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

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

TITLE 10. COMMUNITY DEVELOPMENT

PART 9. TEXAS ADVANCED NUCLEAR ENERGY OFFICE

CHAPTER 331. GRANTS

The Office of the Governor, the Texas Advanced Nuclear Energy Office (TANEO) proposes rulemaking to 10 TAC §§331.1 - 331.32.

EXPLANATION AND JUSTIFICATION OF THE RULES

The Texas Advanced Nuclear Energy Office (TANEO) proposes new 10 Texas Administrative Code (TAC) §§331.1 - 331.32 relating to the Texas Advanced Nuclear Development Fund, the Project Development and Supply Chain Reimbursement Program, and the Advanced Nuclear Construction Reimbursement Program. This proposed rulemaking will implement Texas Government Code Chapter 483 as enacted by House Bill (HB) 14 during the Texas 89th Regular Legislative Session. The proposed rulemaking establishes the policies and procedures governing the reimbursement programs, including the application process, eligibility requirements, and details related to the program's grant agreements. The proposed rules also establish the framework TANEO will use to award grants, enter grant agreements, and distribute the proceeds of a grant award on a rolling basis, as required by Section 483.204(g), Texas Government Code.

SECTION BY SECTION SUMMARY

Proposed rulemaking to Title 10, Texas Administrative Code, provide the rules for the Texas Advanced Nuclear Energy Office, including but not limited to, the application process and review process for the Texas Advanced Nuclear Development Fund. Subchapter A explains and provides the rules for the project development and supply chain reimbursement program.

The following rulemaking covers 10 TAC §§331.1 - 331.32.

TANEO proposes new 10 TAC §§331.1 - 331.32, relating to Grants, including §331.1, concerning Definitions, §331.2, concerning Eligible Recipients; Eligible Expenses, §331.3, concerning Application Process and Requirements Generally, §331.4, concerning Application Requirements, §331.5, concerning Grant Evaluation and Review Process, §331.6, concerning Amount of Grant Award Recommendations and Decisions, §331.7, concerning Grant Decision Notification Process, §331.8, concerning Grant Agreement, §331.9, concerning Waiver of Rules, §331.20, concerning Eligible Projects, §331.21, concerning Limitations on Maximum Grant Amount, §331.30, concerning Eligible Projects, §331.31, concerning Limitations on Maximum Grant Amount; Prerequisites to Grant Funding, §331.32, concerning Grant Agreement.

House Bill 14 (89-R) directed the Texas Advanced Nuclear Energy Office to adopt rules regarding the procedure for awarding grants to an applicant under Chapter 483, Texas Government Code.

Proposed new §331.1 establishes definitions TANEO will utilize in its grant making process.

Proposed new §331.2 establishes eligibility requirements related to eligible recipients and eligible activities.

Proposed new §331.3 describes the application process and explains how TANEO will maintain a formal application available online and may, at any time, change the terms of the formal application document. The rule also establishes process requirements for grant applications, including electronic submission.

Proposed new §331.4 establishes requirements for grant applications.

Proposed new §331.5 establishes the grant review process for TANEO to consider an application, as well as minimum grant-review standards.

Proposed new §331.6 establishes grant funding decisions. The rule specifies that grants will be allocated on a competitive basis and will be awarded based on the efficient and effective use of public funds.

Proposed new §331.7 establishes the grant decision notification process, including notifying an applicant in writing of the decision regarding a grant award. The rule further specifies that TANEO will make conditional awards of grant funds; an award may only become final after a grantee enters a grant agreement with TANEO.

Proposed new §331.8 describes the grant agreement between a grant recipient and TANEO that is a prerequisite for receiving a grant.

Proposed new §331.9 explains that TANEO may waive any provision of the rules of this subchapter if it would further the public interest and is consistent with applicable statutory law.

Proposed new §331.20 describes the projects that are eligible for a Project Development and Supply Chain Reimbursement Program reimbursement grant.

Proposed new §331.21 establishes the maximum amount of funds permitted to be awarded to applicants under the Project Development and Supply Chain Reimbursement Program.

