in, or is likely to result in, physical injury or psychological trauma; and

(B) an incident involving the use of a firearm or other dangerous weapon, regardless of whether a health care provider or employee is injured by the weapon;

(3) require the facility to at least annually provide workplace violence prevention training or education that may be included in other required training or education provided to the facility's health care providers and employees who provide direct patient care;

(4) prescribe a system for responding to and investigating violent incidents or potentially violent incidents at the facility;

(5) address physical security and safety;

(6) require the facility to solicit information from health care providers and employees when developing and implementing a workplace violence prevention plan;

(7) allow health care providers and employees to report workplace violence incidents through the facility's existing occurrence reporting systems; and

(8) require the facility to adjust patient care assignments, to the extent practicable, to prevent a health care provider or facility employee from treating or providing services to a patient who has intentionally physically abused or threatened the provider or employee.

(f) The written workplace violence prevention plan may satisfy the requirements of subsection (e) of this section by referencing other internal facility policies and documents.

(g) At least annually after the date a facility adopts a written workplace violence prevention plan required by subsection (e) of this section, the committee shall:

- (1) review and evaluate the workplace violence prevention plan; and
- (2) report the results of the evaluation to the facility's governing body.

(h) Each facility shall make available on request an electronic or printed copy of the facility's workplace violence prevention plan to each health care provider or facility employee. If the committee determines the plan contains information that would pose a security threat if made public, the committee may redact that information before providing the plan.

(i) In accordance with HSC §331.005, after an incident of workplace violence occurs, a facility shall offer immediate post-incident services, including any necessary acute medical treatment for each facility health care provider or employee who is directly involved in the incident.

(j) In accordance with HSC §331.005, a facility may not discourage a health care provider or employee from exercising the provider's or employee's right to contact or file a report with law enforcement regarding a workplace violence incident.

(k) In accordance with HSC §331.005, a facility shall prohibit facility personnel from disciplining, including by suspension or termination of employment, discriminating against, or retaliating against another person who:

(1) in good faith reports a workplace violence incident; or

(2) advises a health care provider or employee of the provider's or employee's right to report a workplace violence incident.

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 September 24, 2024.

TRD-202404583

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Health and Human Services Commission

Effective date: October 21, 2024

Proposal publication date: May 3, 2024

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CHAPTER 510. PRIVATE PSYCHIATRIC HOSPITALS AND CRISIS STABILIZATION UNITS

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §510.47

The Texas Health and Human Services Commission (HHSC) adopts new §510.47, concerning Workplace Violence Prevention.

New §510.47 is adopted with changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2942). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The new section is necessary to implement Texas Health and Safety Code (HSC) Chapter 331, added by Senate Bill (S.B.) 240, 88th Legislature, Regular Session, 2023.

The new section requires private psychiatric hospitals to establish a workplace violence prevention committee or authorize an existing committee to develop the hospital's workplace violence prevention plan. The new section specifies the required membership for a committee. The new section requires a hospital to adopt, implement, and enforce a written workplace violence prevention policy and plan to protect health care providers and employees from violent behavior and threats of violent behavior occurring at the hospital.

The new section requires the committee to annually evaluate the written workplace violence prevention plan and report the results of the evaluation to the hospital's governing body. The new section requires each hospital to make a copy of the hospital's workplace violence prevention plan available to each hospital health care provider or employee while providing protection from the release of information in the plan that would pose a security threat if made public.

The new section establishes minimum requirements for a hospital to respond to workplace violence incidents and creates protections for individuals with respect to reporting incidents of workplace violence.

COMMENTS

The 31-day comment period ended June 3, 2024.

During this period, HHSC did not receive any comments regarding the proposed rule.

HHSC revises §510.47(c) to state, "A health care system that owns or operates more than one facility, as that term is defined by HSC §331.001, which includes a hospital, may establish a single workplace violence prevention committee for all of the system's facilities if:" for consistency with the statute and edits made to another rule within this rule project in response to a stakeholder's comment. HHSC also changes "hospital" to "facility" throughout this subsection for consistency.

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; HSC §577.010, which authorizes HHSC to adopt rules regarding private mental hospitals and other mental health facilities; and HSC Chapter 331, which requires licensed mental hospitals to adopt a workplace violence prevention policy and adopt and implement a workplace violence prevention plan in accordance with that chapter.

§510.47. *Workplace Violence Prevention.*

(a) In accordance with Texas Health and Safety Code (HSC) §331.002, a hospital shall establish a workplace violence prevention committee or authorize an existing hospital committee to develop a workplace violence prevention plan.

(b) A hospital shall ensure the committee includes at least:

(1) one registered nurse who provides direct care to the hospital's patients;

(2) one physician licensed to practice medicine in this state who provides direct care to the hospital's patients; and

(3) one hospital employee who provides security services for the hospital if any and if practicable.

(c) A health care system that owns or operates more than one facility, as that term is defined by HSC §331.001, which includes a hospital, may establish a single workplace violence prevention committee for all of the system's facilities if:

(1) the committee develops a violence prevention plan for implementation at each facility in the system; and

(2) data related to violence prevention remains distinctly identifiable for each facility in the system.

(d) A hospital shall adopt, implement, and enforce a written workplace violence prevention policy to protect health care providers and employees from violent behavior and threats of violent behavior occurring at the hospital. In accordance with HSC §331.003, the policy shall:

(1) require the hospital to:

(A) provide significant consideration of the violence prevention plan recommended by the hospital's committee; and

(B) evaluate any existing hospital violence prevention plan;

(2) encourage health care providers and employees to provide confidential information on workplace violence to the committee;

(3) include a process to protect from retaliation health care providers or employees who provide information to the committee; and

(4) comply with HHSC rules relating to workplace violence.

(e) A hospital shall adopt, implement, and enforce a written workplace violence prevention plan developed by the committee. In accordance with HSC §331.004, the plan shall:

(1) be based on a hospital setting;

(2) adopt a definition of "workplace violence" that includes:

(A) an act or threat of physical force against a health care provider or employee that results in, or is likely to result in, physical injury or psychological trauma; and

(B) an incident involving the use of a firearm or other dangerous weapon, regardless of whether a health care provider or employee is injured by the weapon;

(3) require the hospital to at least annually provide workplace violence prevention training or education that may be included in other required training or education provided to the health care providers and employees who provide direct patient care;

(4) prescribe a system for responding to and investigating violent incidents or potentially violent incidents at the hospital;

(5) address physical security and safety;

(6) require the hospital to solicit information from the health care providers and employees when developing and implementing a workplace violence prevention plan;

(7) allow health care providers and employees to report workplace violence incidents through the hospital's existing occurrence reporting systems; and

(8) require the hospital to adjust patient care assignments, to the extent practicable, to prevent a health care provider or employee from treating or providing services to a patient who has intentionally physically abused or threatened the provider or employee.

(f) The written workplace violence prevention plan may satisfy the requirements of subsection (e) of this section by referencing other internal hospital policies and documents.

(g) At least annually after the date a hospital adopts a written workplace violence prevention plan required by subsection (e) of this section, the committee shall:

(1) review and evaluate the workplace violence prevention plan; and

(2) report the results of the evaluation to the hospital's governing body.

(h) Each hospital shall make available on request an electronic or printed copy of the hospital's workplace violence prevention plan to each health care provider or hospital employee. If the committee determines the plan contains information that would pose a security threat if made public, the committee may redact that information before providing the plan.

(i) In accordance with HSC §331.005, after an incident of workplace violence occurs, a hospital shall offer immediate post-incident services, including any necessary acute medical treatment for each hospital health care provider or employee who is directly involved in the incident.

(j) In accordance with HSC §331.005, a hospital may not discourage a health care provider or employee from exercising the provider's or employee's right to contact or file a report with law enforcement regarding a workplace violence incident.

(k) In accordance with HSC §331.005, a hospital shall prohibit hospital personnel from disciplining, including by suspension or termination of employment, discriminating against, or retaliating against another person who:

(1) in good faith reports a workplace violence incident; or

(2) advises a health care provider or employee of the provider's or employee's right to report a workplace violence incident.

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 September 24, 2024.

TRD-202404584

Karen Ray

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Effective date: October 21, 2024

Proposal publication date: May 3, 2024

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION

The commissioner of insurance adopts the repeal of 28 TAC §§1.47 - 1.49, 1.51, 1.52, 1.88, and 1.89; amendments to §1.32; and new §1.47. These sections concern the procedures for responding to notices of hearing, dispositions of contested cases, and appeals of dispositions. The changes modernize and clarify parts of TDI's contested case process. The repealed, amended, and new sections are adopted without changes to the proposed text published in the July 5, 2024, issue of the *Texas Register* (49 TexReg 4889). The sections will not be republished.

REASONED JUSTIFICATION. The repeal of §§1.47 - 1.49, 1.51, and 1.52 removes regulations that no longer provide relevant guidance because of repealed or recodified statutes. The repeal of §1.88 and §1.89 removes regulations containing outdated procedures that have been superseded by regulations in 1 TAC Chapter 155. New §1.47 and the amendments to §1.32 update the procedure for (1) informing applicants and license or authorization holders about alleged violations, and (2) informally disposing of contested cases when the applicant or license or authorization holder does not participate in the process. The amendments also make nonsubstantive changes for plain language and to reflect current agency drafting style.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. TDI provided an opportunity for public comment on the rule proposal for a period that ended on August 5, 2024.

Commenters: TDI received comments from one commenter, Texas Land Title Association, in support of the proposal with changes.

Comment on §1.32

Comment. The commenter suggests that TDI consider establishing a timeframe within which the requested hearing will take place to establish clear expectations and ensure efficiency in resolving any disagreement involving licensing decisions.

Agency Response. Because of the variable nature of litigation and TDI's inability to control when a hearing is ultimately held at the State Office of Administrative Hearings (SOAH), TDI declines to make the suggested change.

Comments on §1.47

Comment. The commenter recommends that TDI prescribe the text and formatting of the required disclosure about a person's procedural rights in subsection (a). The commenter states that this change would ensure awareness of the consequences of failing to respond to a notice of allegations.

Agency Response. TDI agrees that it is important for license holders to be made aware of the consequences of failing to respond to TDI's allegations but does not believe that prescribing text and formatting is the best way to achieve clear, plain language communications. TDI declines to make the change, as each of the elements in the commenter's suggested language are already addressed in the proposed requirements. The rule will continue to include substantive requirements for disclosures that inform parties of their procedural rights without restricting the wording or formatting of those disclosures.

Comment. The commenter suggests that TDI add a requirement regarding the method of a default order's delivery to clarify how the named party will receive the commissioner's order. The commenter recommends the rule state that the order will be delivered in the same manner as the notice of allegations.

Agency Response. TDI declines to make the suggested change. Insurance Code §81.002 states that when delivering a decision or order, it must be mailed "to each party and the party's attorney of record, by certified mail, return receipt requested. . ." This is consistent with Government Code §2001.142(a)(3), which provides that a state agency may notify each party in a contested case of a decision or order by "service by first class, certified, or registered mail sent to the last known address of the party's attorney of record or of the party if the party is not represented by counsel." TDI does not believe it is necessary to interpret or apply these statutes in rule.

Comment. The commenter suggests that TDI clarify the description of who can file a motion to set aside a default order. Instead of the language "party in the contested case," the commenter suggests "person against whom a default order has been entered." The commenter states the change is appropriate because it appears a "contested case" does not exist at this stage of the process.

Agency Response. TDI declines to make the suggested change. Under the Administrative Procedures Act in Government Code Chapter 2001, a contested case may begin before the formal initiation of a contested case proceeding at SOAH or before the commissioner. There is a contested case at this stage of the process, and the proposed language better encompasses all those persons that may desire to file a motion to set aside a default order.