Proposed new §331.30 describes the projects that are eligible for an Advanced Nuclear Construction Reimbursement Program reimbursement grant.

Proposed new §331.31 establishes funding levels and prerequisites to eligibility to receive grant funds. The rule specifies the

maximum amount of funds permitted to be awarded to applicants under the Advanced Nuclear Construction Reimbursement Program.

Proposed new §331.32 describes the milestone-based plan TANEO will use in grant agreements to distribute grant funds on a rolling basis to grantees under the Advanced Nuclear Construction Reimbursement Program. The rule specifies that, even if a grantee submits potentially-eligible expenses to TANEO, TANEO will not reimburse any such expenses until a grantee can demonstrate it has reached specified milestones.

FISCAL NOTE

Jarred Shaffer, Director of the Texas Advanced Nuclear Energy Office, Office of the Governor, has determined that for the first five-year period the proposed rules are in effect, there will be no additional estimated cost, reduction of cost, or loss or increase in revenue to the state or local governments due to the enforcement or administration of the rules. Additionally, because the programs' administrative expenses will be paid through the Texas Advanced Nuclear Development Fund, TANEO has determined that enforcing or administering the rules does not have foreseeable implications related to the costs or revenues of state or local government.

PUBLIC BENEFIT

Mr. Shaffer has determined for the first five-year period the proposed rules are in effect there will be a benefit to applicants and the public because the proposed rules provide a framework for the Texas Advanced Nuclear Development Fund as well as transparency and governance for the administration of the Project Development and Supply Chain Reimbursement Program and the Advanced Nuclear Construction Reimbursement Program. The public will also benefit from the programs established by these rules, as the programs will further incentivize capital investments for advanced nuclear energy projects, thereby growing opportunities for small businesses, workforce development, and additional generation capacity for the electrical grid in Texas. Mr. Shaffer has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated due to the enforcement of the rules will be to provide clarity to applicants, grant awardees, and the public and to ensure the efficient operation of the Texas Advanced Nuclear Development Fund's programs.

PROBABLE ECONOMIC COSTS

Mr. Shaffer has determined for the first five-year period the proposed rules are in effect, there will be no additional economic costs to persons required to comply with the proposed rules.

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO-BUSINESS AND RURAL COMMUNITIES

Mr. Shaffer has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Therefore, TANEO is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Texas Government Code.

LOCAL IMPACT STATEMENT

Mr. Shaffer has determined that the proposed rules will have a positive impact on local employment and local economies across the State of Texas. In a recent study published by the University of Texas at Austin, there will be more than 10,000 advanced nuclear jobs tied to announced advanced nuclear power projects in Texas over the next 3-5 years. Further, according to an IC²'s Bureau of Business Research report, with the development of advanced nuclear reactor projects in Texas, Texas could stand to benefit over $50 billion in new economic output and over $27 billion in income for Texas workers by 2055.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Shaffer has determined that during each year of the first five years in which the proposed rules are in effect, the rules:

1) will not create or eliminate government programs;

2) will not require the creation of new employee positions;

3) will not require an increase or decrease in future legislative appropriations to TANEO;

4) will not require an increase or decrease in fees paid to TANEO;

5) will create new regulations;

6) will not expand certain existing regulations, limit certain existing regulations, or repeal existing regulations;

7) will increase the number of individuals subject to the applicability of the rules; and

8) will positively affect the Texas economy.

TAKINGS IMPACT ASSESSMENT

Mr. Shaffer has determined that there are no private real property interests affected by the proposed amendments. Thus, TANEO is not required to prepare a takings impact assessment pursuant to Section 2007.043, Texas Government Code.

REQUEST FOR PUBLIC COMMENTS

Comments on the proposed rules may be submitted to Margaux Fox, Office of the Governor, Texas Advanced Nuclear Energy Office, P.O. Box 12428, Austin, Texas 78711, or by email to *taneo@gov.texas.gov* with the subject line "2025 TANEO Rule Proposal." The deadline for receipt of comments is 5:00 p.m., Central Time, on February 2, 2026, which is at least 30 days from the date of publication in the *Texas Register*. Comments should be organized in a manner consistent with the proposed rules. Each set of comments should include a bulleted list on the last page of the filing that covers each substantive recommendation made in the comments. The bulleted list must be clearly labeled with the submitting entity's name.

SUBCHAPTER A. GENERAL PROVISIONS

10 TAC §§331.1 - 331.9

STATUTORY AUTHORITY

Section 483.101, Texas Government Code, authorizes TANEO to adopt and enforce rules necessary to carry out the programs established in Chapter 483, Texas Government Code. Section 483.203, Texas Government Code, authorizes TANEO to establish by rule procedures for the application for and provision of a grant under the Project Development and Supply Chain Reimbursement Program. Section 483.204, Texas Government Code, authorizes TANEO to establish by rule procedures for the application for and provision of a grant under the Advanced Nuclear Construction Reimbursement Program.

§331.1. Definitions.

All definitions found in section 483.001, Texas Government Code, are adopted by reference for this chapter. Additionally, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Director--The director of the Texas Advanced Nuclear Energy Office.

(2) Fund--The Texas Advanced Nuclear Development Fund as established under Subchapter C, Chapter 483 Texas Government Code.

(3) Grant agreement--A written agreement executed by the Office of the Governor and a grantee that establishes the terms, duties, reporting requirements, and other responsibilities of each party in relation to a grant awarded by the Office of the Governor.

(4) Grant funds--Funds selected applicants may be awarded to carry out the purpose of the grant as established under the grant agreement.

(5) Grant recipient or Grantee--An applicant named as the recipient of the award in the grant agreement.

(6) License--A license issued by the United States Nuclear Regulatory Commission that authorizes the license holder to construct and operate a nuclear power facility, such as a nuclear plant at a specific site, with specified conditions.

(7) OOG--The Office of the Governor.

(8) TANEO--The Texas Advanced Nuclear Energy Office established under Subchapter B, Chapter 483, Texas Government Code.

(9) Regulatory Commission--The United States Nuclear Regulatory Commission.

§331.2. Eligible Recipients; Eligible Expenses.

(a) TANEO may only provide grants to eligible businesses, nonprofit organizations, and governmental entities, including institutions of higher education.

(b) To be eligible for reimbursement of expenses, an applicant must provide sufficient documentation to support incurred expenses. The OOG, in its sole discretion, determines when an applicant has submitted sufficient documentation.

(c) An applicant for a grant under this chapter may receive financial assistance or incentives from a local, state, or federal source, but TANEO may not expend grant funds to reimburse expenses paid by a grant recipient or the grant recipient's project partner using financial assistance or incentives from the local, state, or federal source. TANEO, in its sole discretion, may terminate a grant agreement and a grantee must, at a minimum, return to the OOG the amount equal to the amount of funds the grantee received under the grant agreement.

§331.3. Application Process and Requirements Generally.

(a) TANEO will maintain a formal application available electronically at the TANEO website.

(b) TANEO will post notice of the application schedule of the grant programs described in this chapter at the TANEO website.

(c) Applicants must submit an application in the form and manner prescribed by TANEO on or before the deadlines specified in the posted notice. TANEO may require that applicants submit applications electronically.

(d) TANEO may change the requirements set forth in the formal application at any time. An applicant may be required to provide supplemental information if TANEO makes a change to the notice.

(e) TANEO may reject an application that is not submitted in accordance with the requirements established by TANEO.

(f) TANEO may reject and take no further action on an application that TANEO determines does not comply with applicable program requirements.

§331.4. Application Requirements.

(a) As set forth in greater detail in the instructions prescribed by TANEO in formal applications, each application response must include:

(1) the grant applicant's exact name;

(2) a description of the project, projected milestone dates, and proposed services;

(3) information relating to funding priority or funding consideration;

(4) proof of funding availability;

(5) project area and location to be served;

(6) proposed grant budget;

(7) the project's potential benefit to this state;

(8) information required by the application; and

(9) any other information or documentation TANEO may require.

(b) Prior to an applicant's submission of an application, TANEO may require a potential applicant to submit a Notice of Intent to apply to determine an applicant's eligibility to submit a full application for a project under this chapter.