SUBCHAPTER A. RULES OF PRACTICE AND PROCEDURE

DIVISION 1. GENERAL PROCEDURAL PROVISIONS

28 TAC §1.32, §1.47

STATUTORY AUTHORITY. The commissioner adopts amendments to §1.32 and new §1.47 under Government Code §2001.004 and §2001.056, and Insurance Code §§82.055, 4005.102, and 36.001.

Government Code §2001.004 provides for a state agency's adoption of rules stating the nature and requirements for formal and informal procedures.

Government Code §2001.056 provides that informal disposition of a contested case may be made by default.

Insurance Code §82.055 provides that the commissioner may informally dispose of a matter under Insurance Code Chapter 82, Subchapter B, by default.

Insurance Code §4005.102 lists remedies for violations of the Insurance Code, other insurance laws of Texas, and commissioner rules. This list includes a denial or disciplinary action against an applicant or a regulated person. The section also states that the remedies under the section are in addition to any remedy available under Insurance Code Chapter 82, which includes informal disposition by default.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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 September 25, 2024.

TRD-202404621

Jessica Barta

General Counsel

Texas Department of Insurance

Effective date: October 15, 2024

Proposal publication date: July 5, 2024

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



28 TAC §§1.47 - 1.49, 1.51, 1.52, 1.88, 1.89

STATUTORY AUTHORITY. The commissioner adopts the repeal of §§1.47 - 1.49, 1.51, 1.52, 1.88, and 1.89 under Government Code §2001.004 and §2001.056 and Insurance Code §82.055 and §4005.102.

Government Code §2001.004 provides for a state agency's adoption of rules stating the nature and requirements for formal and informal procedures.

Government Code §2001.056 provides that informal disposition of a contested case may be made by default.

Insurance Code §82.055 provides that the commissioner may informally dispose of a matter under Insurance Code Chapter 82, Subchapter B, by default.

Insurance Code §4005.102 lists remedies for violations of the Insurance Code, other insurance laws of Texas, and commissioner rules. This list includes a denial or disciplinary action against an applicant or a regulated person. The section also states that the remedies under the section are in addition to any remedy available under Insurance Code Chapter 82, which includes informal disposition by default.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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 September 25, 2024.

TRD-202404620

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Effective date: October 15, 2024

Proposal publication date: July 5, 2024

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



CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER T. FAIR PLAN

DIVISION 1. PLAN OF OPERATION

28 TAC §§5.9910, 5.9911, 5.9913 - 5.9917, 5.9930 - 5.9933

The commissioner of insurance adopts amended 28 TAC §§5.9910, 5.9911, 5.9913 - 5.9917, and new §§5.9930 - 5.9933, concerning residual market coverage for property owners' associations. The new and amended sections implement House Bill 998, 88th Legislature, 2023, Regular Session. Sections 5.9910, 5.9913, 5.9915, 5.9916, 5.9917, 5.9932, and 5.9933 are adopted without changes to the text as proposed in the June 28, 2024, issue of the *Texas Register* (49 TexReg 4682). Sections 5.9911, 5.9914, 5.9930, and 5.9931 are adopted with changes to the proposed text to correct errors and in response to comments.

REASONED JUSTIFICATION. The amended and new sections are necessary to implement HB 998, which authorizes the Fair Access to Insurance Requirements Plan (FAIR Plan) to provide property owners' association insurance for condominium owners' and homeowners' associations.

HB 998 requires that the commissioner set, by rule, a designated area for FAIR Plan property owners' association insurance coverage for condominium owners' and homeowners' associations. According to Insurance Code §2211.1515(a), in determining the designated area, the commissioner must "to the extent practicable, ensure the designated area is not more than 10 miles beyond the Texas Windstorm Insurance Association catastrophe

area designated under Section 2210.005; and follow geographical features."

After determining the designated area, Insurance Code §2211.051(b) authorizes the commissioner to set underserved areas within that designated area, if the commissioner determines that "property owners' association insurance is not reasonably available in the voluntary market to a substantial number of insurable risks."

The amendments incorporate references to property owners' association insurance in various sections of FAIR Plan's plan of operation where residential property insurance is referenced and remove the term "residential" before "property" where those terms appear, which reflects the expanded property types authorized under Insurance Code Chapter 2211.

In addition, the amendments enhance clarity and consistency with agency style guidelines by deleting "shall" or replacing "shall" with "will" or another context-appropriate word. Amendments also replace "Association" with "FAIR Plan," "Commissioner" with "commissioner," and "pursuant to" with "under," where appropriate.

The amendments also (1) update statutory references to reflect Insurance Code recodification; (2) add or amend Insurance Code section titles and citations for consistency; and (3) correct and revise punctuation, capitalization, and grammar to reflect current agency drafting style and plain language preferences. These nonsubstantive amendments are not noted in the following descriptions of the sections unless it is necessary or appropriate to provide additional context or explanation.

Descriptions of the new and amended sections follow.

Section 5.9910. Purpose. The amendments incorporate property owners' association insurance into the purpose of FAIR Plan and change "qualified citizens of Texas" to "insurable risks" to better align with statutory language and recognize that FAIR Plan may insure entities as well as individuals.

Section 5.9911. Definitions. The amendments add and clarify definitions to align with the broader scope of Insurance Code Chapter 2211, introducing definitions for "property owners' association," "property owners' association insurance," "TDI," and "TWIA." The amendments also add "FAIR Plan" to the current definition of "Association" and replace "Association" with "FAIR Plan." With these changes, both "Association" and "FAIR Plan" have the same meaning in these rules. Using "FAIR Plan" adds clarity because there are many associations. "Association" will be replaced with "FAIR Plan" in future amendments to other FAIR Plan rules.

An amendment adds a reference to property owners' association insurance to the definition of "inspector." This clarifies that an inspector may determine the condition of properties for which property owners' association insurance coverage under FAIR Plan is sought.

Amendments update an Insurance Code citation in the definition of "residential property insurance" and expand the definition of "underserved area" to include both residential property insurance and property owners' association insurance.

An amendment adds a reference to property owners' association insurance to the definition of "underwriting rules" to clarify that the underwriting rules include those for property owners' association insurance.

The proposal incorrectly cited Insurance Code §2211.011(6-a) for the definition of "property owners' association insurance." The correct citation is §2211.001(6-a), which is corrected in the adopted text.

Section 5.9913. Authority of Agents and Commissions. The amendments add "property owners' association" as a type of applicant. The amendments also increase readability of §5.9913(b) by rephrasing it to state that agents may not hold themselves out as agents of FAIR Plan.

Section 5.9914. Maximum Limits of Liability and Limitations. The amendments set the maximum liability limit for property owners' association insurance at \$3 million for commercial structures and authorize FAIR Plan to reinsure some or all risks that are within or at the limit.

TDI looked at residual market limits for other states and considered the purpose and funding of FAIR Plan when setting the limit. The maximum liability limit of \$3 million acknowledges that property owners' association insurance is commercial and presents different risks than FAIR Plan's residential coverage. In response to a comment, the adopted text removes the term "per location" from subsection (b). This change clarifies that the maximum limit applies on a per-structure basis.

Section 5.9915. Inspections. Amendments make changes throughout the section to add a reference to property owners' association insurance and revise or remove "residential" in addressing property insurance, for consistency with HB 998 and other amendments and new text.

Section 5.9916. Application Forms, Underwriting Rules, Rates, Policy Forms, and Endorsements. The amendments (1) remove the term "residential" in "residential property" to reflect that property under the section includes commercial property in property owners' association, and (2) replace "association policies" with "residential property insurance" in §5.9916(d) to clarify that the prohibition against covering businesses or commercial risks applies only to residential property insurance, not property owners' association insurance.

Section 5.9917. Application, Binder, Policy Issuance, Renewal, and Cancellation. The amendments expand the scope of the section by adding "or property owners' association insurance" after each instance of "residential property insurance." This addition reflects the expanded scope of Insurance Code Chapter 2211 to include property owners' association insurance, as authorized under HB 998.

An amendment updates an incorrectly titled citation to the "Property Tax Code" by removing "Property," so the citation correctly reads "§33.06 of the Tax Code." Amendments also add the title of Tax Code §33.06 so it is consistent with other code citations throughout the rule text.

Section 5.9930. Designated Area for Property Owners' Association Policies. New §5.9930 implements HB 998 by designating the area where FAIR Plan could write property owners' association insurance under Insurance Code §2211.1515. The commissioner designates the region extending 10 miles inland from the geographical features that form the border of the Texas Windstorm Insurance Association (TWIA) catastrophe area as the designated area.

Insurance Code §2211.1515 sets an inland boundary for the designated area--10 miles from the catastrophe area. Setting the coastal side boundary as the catastrophe area boundary and proposing a 10-mile strip as the designated area aligns with in-

formation from legislative hearings and comments received on the informal draft.

The text of paragraph (1) as proposed has been changed to correct a reference to an agency order. As adopted, "Commissioner Order No. 16878" is changed to "State Board of Insurance Order No. 16878." In addition, for clarification, a list of the 14 counties referenced by the order is included in the text as adopted.

Section 5.9931. Petition Requirements for Underserved Area for Property Owners' Association Insurance. New §5.9931 specifies the requirements for property owners' associations to petition for an area to be classified as underserved for property owners' association insurance. The section requires the petitioner to provide information that will help the commissioner determine whether an area is underserved. In response to a comment, the requirement in proposed subsection (c)(7) has been removed. As adopted, §5.9931(c)(7)(C) only requires petitioners to provide the names, physical addresses, and contact information of other property owners' associations *if known*.

Section 5.9932. Petition Procedures for Underserved Area for Property Owners' Association Insurance. New §5.9932 outlines TDI's procedures for assessing petitions from property owners' associations seeking classification of areas as underserved for property owners' association insurance.

New subsection (a) states that TDI will review petitions for compliance with §5.9931. TDI may also gather additional information to determine whether the proposed area qualifies as underserved.

New subsection (b) states that TDI may schedule a public hearing and provide notice as required under Insurance Code §2211.051.

New subsection (c) provides that the commissioner may determine that some, all, or none of the proposed area is underserved.

Section 5.9933. Setting Underserved Areas for Property Owners' Association Insurance. New §5.9933 recognizes the commissioner's statutory authority under Insurance Code §2211.051(b) to issue an order, either in response to a petition or on the commissioner's own initiative, determining that all or part of the designated area is underserved.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. TDI provided an opportunity for public comment on the rule proposal for a period that ended on July 29, 2024. A public hearing on the proposal was held on July 16, 2024; the hearing notice was published in the June 28, 2024, issue of the *Texas Register* (49 TexReg 4682).

Commenters: TDI received comments from three commenters during the comment period. FAIR Plan's representative spoke in support of the proposal. The Community Associations Institute Texas Legislative Action Committee and a property owner association manager provided written comments in support of the proposal with changes.

Comments on the Maximum Limits of Liability and Limitations (§5.9914)

Comment. One commenter expresses concern about the maximum limit of liability under §5.9914(b), which is currently set at \$3 million per structure. The commenter suggests switching to a per-residential-unit basis, similar to the National Flood Insurance Program, to ensure that larger buildings with multiple units are adequately covered.

Agency Response. TDI declines to make the suggested change. The limit of \$3 million per structure is consistent with practices in other state residual markets. According to the 2024 Compendium of Property Insurance Plans from the Property Insurance Plans Service Office (PIPSO), most states set limits on the basis of the building rather than individual units (see Table 4 of the Compendium). Setting the limits on a per-unit basis with no maximum structure limit would make it more difficult for FAIR Plan to project and manage its exposure and could complicate reinsurance purchases. The per-structure limit is also consistent with how TWIA handles commercial property policies.

Comment. A commenter states that the \$3 million maximum limit of liability is too low and suggests increasing it to \$5 million to better match current rebuilding costs and reduce the number of structures for which property owners' associations would need to buy "reinsurance." TDI interprets this to mean an additional policy is needed to cover the remaining amount of insurance necessary to insure a structure.