§331.5. Grant Evaluation and Review Process.

(a) TANEO may establish and specify any selection criteria it considers relevant to the grant.

(b) TANEO shall evaluate each application for a grant based on, at a minimum:

(1) the grant applicant's:

(A) quality of services and management;

(B) efficiency of operations;

(C) access to resources essential for operating the project for which the grant is requested, such as land, water, and reliable infrastructure, as applicable;

(D) application for or docketing of a permit or license with the regulatory commission; and

(E) ability to repay the grant if project benchmarks are not met; and

(2) the project's potential benefit to this state.

(c) TANEO shall not consider incomplete applications.

(1) An application is complete when an applicant has submitted all required documentation to TANEO, including any supplemental documentation TANEO requests from the applicant.

(2) If TANEO specifies an application deadline, an applicant must submit all required documentation to TANEO on or before that deadline.

(d) TANEO will initially screen each completed application for eligibility. TANEO will not consider ineligible applications.

(e) Notwithstanding Subsection (c)(2), TANEO may request additional information from an applicant regarding its application after the application deadline. If an applicant does not provide requested information on or before the date specified by TANEO in its request for

additional information, TANEO may reject the application as incomplete.

(f) TANEO may reject an application at any point during the review and evaluation process.

(g) TANEO's approval of an award shall not obligate TANEO to make any additional, supplemental, or other awards.

(h) TANEO may only issue the grant after the grant agreement is fully executed by the grant recipient and TANEO.

(i) Providing false information, knowingly or unknowingly, on a grant application may result in TANEO denying an application or, if a grant has been awarded, terminating the grant agreement and, at a minimum, recouping any grant funds distributed to a grantee.

§331.6. Amount of Grant Award Recommendations and Decisions.

(a) TANEO will award grant funds on a competitive basis.

(b) TANEO, in its sole discretion and based on the efficient and effective use of public funds, shall make all determinations regarding grant award recommendations and decisions, including, but not limited to, actions relating to an applicant's eligibility, evaluation, award, and funding amount.

(c) TANEO is not obligated to fund a grant at the amount requested by the grant applicant. All grant funding is contingent upon the availability of funds, upon approval of a grant application by TANEO, and a grantee's adherence to the terms of the grant agreement. Neither this chapter nor a grant agreement creates any entitlement or right to grant funds by a grant applicant.

§331.7. Grant Decision Notification Process.

(a) TANEO shall notify an applicant in writing of TANEO's decision regarding a grant award. If TANEO determines an applicant satisfies grant criteria, TANEO may provide a conditional grant award to the applicant.

(b) For applicants that receive notice of a conditional grant award, TANEO may establish a deadline by which the applicant must execute a grant agreement. If an applicant fails to execute a grant agreement on or before the deadline specified under chapter, TANEO may withdraw the grant award.

(c) All grant funding decisions made by TANEO are final and are not subject to appeal.

§331.8. Grant Agreement.

An applicant may not receive a grant under this chapter until it has entered a grant agreement with TANEO. A written agreement under this chapter must:

(1) specify benchmarks and milestones for the completion of the project for which the grant is provided;

(2) require the grant recipient to repay to the state money received from that grant if the recipient fails to reach the specified benchmarks; and

(3) include any additional terms or requirements set forth in subchapter B or C of this chapter.

§331.9. Waiver of Rules.

The director or designee, may, in the director's sole discretion, waive any provision of this chapter upon a finding that the public interest would be furthered by granting a waiver. Any such waiver must be consistent with applicable statutory law.

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 December 15, 2025.

TRD-202504647
Jarred Shaffer
Director, Texas Advanced Nuclear Energy Office
Texas Advanced Nuclear Energy Office
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 463-2000

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SUBCHAPTER B. PROJECT DEVELOPMENT AND SUPPLY CHAIN REIMBURSEMENT PROGRAM

10 TAC §331.20, §331.21

STATUTORY AUTHORITY

Section 483.101, Texas Government Code, authorizes TANEO to adopt and enforce rules necessary to carry out the programs established in Chapter 483, Texas Government Code. Section 483.203, Texas Government Code, authorizes TANEO to establish by rule procedures for the application for and provision of a grant under the Project Development and Supply Chain Reimbursement Program. Section 483.204, Texas Government Code, authorizes TANEO to establish by rule procedures for the application for and provision of a grant under the Advanced Nuclear Construction Reimbursement Program.