Agency Response. TDI declines to increase the \$3 million limit because it is greater than most other states and is a reasonable amount to provide insureds a first layer of coverage while managing FAIR Plan's exposure with this new insurance. Of the 32 states listed in PIPSO's report, only two are listed with maximum limits for commercial property over \$3 million. Another state is listed with no maximum limits for commercial residential property (as opposed to commercial non-residential property). The majority of states have limits below \$2 million (see PIPSO's 2024 Compendium of Property Insurance Plans, Table 4).

Insurance Code §2211.054(11) requires that FAIR Plan's plan of operation set maximum limits of liability. The statute necessarily requires balancing the need to make coverage available with the need to limit FAIR Plan's potential exposure. Setting a \$3 million maximum limit for this new type of FAIR Plan insurance is a reasonable and measured approach. If needed, TDI can revisit this limit in the future.

Comment. A commenter suggests that FAIR Plan should allow for acting as an excess layer above primary insurance when primary coverage does not fully insure a property owners' association or when a specific peril coverage is unavailable.

Agency Response. TDI declines to make this change, as it is beyond the scope of this rulemaking.

Comment. A commenter states that the current wording on the maximum limit of liability in §5.9914(b) is unclear and suggests removing the term "per location" to avoid confusion.

Agency Response. TDI agrees and has removed the term "per location" in §5.9914(b). This change clarifies that the \$3 million limit applies per structure. If there is more than one structure at a location, each structure will have its own limit. The per-structure limit aligns with the way TWIA sets its limits, which will assist with efficiency in FAIR Plan operations.

Comments on Authority of Agents and Commissions (§5.9913)

Comment. A commenter suggests that the phrase "upon request" in §5.9913(a) is unclear about who should make the request and proposes additional language.

Agency Response. TDI disagrees. Section 5.9913(a) is sufficiently clear that residential property owners, property owners' associations, or others with insurable interests may apply for FAIR Plan coverage. The phrase "upon request" has been in

§5.9913(a) for many years without reported confusion. Therefore, TDI declines to make this change.

Comment. A commenter suggests adding language to §5.9913(b) to state that only after determining an applicant's eligibility may an agent inform a potential insured that they are appointed as an agent to FAIR Plan. The commenter states that without this addition, residential property owners and property owners' associations might remain unaware of FAIR Plan as an option, even if they are eligible.

Agency Response. TDI declines to make the suggested change. Adding the language could cause confusion. FAIR Plan does not sell policies directly to the public and does not have its own agents. Section 5.9913(f) specifically provides that an applicant may apply to FAIR Plan only through an agent. The purpose of §5.9913(b) is to prohibit agents from misrepresenting themselves as agents of FAIR Plan. Agents are responsible for assisting applicants in finding coverage and may inform them about FAIR Plan as an option.

Comments on Application, Binder, Policy Issuance, Renewal, and Cancellation (§5.9917)

Comment. A commenter seeks clarification on §5.9917(a)(1) and questions whether an offer from a Lloyd's plan qualifies as an offer to insure for determining eligibility for FAIR Plan. The commenter suggests that TDI refer to Insurance Code §551.051(1-a) and says that a Lloyd's plan is a surplus lines insurer and thus excluded as an insurer.

Agency Response. TDI disagrees. Insurance Code Chapter 2211 provides that offers from Lloyd's plan insurers qualify as offers to insure for the purpose of determining eligibility. Insurance Code §2211.1515(b) provides that two declinations from insurers writing property owners' association insurance is evidence that a property owners' association cannot obtain insurance through the voluntary market. Insurance Code §2211.001(5) defines "insurer" to mean "an authorized insurer writing property insurance in this state, including: (A) a Lloyd's plan; and (B) a reciprocal or interinsurance exchange."

Also, Insurance Code §551.051(1-a) specifically includes Lloyd's plans as insurance companies "admitted to engage in business and authorized to write liability insurance or commercial property insurance in this state."

Comment. A commenter suggests that the terminology in §5.9917(a)(1) conflicts with Insurance Code §551.051(1-a) and suggests using "insurers" instead of "insurance companies." The commenter also suggests using the term "admitted" instead of "licensed" in this subsection to align with the definition of "insurer" in Insurance Code §551.051(1-a).

Agency Response. TDI disagrees. Using the term "insurance companies" and the word "licensed" in §5.9917(a)(1) is not contrary to the meaning of the words "insurer" and "authorized" as used in the relevant statutory provisions, Insurance Code §2211.151 and §2211.1515. Section 5.9917(a)(1) has used "insurance companies" and "licensed" for many years, and TDI is not aware of any issues from using those terms. TDI will consider revising or clarifying the subsection in future rulemaking if issues arise.

Comment. A commenter suggests that declinations should be based on whether coverage meets "the level required by lenders, laws, or the property owners' associations governing documents."

Agency Response. TDI declines to make the suggested change. The suggested language lacks specific criteria and could lead to unclear and inconsistent eligibility requirements. Without detailed knowledge of the various laws and documents referenced, this could lead to uneven access to FAIR Plan.

Comment. A commenter expresses concerns that the requirement for two insurance companies to decline providing residential insurance property and property owners' association insurance is too restrictive for FAIR Plan eligibility. The commenter also seeks clarification on whether §5.9917 replaces Insurance Code §2211.1515 and suggests changing "authorized" to "admitted" in Insurance Code §2211.1515.

Agency Response. TDI declines to make changes to the current requirements. Section 5.9917(a)(1), which requires that two insurance companies must decline to provide coverage, aligns with and implements Insurance Code §2211.1515(b), which requires two declinations as evidence of the applicant's inability to obtain insurance. Any modification to this requirement would need legislative action. Likewise, legislation would be required to replace the word "authorized" in Insurance Code §2211.1515 with "admitted."

Comments on Petition Requirements (§5.9931)

Comment. A commenter states that the requirement in §5.9931(c)(7) is difficult to interpret and suggests removing it. The commenter notes that listing every property owners' association within a 1-mile radius is challenging due to the lack of a central database.

Agency Response. TDI agrees and has removed the proposed requirement to list all property owners' associations within a 1-mile radius. As adopted, §5.9931(c)(7)(C) requires petitioners to provide, *if known*, the names, physical addresses, and contact information of property owners' associations within the proposed underserved area. This simplifies the petition process while still collecting relevant information.

STATUTORY AUTHORITY. The commissioner adopts amendments to §§5.9910, 5.9911, 5.9913 - 5.9917, and new §§5.9930 - 5.9933 under Insurance Code §§2211.051, 2211.053(b), 2211.1515(a), and 36.001.

Insurance Code §2211.051 authorizes the commissioner to include in FAIR Plan the delivery of property owners' association insurance in underserved areas as provided in Insurance Code §2211.1515 if the commissioner determines, after notice and a hearing, that property owners' association insurance is not reasonably available in the voluntary market to a substantial number of insurable risks.

Insurance Code §2211.053(b) requires amendments to FAIR Plan's plan of operation to be adopted by the commissioner by rule.

Insurance Code §2211.1515(a) provides that the commissioner must, when determining the area to be designated by rule, ensure the area is not more than 10 miles beyond the Texas Windstorm Insurance Association catastrophe area designated under §2210.005; and follow geographical features when making this decision.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

§5.9911. *Definitions.*

The following words and terms, when used in this subchapter, have the following meanings.

(1) **Agent**--Any person licensed by the commissioner as a general lines property and casualty agent under Insurance Code §4051.051, concerning License Required.

(2) **Applicant**--Any person applying for insurance from FAIR Plan, including any person designated by the applicant to be the applicant's representative at an inspection.

(3) **Association or FAIR Plan**--The Fair Access to Insurance Requirements (FAIR) Plan Association created under Insurance Code Chapter 2211, concerning FAIR Plan.

(4) **Commissioner**--The Texas commissioner of insurance.

(5) **Governing Committee**--The Governing Committee of FAIR Plan authorized under Insurance Code §2211.052, concerning Administration of FAIR Plan; Composition of Governing Committee.

(6) **Inspector**--The individual(s) or organization(s) designated by FAIR Plan to make inspections to determine the condition of the properties for which residential property insurance and property owners' association insurance is sought and to perform such other duties as may be authorized by FAIR Plan or the commissioner.

(7) **Insurable risk**--Property that meets the underwriting rules of FAIR Plan for determining the insurability of the risk.

(8) **Member insurer or member**--An insurer licensed to write property and casualty insurance in Texas and writing residential property insurance in Texas, including reciprocal exchanges and Lloyds plan insurers.

(9) **Property owners' association**--Homeowners' or condominium owners' association.

(10) **Property owners' association insurance**--Has the meaning assigned by Insurance Code §2211.001(6-a), concerning Definitions.

(11) **Residential property insurance**--Coverage as defined in Insurance Code §2211.001, concerning Definitions, with the exception of farm and ranch owners and farm and ranch insurance as set forth in Insurance Code §2301.003, concerning Applicability of Subchapter.

(12) **Residential property insurance premiums**--Net direct written premiums for residential property insurance for a calendar year as determined by the Texas residential property statistical plan.

(13) **TDI**--The Texas Department of Insurance.

(14) **Underserved area**--

(A) For residential property insurance, the areas designated by the commissioner in §5.3701 of this chapter (relating to Designation of Underserved Areas for Residential Property Insurance for Purposes of the Insurance Code Article 21.49A).

(B) For property owners' association insurance, the areas determined by the commissioner under §5.9933 of this chapter (relating to Determining Underserved Areas for Property Owners' Association Insurance).

(15) **TWIA**--The Texas Windstorm Insurance Association established under Insurance Code Chapter 2210.

(16) **Underwriting rules**--The underwriting rules for residential property insurance and property owners' association insurance as developed by FAIR Plan that have been filed with and approved by the commissioner.

§5.9914. *Maximum Limits of Liability and Limitations.*

(a) The maximum limits of liability for residential property insurance per location through FAIR Plan are \$1,000,000 dwelling and \$500,000 contents. FAIR Plan is authorized to reinsure some or all risks that are within or at these maximum limits.

(b) The maximum limit of liability for property owners' association insurance through FAIR Plan is \$3,000,000 per structure, including business personal property. FAIR Plan is authorized to reinsure some or all risks that are within or at the maximum limit.

(c) FAIR Plan may not provide windstorm and hail insurance coverage for a risk eligible for that coverage under Insurance Code Chapter 2210, concerning Texas Windstorm Insurance Association.

(d) FAIR Plan may issue a policy that includes coverage for an amount in excess of a liability limit set forth in subsection (a) of this section, if FAIR Plan first obtains, from a reinsurer approved by the commissioner, reinsurance for the full amount of policy exposure above the limits for any given type of risk.

(e) The premium charged by FAIR Plan for the excess coverage must be equal to the amount of the reinsurance premium charged to FAIR Plan by the reinsurer, plus any payment to FAIR Plan that is approved by the commissioner.

§5.9930. *Designated Area for Property Owners' Association Policies.*

For purposes of Insurance Code §2211.1515, concerning Mandatory Property Owners' Association Policies in Certain Areas, the commissioner sets the designated area as the region extending 10 miles inland from the border of the TWIA catastrophe area, which consists of the geographical features of:

(1) the county lines of the 14 first tier coastal counties, which are Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio, and Willacy, as designated in State Board of Insurance Order No. 16878;

(2) Highway 146 where it intersects the cities of Seabrook and La Porte, as designated in Commissioner Order No. 95-1200;

(3) the municipal boundary of the City of Morgan's Point, as designated in Commissioner Order No. 96-0380; and

(4) Highway 146 where it intersects the cities of Shoreacres and Pasadena, as designated in Commissioner Order No. 96-1468.

§5.9931. *Petition Requirements for Underserved Area for Property Owners' Association Insurance.*

(a) A property owners' association may submit a petition to classify an area as an underserved area.

(b) Underserved areas must be located within the area designated in §5.9930 of this title (relating to Designated Area for Property Owners' Association Policies).

(c) The petition must:

(1) be submitted in writing to the Office of the Chief Clerk;

(2) provide contact information for the petitioner;

(3) clearly specify the area proposed as underserved, in a written description, a map, or other method;

(4) explain why the petitioner thinks the area is underserved;

(5) state the names of the petitioner's current and former insurers;

(6) provide:

(A) the names of insurers that have declined to provide coverage in the proposed underserved area; and

(B) detailed information about the risks, coverages, and coverage amounts the insurers are unwilling to offer;

(7) include, if known:

(A) the names of insurers that have or are actively writing property coverage in the proposed underserved area;

(B) the total number of property owners' associations within the proposed underserved area;

(C) the names, physical addresses, and contact information of property owners' associations in the proposed underserved area; and

(D) the number of property owners' associations within the proposed underserved area that have been unable to get coverage.

(d) TDI may request additional information from the petitioner to help complete the review under §5.9932 of this title (relating to Petition Procedures for Underserved Area for Property Owners' Association Insurance).

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 September 25, 2024.

TRD-202404602

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Effective date: October 15, 2024

Proposal publication date: June 28, 2024

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CHAPTER 9. TITLE INSURANCE

The commissioner adopts amendments to 28 TAC §9.1 and §9.401, which adopt by reference the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* (Basic Manual) and the *Texas Title Insurance Statistical Plan* (Statistical Plan). The commissioner adopts §9.1 and §9.401 and the amendments and new sections of the Basic Manual and the Statistical Plan without changes to the proposed text published in the May 31, 2024, issue of the *Texas Register* (49 TexReg 3908). The rules will not be republished.

REASONED JUSTIFICATION. The new and amended sections of the Basic Manual and Statistical Plan reflect changes that the commissioner approved for the formal rulemaking proposal in an order dated December 21, 2023. The order followed a hearing on November 15, 2023, where the commissioner presided over a petition by the Texas Land Title Association (TLTA) for most of the changes and a proposal by TDI staff for the remaining changes. The commissioner's order and the exhibits at the hearing provide a detailed justification for the various changes and additions to the Basic Manual and Statistical Plan. These are summarized as follows:

- The rates for several endorsements, mostly associated with commercial-level transactions, increased because they did not

compensate the title industry for the labor and risk required for them. Most of these rates had not changed for several decades.

- Endorsements for certain transactions, particularly energy projects, needed to be updated, or new forms needed to be promulgated, to better cover certain risks.

- Some processes unnecessarily required notarization. Removing the notarization requirement from licensing forms and allowing the use of an unsworn declaration for statements related to a prior survey increases efficiency, reduces burdens on licensees and consumers, and reduces consumer expense.

- Some forms needed to be updated to more closely reflect industry updates that have occurred in other states and with other industries, such as accounting and estate planning, that have updated requirements or practices that were not adequately reflected in current forms.

- Some forms and procedures needed to be amended to clarify coverage or remove references to obsolete laws.

- Some rules in the Basic Manual and parts of the Statistical Plan needed corrections.

- Nonsubstantive changes related to plain language and rule drafting preferences needed to be made for clarity and to conform with current TDI style guidelines.

The item numbers below identify the adopted amendments to the Basic Manual and Statistical Plan. Each item number represents amendments to, or the addition of, specific rules or forms in the Basic Manual and parts of the Statistical Plan. The item numbers in this order match the numbers used in the proposal. They are for organizational purposes only and do not represent formal agenda items from a call for rulemaking.

TDI adopts amendments to these items as described in the following paragraphs.

Item 2023-1. TDI adopts amendments to Rate Rule R-11.c, affecting the following Basic Manual items:

1. Form T-3 (Assignment of Mortgage Endorsement): Increases the premium to the minimum Basic Premium Rate plus \$100 for each additional full or partial 12-month period after the first anniversary of the initial policy date. Previously, the premium was the minimum Basic Premium Rate.

2. Form T-38 (Partial Release, Release of Additional Collateral, Modification Agreement, Reinstatement Agreement, or Release from Personal Liability Endorsement): Increases the premium to the minimum Basic Premium Rate plus \$25 per year between the issuance of the endorsement and the policy. Previously, the premium was \$100 plus \$10 per year between the issuance of the endorsement and the policy.

3. Form T-3 (Down Date Endorsement): Increases the premium to \$100 for nonresidential construction projects. The premium remains \$50 for residential construction projects. Previously, the premium was \$50 for any construction project, whether residential or nonresidential.

The adopted amendments also change the lettering convention on the subsections from lowercase to uppercase and make plain language edits.

Item 2023-2. TDI adopts amendments to Rate Rule R-15.b to increase the premium for the Form T-3 "down date endorsement" for Owner's Policies to \$100 for nonresidential construction projects. The premium remains \$50 for residential construc-

tion projects. Previously, the premium was \$50 for any construction project, whether residential or nonresidential.

Item 2023-3. TDI adopts amendments to Rate Rule R-30 to increase the premium for Access Endorsements (Form T-23) to \$100 for each Access Endorsement issued under a policy. Previously, the premium was \$100 for all Access Endorsements issued under a policy. The adopted amendments also make plain language edits.

Item 2023-4. TDI adopts an amendment to Form T-1R, Residential Owner's Policy of Title Insurance One-to-Four Family Residences, removing the parenthetical "(Applies to Owner's Policy only)" in Schedule B, Item 3 of the form.

Item 2023-5. TDI adopts amendments to Form T-16, Loan Policy Aggregation Endorsement, to conform more closely to the American Land Title Association (ALTA) form used in other states. The adopted amendments also make plain language edits, renumber the subsections, and restructure the form text for greater clarity and easier reading.

Item 2023-6. TDI adopts amendments to Forms T-19, T-19.1, T-19.2, and T-19.3, which are a series of endorsements that include coverage for damage to improvements because of mineral extraction or development. The amendments make coverage across the forms more consistent and update Forms T-19.2 and T-19.3 to conform with their model form equivalents from ALTA.

Item 2023-7. TDI adopts amendments to Forms T-1 and T-2 to clarify provisions related to survey coverage.

Item 2023-9. TDI adopts amendments to subsection C of Procedural Rule P-20 to allow title insurers to specify for which year the policy insures "taxes not yet due and payable."

Item 2023-11. TDI adopts amendments to Procedural Rule P-57 to allow for more legal entities used in estate planning to be an additional insured on the Additional Insured Endorsement (Form T-26) and to allow the endorsement to be added up to 90 days after title is conveyed to the additional insured.

Item 2023-13. TDI adopts amendments to Procedural Rule P-2 and adopts Form T-47.1 to allow an unsworn declaration to be used to affirm that a property is essentially unchanged since a previous survey was issued. New Form T-47.1 can be used instead of the Form T-47, Survey Affidavit. TDI also adopts amendments to Form T-47 to allow for a single declarant and make plain language edits.

Item 2023-16. TDI adopts amendments to Procedural Rule P-9.b.8, Rate Rule R-11.f, and Form T-35 to clarify that the endorsement covers only revolving credit arrangements for construction projects, not other kinds of future advances.

Item 2023-18. TDI adopts an endorsement, Energy Project - Minerals and Surface Damage Endorsement (Form T-19.4), to provide surface damage coverage for severable improvements that would not be insured under the other forms that cover surface damage related to mineral extraction (Forms T-19, T-19.1, T-19.2, and T-19.3). TDI also adopts Procedural Rule P-50.2 to govern use of the endorsement, and Rate Rule R-29.2 to set a premium for the endorsement: 5% of the Basic Premium Rate. The endorsement can only be used if it is issued simultaneously with an energy project endorsement, as described in Item 2023-B.

Item 2023-21. TDI adopts amendments to Internal Control No. 5 to explicitly allow for electronic signatures on escrow checks.

Item 2023-22. TDI adopts amendments to Form PC-150 to update and align it with the Texas State Board of Public Accountancy standards.

Item 2023-23. TDI adopts an amendment to Form T-11 to correct a clerical error on the form where the last item on a numbered list did not have its corresponding number.

Item 2023-24. TDI adopts amendments to Form PC-417 to update TDI's mailing address on the form.

Item 2023-25. TDI adopts amendments to Licensing Forms FINT 08, FINT 09, FINT 10, FINT 129, and FINT 143 to remove the notarization requirement and replace it with an unsworn declaration.

Item 2023-26. TDI adopts amendments to the Statistical Plan to update codes related to Rate Rule R-8 so that the plan matches the transaction descriptions that changed when Rate Rule R-8 was amended in 2019. The adopted amendments also include codes that match the adopted items described in Items 2023-1, 2023-2, 2023-18, 2023-B, and 2023-C. TDI also adopts the amendments to use clearer and more consistent descriptions and improved style and formatting that reflect current TDI style preferences.

Item 2023-27. TDI adopts amendments to update TDI's mailing address, email address, and physical address where they are listed in the Basic Manual to reflect TDI's move from its previous location in the William P. Hobby Building at 333 Guadalupe Street, Austin, Texas 78701, to the Barbara Jordan State Office Building at 1601 Congress Avenue, Austin, Texas 78701, and also add TDI's Title Examinations email address as another way to communicate with TDI. The adopted amendments change TDI's address in the following places in the Basic Manual:

- Section V, Exhibit & Forms, Report forms for Audit of Trust Funds (TDI Title Forms PC 150)

- Section VI, Administration Rules, Rule D-1: Requirements for Ceasing Operations by Agents and Direct Operations, Section I, A

- Section VI, Administration Rules, Rule S.1: Minimum Capitalization Standards for Title Agents Pursuant to §2651.012 and Certification and Procedure to Determine Value of Assets Pursuant to §2651.158, Section III, C, D, and E

- Section VI, Administration Rules, Rule S.4: Title Company Requirements, Procedures, and Forms for Providing Privileged Title Agent Financial Solvency Information to the Department Pursuant to §2651.011, # A - 2 and 3, # B - 1 and 2

- Section VI, Administration Rules, Rule S.5: Filing of Title Agent's Quarterly Withholding Tax Report, Section III and Section IV

- Section VI, Administration Rules, Rule S.7: Surety Bond for Title Agents to Comply with Minimum Capitalization Standards, Section I, # E

Item 2023-A. TDI adopts amendments to Form T-50, the Insured Closing Service Letter, to conform more closely to recent changes in ALTA's model Closing Protection Letter, including the addition of language that excludes computer-related fraud. TDI also adopts the amendments to update formatting to reflect current TDI style, using plainer language and 12-point Segoe UI font, consistently numbering and lettering paragraphs, and organizing information more clearly.

Item 2023-B. TDI adopts six endorsements that are specifically tailored to provide coverage of severable improvements in different scenarios in connection with electrical energy projects: Forms T-55, T-55.1, T-55.2, T-55.3, T-55.4, and T-55.5. TDI adopts a rate rule to establish a premium for each endorsement: 5% of the Basic Premium Rate (Rate Rule R-37). TDI also adopts amendments to Procedural Rule P-72 to govern use of the six endorsements. TDI also adopts amendments to Procedural Rule P-72 to govern the use of another severable improvements endorsement form, Form T-54; and TDI adopts Rate Rule R-37 to establish a premium of 5% of the Basic Premium Rate for the Form T-54 endorsement. TDI also adopts amendments to update the formatting to reflect TDI style, using plainer language and 12-point Segoe UI font, consistently numbering and lettering paragraphs, and organizing information more clearly.

Item 2023-C. TDI adopts amendments to Procedural Rule P-1.u. to broaden the description of residential real property. The amendments allow immediately contemplated improvements to be considered residential properties on currently unimproved land. The amendments also loosen the acreage restrictions, including removing the agricultural production requirement for large residential properties between 10 and 200 acres. TDI also adopts amendments to Rate Rule R-16 to allow a 5% survey coverage rate to be applied to residential property when an Owner's Policy (Form T-1) is issued, not just when a Residential Owner Policy (Form T-1R) is issued. TDI also adopts amendments to update the formatting to reflect TDI style, using plainer language and 12-point Segoe UI font, consistently numbering and lettering paragraphs, and organizing information more clearly.