§331.20. Eligible Projects.

TANEO may provide a reimbursement grant from the Fund under this subchapter for the expenses associated with or required for initial development of an advanced nuclear project in this state.

§331.21. Limitations on Maximum Grant Amount.

A grant provided under this subchapter may not exceed the lesser of:

(1) 50 percent of the amount of qualifying expenses associated with the project; or

(2) $12.5 million.

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 December 18, 2025.

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Jarred Shaffer
Director, Texas Advanced Nuclear Energy Office
Texas Advanced Nuclear Energy Office
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 463-2000

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SUBCHAPTER C. ADVANCED NUCLEAR CONSTRUCTION REIMBURSEMENT PROGRAM

10 TAC §§331.30 - 331.32

STATUTORY AUTHORITY

Section 483.101, Texas Government Code, authorizes TANEO to adopt and enforce rules necessary to carry out the programs established in Chapter 483, Texas Government Code. Section 483.203, Texas Government Code, authorizes TANEO to establish by rule procedures for the application for and provision of a grant under the Project Development and Supply Chain Reimbursement Program. Section 483.204, Texas Government Code, authorizes TANEO to establish by rule procedures for the application for and provision of a grant under the Advanced Nuclear Construction Reimbursement Program.

§331.30. Eligible Projects.

(a) TANEO may provide a reimbursement grant from the Fund under this subchapter for the expenses associated the construction of an advanced nuclear project in this state.

(b) An applicant that has received state-appropriated money for an advanced nuclear reactor is not eligible to receive a grant under this subchapter.

§331.31. Limitations on Maximum Grant Amount; Prerequisites to Grant Funding.

(a) A grant provided under this subchapter may not exceed the lesser of:

(1) 50 percent of the amount of qualifying expenses associated with the project; or

(2) $120 million.

(b) TANEO may not provide a reimbursement grant for a project under this subchapter until the regulatory commission has docketed a construction permit or license application for the project.

§331.32. Grant Agreement.

(a) Before entering a grant agreement for a grant under this subchapter, TANEO will establish a milestone-based plan to distribute grant funds on a rolling basis in accordance with:

(1) a project's respective regulatory commission license or permit regulatory pathway; and

(2) the grant recipient's financial investment decisions as it relates to the project.

(b) To determine the milestones included in a grant agreement, TANEO may consider, but is not limited to, the following considerations:

(1) the applicant's progress and completion of the regulatory commission's regulatory stages and other requirements related to a license or permit, including the:

(A) application schedule and resource letter published;

(B) application safety review;

(C) application environmental review; and

(D) issuance of license or permit; and

(2) the recipient's financial investment decisions related to a project, including:

(A) a comprehensive description of the entire project management process;

(B) anticipated timing of decisions and associated prerequisites for a project to proceed through a gating process; and

(C) a comprehensive financing and capital expenditure plan for the project, including details relating to sources of funding and project-specific investment decisions and timelines.

(c) Notwithstanding subsection (b)(1), TANEO may, in its sole discretion, accept approvals that applicants receive from other federal agencies.

(d) TANEO may withhold reimbursements of grant funds based on an applicant's completion, or failure to complete, specified milestones described in the grant agreement.

(e) TANEO may require a grant recipient to submit any documentation or information TANEO determines is necessary to assess whether a grantee has met a milestone in whole or in part for the purpose of distributing grant funds.

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 December 18, 2025.