Item 2023-D. TDI adopts amendments to subparagraph 2.b of the Equity Loan Mortgage Endorsement (Form T-42) to delete the previous language and insert a statement that the subparagraph is intentionally deleted because of an amendment to the Texas Constitution. The Texas Constitution amendment made the subparagraph obsolete.

Item 2023-E. TDI adopts amendments to subsections B, C, and D of Rate Rule R-5 (Simultaneous Issue of Owner's Policy and Loan Policy) to clarify that the simultaneous issue discount is available in combination with other applicable rate discounts. TDI adopts amendments to subsections F of Rate Rule R-5 to lower the Owner's Policy amount threshold for that subsection to \$1 million, restrict the subsection to nonresidential property transactions, and qualify that the subsequent Loan Policy must be issued by the same company that issued the Owner's Policy. TDI also adopts amendments to update the formatting to reflect TDI style, using plainer language and 12-point Segoe UI font, consistently numbering and lettering paragraphs, and organizing information more clearly.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. TDI provided an opportunity for public comment on the rule proposal for a period that ended on July 1, 2024.

Commenters: TDI received comments from three commenters. Commenters in support of the proposal were TLTA and Texas REALTORS. A commenter in support of the proposal with changes was the Texas Society of Professional Surveyors.

Comments on §9.1

Comment. One commentor agrees with the entirety of the proposal and thanks TDI for its diligent work.

Agency Response. TDI appreciates the support.

Comment. One commentor supports the changes to Procedural Rule P-2 and Forms T-47 and T-47.1, allowing unsworn declarations to be used instead of a notary.

Agency Response. TDI appreciates the support.

Comment. One commentor suggests changes to Procedural Rule P-2 and Forms T-47 and T-47.1. The commentor suggests adding a written disclosure form to describe what perjury is and criminal penalties for perjury. The commentor also suggests adding safeguards to prevent survey misuse related to copyright protections and to prevent the reuse of a survey in transactions that do not involve the original purchaser of the survey.

Agency Response. TDI declines to make the suggested changes. The unsworn declaration and affidavit forms already have language warning about the penalty of perjury. A written disclosure form summarizing the meaning of perjury and describing criminal penalties for perjury is unnecessary.

Insurance Code §2704.102, Procedural Rule P-2, and Forms T-47 and T-47.1 are concerned with underwriting area and boundary coverage in a title policy. Insurance Code §2704.102 explicitly gives title companies providing area and boundary coverage the discretion to accept a survey regardless of its age or the identity of the person for whom the survey was prepared. Procedural Rule P-2 and Forms T-47 and T-47.1 enable title companies to exercise the underwriting discretion granted by statute. TDI declines to introduce restrictions that seem unrelated to underwriting.

SUBCHAPTER A. BASIC MANUAL OF RULES, RATES AND FORMS FOR THE WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS

28 TAC §9.1

STATUTORY AUTHORITY. The commissioner adopts amended §9.1 under Insurance Code §§2551.003, 2651.002, 2651.007, 2652.051, 2703.054, 2703.101, 2703.151, 2703.208, and 36.001.

Insurance Code §2551.003 authorizes the commissioner to adopt and enforce rules that prescribe underwriting standards and practices, that define risks, and that the commissioner determines are necessary to accomplish the purposes of the Title Insurance Act.

Insurance Code §2651.002 requires that a title agent must file an application for an agent's license on forms provided by TDI.

Insurance Code §2651.007 requires that TDI prescribe title agent licensing renewal forms.

Insurance Code §2652.051 requires that an escrow officer file an application for an escrow officer's license on forms provided by TDI.

Insurance Code §2703.054 authorizes the commissioner to amend owner title insurance policy language and endorsements to implement Insurance Code Chapter 2703, Subchapter A.

Insurance Code §2703.101 requires the commissioner to prescribe an owner title policy form to be used in connection with a transaction involving residential real property in this state.

Insurance Code §2703.151 requires the commissioner to fix and promulgate premiums rates charged by title insurance companies and agents.

Insurance Code §2703.208 provides that any addition or amendment to the Basic Manual may be proposed and adopted by reference by publishing notice in the *Texas Register*.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

§9.1. Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas.

The Texas Department of Insurance adopts by reference the *Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas* (Basic Manual) as amended, effective November 1, 2024. The Basic Manual is available on the TDI website at www.tdi.texas.gov.

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 September 25, 2024.

TRD-202404618

Jessica Barta

General Counsel

Texas Department of Insurance

Effective date: November 1, 2024

Proposal publication date: May 31, 2024

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



SUBCHAPTER C. TEXAS TITLE INSURANCE STATISTICAL PLAN

28 TAC §9.401

STATUTORY AUTHORITY. The commissioner adopts amended §9.401 under Insurance Code §§2551.003, 2703.151, 2703.153, 2703.208, and 36.001.

Insurance Code §2551.003 authorizes the commissioner to adopt and enforce rules that prescribe underwriting standards and practices, that define risks, and that the commissioner determines are necessary to accomplish the purposes of the Title Insurance Act.

Insurance Code §2703.151 requires the commissioner to fix and promulgate premiums rates charged by title insurance companies and agents.

Insurance Code §2703.153 requires the commissioner to develop and maintain a statistical report for the use of fixing and promulgating premium rates. The commissioner is required to evaluate the statistical report not less than every five years to see whether changes are required and amend it as necessary.

Insurance Code §2703.208 provides that any addition or amendment to the Basic Manual may be proposed and adopted by reference by publishing notice in the *Texas Register*.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

§9.401. Texas Title Insurance Statistical Plan.

The Texas Department of Insurance adopts by reference the rules in the *Texas Title Insurance Statistical Plan* as amended effective January 1, 2025. This document is published by and is available from the Texas Department of Insurance, MC: PC-ACT, P.O. Box 12030, Austin, Texas 78711-2030. This document is also available on the TDI website at www.tdi.texas.gov.

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 September 25, 2024.

TRD-202404619

Jessica Barta

General Counsel

Texas Department of Insurance

Effective date: January 1, 2025

Proposal publication date: May 31, 2024

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



PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 147. DISPUTE RESOLUTION- -AGREEMENTS, SETTLEMENTS, COMMUTATIONS

28 TAC §147.10

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts the amendment of the title of 28 TAC §147.10, concerning commutation of impairment income benefits. DWC adopts §147.10 without changes to the proposed text published in the August 23, 2024, issue of the *Texas Register* (49 TexReg 6407). The rule will not be republished.

REASONED JUSTIFICATION. The amendment corrects an inadvertent duplication in the title of §147.10. The proposal amending Chapter 147, which was published in the April 5, 2024, issue of the *Texas Register* (49 TexReg 2165) reorganized the chapter to make it easier to understand and use. In that proposal, the title of §147.10 was inadvertently renamed to duplicate the title of §147.11. Amending §147.10 is necessary to correct the title of §147.10 to Commutation of Impairment Income Benefits to better describe its purpose.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: DWC received one written comment, and no oral comments. Commenters in support of the proposal were: Office of Injured Employee Counsel (OIEC). DWC did not receive any comments against the proposal.

Comment on §147.10. OIEC commented that they support DWC's proposed change to the title of Rule 147.10 to "Commutation of Impairment Income Benefits" to better describe its purpose.

Agency Response to Comment on 147.10. DWC appreciates the comment.

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendment to 28 TAC §147.10 under Labor Code §§408.128, 402.00111, 402.00116, and 402.061.

Labor Code §408.128 allows an employee to elect to commute the remainder of their entitled impairment income benefits if the employee has returned to work for at least three months, earning at least 80% of the employee's average weekly wage.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

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

Filed with the Office of the Secretary of State on September 27, 2024.

TRD-202404660

Kara Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Effective date: October 17, 2024

Proposal publication date: August 23, 2024

For further information, please call: (512) 804-4703



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 4. TREASURY ADMINISTRATION SUBCHAPTER A. POOLED COLLATERAL PROGRAM

34 TAC §4.121

The Comptroller of Public Accounts adopts the repeal of §4.121, concerning notification, without changes to the proposed text as published in the August 16, 2024, issue of the *Texas Register* (49 TexReg 6192). The rule will not be republished.

The repeal removes §4.121 from Subchapter A because it is unnecessary for the implementation of Government Code, Chapter 2257, Subchapter F, concerning pooled collateral to secure deposits of certain public funds.

The comptroller did not receive any comments regarding adoption of the repeal.

The repeal is adopted under Government Code, §2257.102(a), which requires the comptroller to adopt rules to administer Government Code, Chapter 2257, Subchapter F, concerning pooled collateral to secure deposits of certain public funds.

The repeal implements Government Code, Chapter 2257, Subchapter F, concerning pooled collateral to secure deposits of certain public funds.

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 September 25, 2024.

TRD-202404624

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Effective date: October 15, 2024

Proposal publication date: August 16, 2024

For further information, please call: (512) 475-2220



CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER C. APPRAISAL DISTRICT ADMINISTRATION

34 TAC §9.415

The Comptroller of Public Accounts adopts amendments to §9.415, concerning applications for property tax exemptions without changes to the proposed text as published in the August 23, 2024, issue of the *Texas Register* (49 TexReg 6408). The rule will not be republished. The comptroller adopts the amendments due to changes to Tax Code, §11.43 (Application for Exemption) made by Senate Bill 1381, 88th Legislature, R.S., 2023.

Because Tax Code, §11.43 was amended to require the chief appraiser to allow the surviving spouse of a qualified individual age 65 or older or disabled to continue claiming the residence homestead exemption without requiring the surviving spouse to file a new application under certain circumstances, the amendment removes subsection (b) as unnecessary.

Subsequent subsections are relettered.

The comptroller did not receive any comments regarding adoption of the amendments.

The amendments are adopted under Tax Code, §5.03 (Powers and Duties Generally), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to establishing minimum standards for the administration and operation of an appraisal district.

The amendments implement Tax Code §11.43 (Application for Exemption).

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 September 23, 2024.

TRD-202404566

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Effective date: October 13, 2024

Proposal publication date: August 23, 2024

For further information, please call: (512) 475-2220



SUBCHAPTER K. ARBITRATION OF APPRAISAL REVIEW BOARD DETERMINATIONS

DIVISION 2. LIMITED BINDING ARBITRATION FOR PROCEDURAL VIOLATIONS

34 TAC §9.4223

The Comptroller of Public Accounts adopts an amendment to §9.4223, concerning dismissal for lack of jurisdiction, without changes to the proposed text as published in the June 21, 2024, issue of the *Texas Register* (49 TexReg 4575). The rule will not be republished.

The amendment clarifies that dismissals with prejudice for lack of jurisdiction under §9.4223(a)(9) will occur where the individual who files for limited binding arbitration lacks the authority to do so. The amendment also modifies the language of subsection (a)(9) for consistency with §9.4244(a)(7) of this title. The comptroller will modify §9.4244(a)(7) of this title in a separate rulemaking.

The comptroller received a comment regarding dismissal for delinquent taxes under §9.4223(a)(1) from Adam L. Pomerantz, Esq. Mr. Pomerantz states that he believes Rule 9.4223(a)(1) is "invalid to the extent that it requires dismissal when taxes were paid after the Delinquency Date but before the arbitrator is appointed or asked by a CAD to dismiss an appeal." Mr. Pomerantz states that in a recent arbitration the property owner paid the taxes after the delinquency date, but before Mr. Pomerantz was appointed as arbitrator. Mr. Pomerantz states that he interprets Tax Code, §41A.10(b) to allow arbitrators to dismiss an arbitration only when the taxes are still delinquent at the time the arbitrator is asked to dismiss. In contrast, he notes that Rule 9.4223(a)(1) requires dismissal with prejudice if taxes on the property are delinquent because, for the year at issue, the undisputed tax amount was not paid before the delinquency date. Mr. Pomerantz argues that arbitrators are not authorized to dismiss appeals if, when requested by a CAD to dismiss the arbitration, all taxes, interest, and penalties have been paid, even if this took place after the delinquency date.