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Jarred Shaffer
Director, Texas Advanced Nuclear Energy Office
Texas Advanced Nuclear Energy Office
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For further information, please call: (512) 463-2000

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER S. WHOLESALE MARKETS

16 TAC §25.513

The Public Utility Commission of Texas (commission) proposes new 16 Texas Administrative Code (TAC) §25.513, relating to Texas Energy Fund - Texas Backup Power Package Program. The proposed rule will implement Public Utility Regulatory Act (PURA) §§34.0204, 34.0205, and 35.005(g) as enacted by Senate Bill 2627 during the Texas 88th Regular Legislative Session. The proposed rule will establish procedures for applying for a grant or loan for procurement, installation, and operation of Texas Backup Power Packages (TBPPs), terms for an applicant to request a grant or loan, as well as conditions under which a TBPP loan may be forgiven. The proposed rule excludes TBPPs that source power from electric school bus batteries (ESBs) from the scope of this rulemaking because the logistical and technical complexities inherent to such assets are significantly different from stationary TBPP assets. The commission will take additional time to study and integrate TBPPs that source power from ESBs at a future date; the commission invites interested stakeholders to provide information related to ESBs in the TBPP Program in a question below. Additionally, the proposed rule includes other questions for public comment related to implementation of the TBPP program.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

(1) the proposed rule will not create a government program and will not eliminate a government program;

(2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;

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

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

(5) the proposed rule will not create a new regulation;

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

(7) the proposed rule will not change the number of individuals subject to the rule's applicability; and

(8) the proposed rule will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

David Gordon, Executive Counsel, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal impacts for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections. However, local governments may participate in the program addressed in the rule, which could benefit local governments by obviating expenditures on backup power systems for qualifying governmental facilities.

Public Benefits

David Gordon, Executive Counsel, has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be availability of backup power for critical facilities on which communities rely for health, safety, and well-being. There will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by January 30, 2026. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website or by submitting a paper copy to Central Records, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Comments must be filed by January 30, 2026. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission also requests any data, research, or analysis from any person required to comply with the proposed rule or any other interested person. The commission will consider the costs and benefits in deciding whether to modify the proposed rule on adoption. All comments should refer to Project Number 59024.

In addition to comments on the text of the proposed rule, the commission invites interested persons to address the following questions related to implementation and administration of the TBPP Program.

Should the commission require TBPP awardees to contribute a dollar amount towards the total TBPP cost as a condition of the award of a loan or a grant (the "cost-share")? If yes, what is an appropriate cost-share amount for the applicant? Should the cost-share be expressed in nominal dollars, on a dollar-per-kilowatt basis, or some other metric?

What technical specifications, asset characteristics, and operational requirements are needed to implement TBPPs that source power from an electric school bus?

Should the rule accommodate any restrictions that would otherwise prohibit a public entity applicant from granting a secured interest in a TBPP facility that is financed with a loan?

Each set of comments should include a standalone executive summary as the first page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

Statutory Authority

The new rule is proposed under PURA §34.0204, which authorizes the commission to use money in the Texas Energy Fund without further appropriation to provide a grant or loan for a TBPP; §34.0205, which authorizes the commission to establish procedures for the application for and award of a grant or loan; §35.005(g), which authorizes the commission to adopt procedures to expedite an electric utility interconnection request for a TBPP; and §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statute: Public Utility Regulatory Act §§ 34.0204; 34.0205; 35.005(g); and 14.002.

§25.513. Texas Backup Power Package Program.

(a) Purpose. The purpose of this section is to implement Public Utility Regulatory Act (PURA) §§34.0204, 34.0205, and 35.005(g), and establish requirements and terms to provide grants and loans for funding Texas Backup Power Packages (TBPPs).

(b) Eligibility.

(1) Applicant eligibility. To be eligible for a grant or loan under this section, an applicant must be the owner of a critical facility.

(A) A critical facility may be owned by a corporation, municipality, county, district, or a utility.

(B) A critical facility must be a facility located in the state of Texas that provides essential services which a community relies on for health, safety, and well-being.