The comptroller thanks Mr. Pomerantz for submitting this comment, but declines to make a change to the rule. Mr. Pomerantz proposes a change to §9.4223(a)(1) which addresses dismissal for delinquent taxes. This is a very different issue from the proposed amendment to §9.4223(a)(9) which addresses the dismissal of requests filed without authority. The comptroller cannot make the requested change because it is beyond the scope of this rulemaking.

The amendment is adopted under Tax Code, §41A.13, which authorizes the comptroller to adopt rules necessary to implement and administer Tax Code, Chapter 41A, concerning appeal through binding arbitration.

The amendment implements Tax Code, Chapter 41A.

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 September 24, 2024.

TRD-202404593

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Effective date: October 14, 2024

Proposal publication date: June 21, 2024

For further information, please call: (512) 475-2220



DIVISION 3. REGULAR BINDING ARBITRATION OF APPRAISAL REVIEW BOARD DETERMINATIONS

34 TAC §9.4244

The Comptroller of Public Accounts adopts an amendment to §9.4244, concerning dismissals for lack of jurisdiction, without changes to the proposed text as published in the June 21, 2024, issue of the *Texas Register* (49 TexReg 4576). The rule will not be republished.

The amendment clarifies that dismissals with prejudice for lack of jurisdiction under §9.4244(a)(7) will occur where the individual who files for regular binding arbitration lacks the authority to do so. The amendment modifies the name of §9.4244 for consistency with §9.4223 of this title. The amendment also modifies the language of subsection (a)(7) for consistency with §9.4223(a)(9) of this title. The comptroller will modify §9.4223(a)(9) of this title in a separate rulemaking.

The comptroller received a comment regarding dismissal for delinquent taxes under §9.4244(a)(1) from Adam L. Pomerantz, Esq. Mr. Pomerantz states that he believes Rule 9.4244(a)(1) is "invalid to the extent that it requires dismissal when taxes were paid after the Delinquency Date but before the arbitrator is appointed or asked by a CAD to dismiss an appeal." Mr. Pomerantz states that in a recent arbitration the property owner paid the taxes after the delinquency date, but before Mr. Pomerantz was appointed as arbitrator. Mr. Pomerantz states that he interprets Tax Code, §41A.10(b) to allow arbitrators to dismiss an arbitration only when the taxes are still delinquent at the time the arbitrator is asked to dismiss. In contrast, he notes that Rule 9.4244(a)(1) requires dismissal with prejudice if taxes on the property are delinquent because, for the year at issue, the undisputed tax amount was not paid before the delinquency date. Mr. Pomerantz argues that arbitrators are not authorized to dismiss appeals if, when requested by a CAD to dismiss the arbitration, all taxes, interest, and penalties have been paid, even if this took place after the delinquency date.

The comptroller thanks Mr. Pomerantz for submitting this comment, but declines to make a change to the rule. Mr. Pomerantz proposes a change to §9.4244(a)(1) which addresses dismissal for delinquent taxes. This is a very different issue from the proposed amendment to §9.4244(a)(7) which addresses the dismissal of requests filed without authority. The comptroller cannot

make the requested change because it is beyond the scope of this rulemaking.

The amendment is adopted under Tax Code, §41A.13, which authorizes the comptroller to adopt rules necessary to implement and administer Tax Code, Chapter 41A, concerning appeal through binding arbitration.

The amendment implements Tax Code, Chapter 41A.

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 September 24, 2024.

TRD-202404595

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Effective date: October 14, 2024

Proposal publication date: June 21, 2024

For further information, please call: (512) 475-2220



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 17. STATE PENSION REVIEW BOARD

CHAPTER 607. PUBLIC RETIREMENT SYSTEM MINIMUM EDUCATIONAL TRAINING PROGRAM

The Texas Pension Review Board (Board) adopts the repeal of 40 TAC Chapter 607 pertaining to the Minimum Educational Training program. This repeal is in conjunction with the adoption of new rules in Chapter 607, also published in this issue of the *Texas Register*. The rules are adopted without changes to the proposed text as published in the August 9, 2024, issue of the *Texas Register* (49 TexReg 5921) and will not be republished.

BACKGROUND AND JUSTIFICATION

The Board adopts the repeal of its existing rules in Chapter 607 in order to adopt new, updated rules in Chapter 607 that increase clarity of the rules, streamline training cycles to improve compliance with the training requirements, increase the efficiency of program tracking and reporting, and strengthen agency oversight for accredited training activities.

PUBLIC COMMENTS

The agency did not receive any comments on the proposed repeal during the public comment period.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§607.101, 607.103 - 607.105, 607.107

STATUTORY AUTHORITY

The repeal is adopted under Government Code §801.211(e), which authorizes the Board to adopt rules necessary to implement the Minimum Educational Training program.

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 September 26, 2024.

TRD-202404644

Tamara Aronstein

General Counsel

State Pension Review Board

Effective date: October 16, 2024

Proposal publication date: August 9, 2024

For further information, please call: (512) 463-1736



SUBCHAPTER B. MINIMUM EDUCATIONAL TRAINING REQUIREMENTS FOR TRUSTEES AND SYSTEM ADMINISTRATORS

40 TAC §607.110, §607.113

STATUTORY AUTHORITY

The repeal is adopted under Government Code §801.211(e), which authorizes the Board to adopt rules necessary to implement the Minimum Educational Training program.

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 September 26, 2024.

TRD-202404645

Tamara Aronstein

General Counsel

State Pension Review Board

Effective date: October 16, 2024

Proposal publication date: August 9, 2024

For further information, please call: (512) 463-1736



SUBCHAPTER C. MINIMUM EDUCATIONAL TRAINING PROGRAM SPONSORS

40 TAC §§607.120, 607.122, 607.124, 607.126, 607.128, 607.130

STATUTORY AUTHORITY

The repeal is adopted under Government Code §801.211(e), which authorizes the Board to adopt rules necessary to implement the Minimum Educational Training program.

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 September 26, 2024.

TRD-202404646

Tamara Aronstein

General Counsel

State Pension Review Board

Effective date: October 16, 2024

Proposal publication date: August 9, 2024

For further information, please call: (512) 463-1736



SUBCHAPTER D. COMPLIANCE WITH THE MINIMUM TRAINING REQUIREMENTS

40 TAC §607.140, §607.142

STATUTORY AUTHORITY

The repeal is adopted under Government Code §801.211(e), which authorizes the Board to adopt rules necessary to implement the Minimum Educational Training program.

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 September 26, 2024.

TRD-202404647

Tamara Aronstein

General Counsel

State Pension Review Board

Effective date: October 16, 2024

Proposal publication date: August 9, 2024

For further information, please call: (512) 463-1736



CHAPTER 607. PUBLIC RETIREMENT SYSTEM MINIMUM EDUCATIONAL TRAINING PROGRAM

The Texas Pension Review Board (Board) adopts new rules in 40 TAC Chapter 607 relating to the Minimum Educational Training program for public retirement system trustees and administrators.

The Board adopts the new rules in §§607.101, 607.103 - 607.105, 607.107, 607.113, 607.120, 607.122, 607.124, 607.126, 607.128, 607.130, 607.140, and 607.142 without changes to the proposed text published in the August 9, 2024, issue of the *Texas Register* (49 TexReg 5923), and the rules will not be republished.

The Board adopts the new rule in §607.110 with a change to the proposed text published in the August 9, 2024, issue of the *Texas Register* (49 TexReg 5923), and the rule will be republished. The change makes a minor, technical change to §607.110(i) to correct a reference to another subsection within §607.110.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

Section 801.211, Texas Government Code requires the Board to develop and administer an educational training program for trustees and administrators, and Section 801.211(e), Texas Government Code authorizes the Board to adopt rules to implement this requirement. The new rules clarify and improve the Mini-

imum Educational Training program in conjunction with the repeal of the rules under separate action.

SECTION-BY-SECTION SUMMARY

The adopted rules in 40 TAC §607.101 provide the authority to adopt these rules.

The adopted rules in 40 TAC §607.103 provide the purpose of the rules, to ensure that trustees and administrators of Texas public retirement systems have the pension education needed to successfully discharge their duties.

The adopted rules in 40 TAC §607.104 provide definitions pertinent to the rules for the Minimum Educational Training program.

The adopted rules in 40 TAC §607.105 provide the applicability of the rules, which apply to trustees, except in certain cases, statutorily authorized designees, and administrators of public retirement systems.

The adopted rules in 40 TAC §607.110 provide the Minimum Educational Training program requirements for trustees and administrators in their first year of service and each calendar year thereafter. Trustees and administrators must complete seven credit hours of core training in the first year of service and two credit hours of training for continuing education each calendar year thereafter. The proposed rules create a one-time extension application process for the first year of service training requirement. The proposed rules specify that continuing education hours completed in excess of the annual requirement may not be carried over to a subsequent calendar year. The proposed rules provide for the transition from current requirements, proposed for repeal under separate action, to the new requirements effective January 1, 2025.

The adopted rules in 40 TAC §607.113 specify that trustees and administrators reappointed to, re-elected to, or rehired by a public retirement system are not required to repeat the first year of service training requirement unless more than five years have passed since the last date of the most recent term of service or employment.

The adopted rules in 40 TAC §607.120 provide program standards for training providers offering Minimum Educational Training activities, such as compliance with program requirements and the Board's curriculum guide, method of delivery for training activities, and verification of attendance for online training.

The adopted rules in 40 TAC §607.122 detail the computation of credit hours by training providers. Credit hours are based on net actual instruction time for all activities, with additional parameters provided for both digital and in-person activities.

The adopted rules in 40 TAC §607.124 provide for the accreditation of training providers by the Board. Training providers must conform with Board standards outlined in rule, conduct its business lawfully, and follow the application process provided in rule. This rule also creates a process for complaints regarding training providers and the Board's authority if a training provider is noncompliant with training program standards or Board rules.

The adopted rules in 40 TAC §607.126 create several requirements for accredited training providers, including recordkeeping, allowing review by the Board, and providing participants a certificate of completion.

The adopted rules in 40 TAC §607.128 allow for accreditation of training activities by a non-accredited training provider through

a case-by-case application process outlined in the rule. Such activities, once approved, may be offered through repeat presentations for 36 months without requiring a new application.

The adopted rules in 40 TAC §607.130 provide details on accreditation of in-house training activities offered by a public retirement system for its own trustees and/or administrators. In-house training must meet all standards for training providers included in Chapter 607, except that in-house training is exempted from certain requirements listed in the rule.

The adopted rules in 40 TAC §607.140 pertain to Minimum Educational Training program reporting requirements, creating an annual April 1 deadline for two reports to be submitted by public retirement systems to provide the Board information on trustees and administrators and the training they completed during the preceding calendar year. This section also includes a requirement for the Board to report annually on the noncompliance status of trustees and administrators, as reported to the Board pursuant to this section.

The adopted rules in 40 TAC §607.142 create recordkeeping requirements for public retirement systems, which must retain records detailed in the rule for five years from the date a training activity is completed, and provide a copy of these records to the Board upon request.

PUBLIC COMMENTS

The agency did not receive any comments on the proposed rules during the public comment period.

BOARD ACTION

The Board met on July 25, 2024, to discuss the proposed rules. The Board recommended the proposed rules be published in the *Texas Register*. At its meeting on September 25, 2024, the Board adopted the rules as published in the *Texas Register*, with one change to §607.110 as discussed above.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§607.101, 607.103 - 607.105, 607.107

STATUTORY AUTHORITY

The rules are adopted under Government Code §801.211 (e), which authorizes the Board to adopt rules necessary to implement the Government Code §801.211 educational training requirement.

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 September 26, 2024.

TRD-202404648

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Effective date: October 16, 2024

Proposal publication date: August 9, 2024

For further information, please call: (512) 463-1736



SUBCHAPTER B. MINIMUM EDUCATIONAL TRAINING REQUIREMENTS FOR TRUSTEES AND SYSTEM ADMINISTRATORS

40 TAC §607.110, §607.113

STATUTORY AUTHORITY

The rules are adopted under Government Code §801.211(e), which authorizes the Board to adopt rules necessary to implement the Government Code §801.211 educational training requirement.

§607.110. *Minimum Educational Training Requirements.*

(a) First year of service. A new trustee and a new system administrator shall complete at least seven (7) credit hours of training in the core content areas within the first year of service. The seven credit hours shall include training in all of the core content areas. A trustee or system administrator must earn no less than half a credit hour in each content area. No more than two credit hours earned in any one core content area shall be applied toward meeting the 7-hour minimum requirement contained in this subsection. The core content areas are:

- (1) fiduciary matters;
- (2) governance;
- (3) ethics;
- (4) investments;
- (5) actuarial matters;
- (6) benefits administration; and
- (7) risk management.

(b) A new trustee or system administrator may submit to the Board an application for a one-time extension period of three months to complete the first year of service core training requirement, which the Board may approve in exceptional circumstances. The request for extension must be approved by the chair of the PRS' board, or, for an extension request by the PRS board chair, approved by the vice chair of the PRS' board or its administrator. The application must be submitted to the Board on a form prescribed by the Board and must include an explanation of the circumstances necessitating the extension.

(c) Subsequent years of service. A trustee and a system administrator shall complete at least two (2) credit hours of continuing education in either the core content areas in subsection (a) of this section, continuing education content areas, or any combination thereof, within each calendar year after the first year of service as a new trustee or new system administrator. The continuing education content areas include:

- (1) compliance;
- (2) legal and regulatory matters;
- (3) pension accounting;
- (4) custodial issues;
- (5) plan administration;
- (6) Texas Open Meetings Act; and
- (7) Texas Public Information Act.

(d) A trustee or administrator may not carry over continuing education credit hours earned in excess of the requirement under subsection (c) of this section to a subsequent calendar year.

(e) MET completed up to six months before the trustee's date of assuming position on the PRS board or system administrator's hiring date may be counted for the first-year-of-service requirement in subsection (a) of this section.

(f) A trustee serving concurrently on multiple PRS boards and a system administrator employed concurrently by multiple PRSs shall only be required to complete the MET requirements in this section for service with one PRS, so long as the concurrent service or employment is reported to the Board pursuant to §607.140(b)(3) of this chapter.

(g) Credit hours for attending MET activities shall be based on net actual instruction time. Credit hours for viewing or listening to audio, video, or digital media shall be based on the running time of the recordings, and credit hours for attending in-person educational programs shall be based on actual instruction time.

(h) A trustee or administrator may gain credit for teaching an accredited MET activity. Credit hours shall be based on net actual presentation time, but may not include repeated presentations of the same activity in a single calendar year.

(i) The Board hereby adopts by reference the Curriculum Guide for Minimum Educational Training to provide further direction on core and continuing education content areas as contained in subsections (a) and (c) of this section. Trustees and system administrators are encouraged to review the Curriculum Guide for content area guidance.

(j) The Board shall make the Curriculum Guide for Minimum Educational Training available to the PRSs. A PRS can obtain the most current version of the Curriculum Guide for Minimum Educational Training from the offices of the State Pension Review Board and from its website at <http://www.prb.texas.gov>.

(k) The 2025 calendar year training cycle for trustees and administrators shall be based on their MET compliance status on December 31, 2024, as detailed below. This subsection expires on December 31, 2025.

(1) Trustees and administrators within their first year of service on December 31, 2024 who have completed by that date the training required by subsection (a) of this section shall begin their first continuing education cycle in calendar year 2025.

(2) Trustees and administrators within their first year of service on December 31, 2024 who have not completed by that date the training required by subsection (a) of this section shall complete the first year of service training in calendar year 2025.

(3) Trustees and administrators who began a continuing education cycle, as required by subsection (c) of this section, in calendar year 2024 may carry over any hours completed in that year to the calendar year 2025 continuing education cycle. If a trustee or administrator completed more than two continuing education hours, those hours will not carry over to calendar year 2026.

(4) Trustees and administrators who began a continuing education cycle, as required by subsection (c) of this section, in calendar year 2023 will begin a new continuing education cycle on January 1, 2025. Trustees and administrators who did not complete the training hours required in previous cycles will remain noncompliant and must complete all outstanding required credit hours.

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 September 26, 2024.

TRD-202404649
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State Pension Review Board
Effective date: October 16, 2024
Proposal publication date: August 9, 2024
For further information, please call: (512) 463-1736

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**SUBCHAPTER C. MINIMUM EDUCATIONAL
TRAINING PROGRAM SPONSORS**

**40 TAC §§607.120, 607.122, 607.124, 607.126, 607.128,
607.130**

STATUTORY AUTHORITY

The rules are adopted under Government Code §801.211(e), which authorizes the Board to adopt rules necessary to implement the Government Code §801.211 educational training requirement.

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 September 26, 2024.

TRD-202404650
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General Counsel
State Pension Review Board
Effective date: October 16, 2024
Proposal publication date: August 9, 2024
For further information, please call: (512) 463-1736

◆ ◆ ◆
**SUBCHAPTER D. COMPLIANCE WITH THE
MINIMUM TRAINING REQUIREMENTS**

40 TAC §607.140, §607.142

STATUTORY AUTHORITY

The rules are adopted under Government Code §801.211(e), which authorizes the Board to adopt rules necessary to implement the Government Code §801.211 educational training requirement.

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 September 26, 2024.

TRD-202404651
Tamara Aronstein
General Counsel
State Pension Review Board
Effective date: October 16, 2024
Proposal publication date: August 9, 2024
For further information, please call: (512) 463-1736

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**CHAPTER 609. PUBLIC RETIREMENT
SYSTEM INVESTMENT EXPENSE REPORTING**

The Texas Pension Review Board (Board) adopts amendments to 40 TAC §609.105, Definitions, and §609.111, Investment Expense Reporting Structure and the repeal of 40 TAC §609.109, regarding the initial investment expense reporting period.

The Board adopts the amendments and repeal without changes to the proposed text published in the August 9, 2024, issue of the *Texas Register* (49 TexReg 5930), and the rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

Government Code §802.103(e) authorizes the Board to adopt rules necessary to implement the Government Code §802.103(a)(3) investment expense reporting requirement.

The purpose of the amendments is to clarify the provisions in the current rule for ease of reference and understanding by the public and improve consistency and accuracy of investment expense reports to improve transparency for the public, members of the systems, and policymakers.

SECTION-BY-SECTION SUMMARY

The rules in 40 TAC §609.105 pertain to definitions for investment expense reporting. The rule is modified to specify that "direct and indirect fees and commissions" include "fees netted from returns," which is defined in the previously existing rule language. The amendments also specifies that "investment service" includes "in-house investment staff."

The rules in 40 TAC §609.111 pertain to the investment expense reporting structure. The amendments clarify that direct and indirect fees and commissions must be reported by type of fee and commission, and specify the types as defined in 40 TAC §609.105(4), as the definition is amended by this rulemaking. The amendments also specify that investment expense information may be reported in an unaudited supplemental schedule within the public retirement system's annual financial report.

The rules in 40 TAC §609.109 pertain to the initial investment expense reporting period, which has already passed. The rule expressly states this section expired on April 1, 2022. The repeal will remove this obsolete provision from the rules.

PUBLIC COMMENTS

The agency did not receive any comments on the proposed amendments or repeal during the public comment period.

BOARD ACTION

The Board met on July 25, 2024, to discuss the proposed amendments and repeal. The Board recommended the proposed amendments be published in the *Texas Register*. At its meeting on September 25, 2024, the Board adopted the proposed amendments and repeal as published in the *Texas Register*.

40 TAC §609.105, §609.111

STATUTORY AUTHORITY

The amendments are adopted under Government Code §802.103(e), which authorizes the Board to adopt rules necessary to implement the Government Code §802.103(a)(3) investment expense reporting requirement.

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 September 26, 2024.

TRD-202404652
Tamara Aronstein
General Counsel
State Pension Review Board
Effective date: October 16, 2024
Proposal publication date: August 9, 2024
For further information, please call: (512) 463-1736



40 TAC §609.109

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §801.201, which authorizes the Board to adopt rules and Texas Government Code §802.103(e), which authorizes the Board to adopt rules for investment expense reporting and other annual financial report requirements.

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 September 26, 2024.

TRD-202404653
Tamara Aronstein
General Counsel
State Pension Review Board
Effective date: October 16, 2024
Proposal publication date: August 9, 2024
For further information, please call: (512) 463-1736



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 6. STATE INFRASTRUCTURE BANK

The Texas Department of Transportation (department) adopts the amendments to §§6.2 - 6.4, 6.12, 6.23, 6.32, 6.41 - 6.43, and 6.45, concerning the state infrastructure bank. The amendments to §§6.2 - 6.4, 6.12, 6.23, 6.32, 6.41 - 6.43, and 6.45 are adopted without changes to the proposed text published in the July 12, 2024, issue of the *Texas Register* (49 TexReg 5006) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Amendments to §§6.2 - 6.4, 6.12, 6.23, 6.32, 6.41 - 6.43, and 6.45, provide conforming changes to Texas Transportation Code, Chapter 222, Subchapter D, clean up outdated provisions, clarify the intent of multiple sections of Chapter 6, and

provide efficiencies for the department and borrowers from the state infrastructure bank (SIB).

Amendments to §6.2, Definitions, delete the reference to "Environmental Affairs Divisions Operations and Procedures Manual" in §6.2(5)(B) because the manual is not used for these rules and delete the definition of "Interoperability" as it is used in the rules.

Amendments to §6.3, General Policies, include amend subsection (f) to allow a borrower to request reimbursement of eligible project costs if incurred not more than 12 months prior to the execution of the financial assistance agreement evidencing the financial assistance. Costs are required to be approved by the department and funds will not be disbursed until the financial assistance agreement has been executed by both parties.

Amendments to §6.4, Separate Subaccounts, clean up subsection (b) to indicate that the highway and transit subaccounts "may be capitalized" with state and federal funds instead of "is capitalized" with state and federal funds. Currently the transit account is not funded.

Amendments to §6.12, Eligible Projects, modify an eligible project for which secondary funds may be used to "a project eligible for assistance under Title 23 or Title 49, USC." This language aligns with Texas Transportation Code, §222.071(5).

Amendments to §6.23, Application Procedure, removes part of subsection (b)(3)(A) and removes subsections (b)(3)(B-C), which require the applicant to submit information about the consistency of the project with certain statewide plans as well as identify the environmental impacts of the project. The amendments are made to conform with the changes made in §6.32(c), and §6.32(d) along with other provisions that require environmental reviews be completed before execution of a SIB agreement.

Amendments to §6.32, Commission Action, make various changes to the rules related to commission actions concerning financial assistance from the SIB. Changes to subsection (b)(2) add "financial condition of the bank" as a consideration for the Commission when determining whether to waive preliminary approval of a loan. Additionally, the changes make the commission's consideration of the listed factors permissive.

Changes to subsection (c) allow the executive director of the department to suspend the deadlines for applications that need to be considered for preliminary approval. Currently, the preliminary approval process is not needed and the rules do not allow for the deadlines to be suspended. The changes provide the executive director flexibility when available SIB funds are sufficient to cover all requests. Additionally, paragraph (1)(D) is removed to conform with the changes in §6.32(d).

In subsection (d), changes are made to require that SIB loans will conform to the environmental requirements outlined in Chapter 2 of Title 43 of the Texas Administrative Code (relating to Environmental Review of Transportation Projects), if the project meets the applicability thresholds in 43 TAC §2.3. Changes further indicate that any required environmental review must be completed before construction begins, excluding construction activities in Title 23, United States Code, §101(a)(4)(A) and that the applicant will be responsible for the environmental review unless the department agrees otherwise. This change is meant to allow for SIB loans to be used for preliminary project activities defined in Title 23, United States Code, which include preliminary engineering, engineering, and design-related services directly relating to the construction of a highway project, including engineer-

ing, design, project development and management, construction project management and inspection, surveying, assessing resilience, mapping (including the establishment of temporary and permanent geodetic control in accordance with specifications of the National Oceanic and Atmospheric Administration), and architectural-related services. This change is also part of other changes that will require environmental reviews to be completed before execution of the agreement; these changes will create efficiencies in the process.

Amendments to subsection (c)(2) remove the requirement of project consistency with certain statewide planning documents. Deleting this requirement will remove a burden for projects that is not required in statute. Statute only requires inclusion in the MPO plan.

Amendments to subsection (e) remove references to the environmental impacts of a project to conform to the change in §6.32(d).

Changes to subsection (g) remove the examples of the types of actions that the commission may require an applicant to take to receive financial assistance from the SIB to clarify that "further actions" are not limited to the listed examples.

Amendments to §6.41, Financial Assistance Agreements, provide that funds will not be disbursed for construction, excluding activities in Title 23, United States Code, §101(a)(4)(A), until an environmental review under Chapter 2 is complete, if required. This change aligns with TxDOT's environmental review standards to require an environmental review for construction and right of way activities while not requiring a completed study for preliminary engineering and design related activities. This will allow communities to use the SIB for these activities.

Additional changes to the section clarify that the repayment of financial assistance provided from the SIB will begin within 18 months of the date of initial funds disbursement rather than "on the earliest reasonable date consistent with applicable federal and state law, rules, and regulations." The rules allow the commission to defer the initial repayment but was not clear when that approval was needed. This change will remove the ambiguity of when approval is needed for a payment deferral.

Amendments to §6.42, Performance of Work, repeal the requirement that the department will set aside funds internally for the borrower when the department provides work on project on behalf of the applicant. The department has chosen not to do this practice and this repeal aligns the rules with the department's practice. The amendments move subsections (b)(2), (3), and (5) to §6.45, Financial and Credit Requirements, and amend existing §6.45(b)(4), which is redesignated as subsection (b)(2), to remove the different requirements based on the size of the loan. These amendments standardize the financial requirements (annual budget and audit) for all loans and borrowers.

Amendments to §6.43, Design, Construction, and Procurement Standards, remove federal-aid projects from the design requirements and instead differentiate the standards between projects on the state highway system and off the state highway system. As amended, subsection (a) is applicable to projects on the state highway system and will continue to adhere to department design standards, while new subsection (b) requires projects not on the state highway system to conform to American Association of State Highway and Transportation Officials (AASHTO) design standards. This changes align the rules with recognized department practices.

Amendments to §6.45, Financial and Credit Requirements, are explained under the explanation for the amendments to §6.43, Design, Construction, and Procurement Standards.

COMMENTS

No comments on the proposed amendments were received.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §§6.2 - 6.4

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §222.077, which authorizes the commission to adopt rules to implement Transportation Code, Chapter 222, Subchapter D relating to the state infrastructure bank.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, Chapter 222, Subchapter D.

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 September 26, 2024.

TRD-202404639

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Effective date: October 16, 2024

Proposal publication date: July 12, 2024

For further information, please call: (512) 463-8630



SUBCHAPTER B. ELIGIBILITY

43 TAC §6.12

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §222.077, which authorizes the commission to adopt rules to implement Transportation Code, Chapter 222, Subchapter D relating to the state infrastructure bank.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, Chapter 222, Subchapter D.

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

Filed with the Office of the Secretary of State on September 26, 2024.

TRD-202404640

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Effective date: October 16, 2024
Proposal publication date: July 12, 2024
For further information, please call: (512) 463-8630



SUBCHAPTER C. PROCEDURES

43 TAC §6.23

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §222.077, which authorizes the commission to adopt rules to implement Transportation Code, Chapter 222, Subchapter D relating to the state infrastructure bank.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, Chapter 222, Subchapter D.

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 September 26, 2024.

TRD-202404641
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Effective date: October 16, 2024
Proposal publication date: July 12, 2024
For further information, please call: (512) 463-8630



SUBCHAPTER D. DEPARTMENT AND COMMISSION ACTION

43 TAC §6.32

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §222.077, which authorizes the commission to adopt rules to implement Transportation Code, Chapter 222, Subchapter D relating to the state infrastructure bank.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, Chapter 222, Subchapter D.

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 September 26, 2024.

TRD-202404642
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Effective date: October 16, 2024
Proposal publication date: July 12, 2024
For further information, please call: (512) 463-8630



SUBCHAPTER E. FINANCIAL ASSISTANCE AGREEMENTS

43 TAC §§6.41 - 6.43, 6.45

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §222.077, which authorizes the commission to adopt rules to implement Transportation Code, Chapter 222, Subchapter D relating to the state infrastructure bank.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, Chapter 222, Subchapter D.

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 September 26, 2024.

TRD-202404643
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Effective date: October 16, 2024
Proposal publication date: July 12, 2024
For further information, please call: (512) 463-8630



CHAPTER 11. DESIGN

SUBCHAPTER E. TRANSPORTATION ENHANCEMENT PROGRAM

43 TAC §§11.200 - 11.221

The Texas Department of Transportation (department) adopts the repeal of §§11.200 - 11.221 concerning Transportation Enhancement Program. The repeal of §§11.200 - 11.221 is adopted without changes to the proposed text as published in the July 12, 2024, issue of the *Texas Register* (49 TexReg 5015) and will not be republished.

EXPLANATION OF ADOPTED REPEAL

Sections 11.200 - 11.221 (Chapter 11, Subchapter E, Transportation Enhancement Program) prescribe the policies and

procedures for the implementation of the federal Transportation Enhancement Program. The Transportation Enhancement Program was replaced by the Transportation Alternatives Program (TAP) in the federal Moving Ahead for Progress in the 21st Century Act in 2012. Chapter 11, Subchapter F, Transportation Alternatives Program (§§11.300 - 11.317), prescribe the policies and procedures for the implementation and administration of TAP.

No new projects have been submitted under the Transportation Enhancement Program since August 2012, nor authorized for funding under the program since August 2016. Therefore, §§11.200 - 11.221 are no longer needed and are being repealed.

COMMENTS

No comments on the proposed repeal were received.

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

None.

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 September 26, 2024.

TRD-202404635

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Effective date: October 16, 2024

Proposal publication date: July 12, 2024

For further information, please call: (512) 463-8630



CHAPTER 12. PUBLIC DONATION AND PARTICIPATION PROGRAM

SUBCHAPTER K. ACKNOWLEDGMENT PROGRAM

43 TAC §§12.351 - 12.355

The Texas Department of Transportation (department) adopts amendments to §§12.351 - 12.355, relating to the Acknowledgment Program. The amendments to §§12.351 - 12.355 are adopted without changes to the proposed text in the July 12, 2024, issue of the *Texas Register* (49 TexReg 5016) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Amendments to §§12.351-12.355 include edits to clarify and streamline existing language throughout, and propose new language to implement the authority granted by Senate Bill 2200, 88th Legislature, Regular Session 2023. SB 2200 permits the department to publicly acknowledge certain donations made

to the department. Specifically, if a person makes a donation to the department's roadside assistance and safety service patrol program, the department may acknowledge the donation on a vehicle or equipment used by the program. Through the roadside assistance and safety service patrol, the department offers, as a free service, roadside assistance to clear minor crashes and debris and to assist motorists in need.

Amendments to §12.351, Purpose, add the department's roadside assistance and safety service patrols as highway-related services eligible for the state acknowledgement program.

Amendments to §12.352, Definitions, expand the term "acknowledgment" to also include an acknowledgment decal and add the definition of "acknowledgment decal" as a term used in the subchapter.

Amendments to §12.353, Acknowledgment Program, add the new statutory requirement that a public acknowledgment may not contain comparative or qualitative descriptions of a product, service, facility, or company.

Amendments to §12.354, Acknowledgment Program Vendor Contract; Program Agreement, require that the number and service area of vehicles with acknowledgment decals be included in the vendor's contract with the donor and in the information provided by the vendor to the department. The vendor is required to receive approval from the department for the vehicles to receive decals.

Amendments to §12.355, Acknowledgment Sign, add decals to the methods of acknowledgment, and outline general decal approval, location, and design requirements to ensure decals do not affect the safety of the traveling public. The section heading is changed to "Acknowledgment Signs and Decals" to describe the content of the section with those changes.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, under Texas Transportation Code, §201.206, which authorizes the commission to enact rules concerning the acknowledgment of donations under that section.

The authority for the adopted amendments is provided by S.B. No. 2200, 88th Regular Session, 2023. The primary author and the primary sponsor of that bill are Sen. Kelly Hancock and Rep. Caroline Harris, respectively.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, §201.206

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 September 26, 2024.

TRD-202404636

Becky Blewett
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Effective date: October 16, 2024
Proposal publication date: July 12, 2024
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CHAPTER 25. TRAFFIC OPERATIONS SUBCHAPTER B. PROCEDURES FOR ESTABLISHING SPEED ZONES

The Texas Department of Transportation (department) adopts the repeal of §25.27 and enactment of new §25.27 concerning Variable Speed Limits. The repeal of §25.27 and new §25.27 are adopted without changes to the proposed text as published in the July 12, 2024, issue of the *Texas Register* (49 TexReg 5019) and will not be republished.

EXPLANATION OF PROPOSED REPEAL and REPLACEMENT WITH NEW SECTION

Repeal of §25.27, a pilot Variable Speed Limits program which expired February 1, 2015, is necessary to establish new §25.27, a Variable Speed Limits program, with authority granted through House Bill 1885, 88th Legislature, Regular Session, 2023, which added Transportation Code, §545.353(k).

New §25.27, Variable Speed Limits, establishes the procedures for a new variable speed limits program that will improve traffic safety by allowing the temporary lowering of a prima facie speed limit to address any conditions that affect the safe and orderly movement of traffic on a roadway. Under Transportation Code, §545.353(k), a speed limit that is established under the program must be based on an engineering and traffic investigation. However, because the prima facie speed limits for roadways are established with thorough engineering and traffic investigations, an 85th percentile speed study is not required. The district engineer may determine the appropriate reduction of no more than 10 miles per hour below the prima facie speed limit using engineering judgment based on other commonly-accepted investigation methods, such as the determination of a spot speed within the affected area, speed-over-distance readings from automated field technology, sight distance during inclement weather, or traffic flow obtained by either field investigation or automated technology. The lower speed limit is effective only when the speed limit is posted. New §25.27 also prohibits the lowering of an established prima facie speed limit under this section to divert traffic to a toll road for the purpose of increasing revenue from toll charges, as required by the statute.

In addition to the items required by statute, new §25.27 requires the department to document all changes made to prima facie speed limits under this section and the dates of those changes to maintain an official record. The new rule requires coordination with state and local law enforcement regarding the locations and amount of the speed reductions in order to support speed limit enforcement.

COMMENTS

No comments on the proposed repeal and new section were received.

43 TAC §25.27

STATUTORY AUTHORITY

The repeal is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Texas Transportation Code, §545.353, which grants the commission authority to adopt rules necessary to implement the Variable Speed Limit program.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, §545.353

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 September 26, 2024.

TRD-202404637
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Texas Department of Transportation
Effective date: October 16, 2024
Proposal publication date: July 12, 2024
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43 TAC §25.27

STATUTORY AUTHORITY

The new section is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Texas Transportation Code, §545.353, which grants the commission authority to adopt rules necessary to implement the Variable Speed Limit program.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, §545.353

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 September 26, 2024.

TRD-202404638
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Texas Department of Transportation
Effective date: July 12, 2024
Proposal publication date: October 16, 2024
For further information, please call: (512) 463-8630