(C) A critical facility must be one of the following facility types:

(i) a hospital, ambulance dispatch facility, healthcare treatment facility, police station, fire station, or critical water or wastewater facility;

(ii) a medical facility or facility providing hospice, nursing, assisted living, or end-stage renal disease treatment and dialysis;

(iii) a community heating or cooling center, storm shelter, or homeless shelter;

(iv) an evacuation route fuel station or a gas station or grocery store in an urban or rural area with limited access to essential supplies;

(v) a communications facility that serves 911 call centers and radio and television emergency alert systems; or

(vi) a food bank or gathering place, including a public school, public library, town hall or municipal building, or house of worship which is identified as critical by the presiding officer of the governing body of a political subdivision.

(D) The applicant must control the site at which a TBPP may be installed, either through ownership or a lease of the property for the duration of the TBPP compliance and monitoring period.

(2) Vendor eligibility. To be eligible to participate in a TBPP project at an eligible critical facility, a vendor must be selected by the commission through a competitive solicitation process. The commission will maintain an approved vendor list.. Approved vendors servicing TBPPs that fail to operate may be removed from the approved vendor list.

(3) TBPP eligibility. To receive a grant or loan under this section, an applicant must contract with an approved vendor to install a TBPP that meets the following requirements.

(A) The TBPP must:

(i) be connected behind-the-meter at an eligible critical facility;

(ii) be engineered to minimize operation costs;

(iii) use interconnection technology and controls that enable immediate islanding from the power grid and stand-alone operation for the critical facility;

(iv) be capable of operating for at least 48 continuous hours without refueling or connecting to a separate power source;

(v) be designed so that one or more TBPPs can be aggregated onsite to serve not more than 2.5 megawatts of load at the critical facility; and

(vi) provide power sourced from a combination of natural gas or propane with photovoltaic panels and battery storage; and

(vii) be able to produce energy from the battery storage component sufficient to serve the critical facility's monthly average peak demand for one hour and produce energy from photovoltaic panels sufficient to recharge the battery storage component within six hours.

(B) The TBPP must not be used by the owner or the facility operator for the wholesale or retail sale of energy, ancillary services, or other reliability services products.

(c) TBPP funding. A TBPP may be funded in whole or in part by a grant, loan, or a combination of both.

(1) Grants. Grant funds may be used for the following cost categories:

(A) Design costs. Eligible costs under this category include costs for site specific plans, drawings, and studies.

(B) Installation costs. Eligible costs under this category include:

(i) costs for site installation, including labor;

(ii) costs for permitting, utility coordination, and code compliance;

(iii) costs for standard site preparation inputs, including foundations and pads; and

(iv) costs for inspection, testing, and commissioning; or

(C) any other costs necessary to facilitate the ownership or operation of the TBPP that are not expressly excluded under subsection (d) of this section.

(2) Loans. Loan funds may only be used for the following cost categories:

(A) Procurement. Eligible costs under this category include:

(i) costs for material and equipment delivery, and temporary storage and staging;

(ii) costs for equipment, such as the generator, battery storage system, photovoltaic modules and inverters, switchgear, controllers, and associated hardware; and

(iii) any other costs necessary to procure a TBPP that are not expressly excluded under subsection (d) of this section.

(B) Operating costs. Eligible operating costs include costs for operations and routine preventative maintenance, and warrantied repair services during the compliance period.

(d) Funding exclusions. Grant or loan funds received under this section must not be used for:

(1) A facility that:

(A) is a commercial energy system, a private school, or a for-profit entity that does not directly service public safety and human health;

(B) is a private residence;

(C) operates under a land lease agreement that expires prior to the end of the project compliance period or that does not have the lessor's written consent to install a TBPP;

(D) installs a source of backup power that does not follow the design and use standards of a TBPP; or

(E) uses the TBPP for the wholesale or retail sale of energy, ancillary services, or other reliability services products.

(2) Project costs that are:

(A) not included in a quotation provided by an approved vendor;

(B) for integrating existing backup power equipment into a TBPP installation, unless it aligns with vendor's TBPP design and the vendor offers the same warranties and performance guarantees as for a comparable TBPP of entirely new backup equipment;

(C) for building or electrical upgrades to a critical facility, except for the purpose of segregating critical circuits;

(D) related to segregating existing backup power equipment;

(E) associated with any enhanced system features outside the standard TBPP offering from an approved vendor;

(F) for critical facility or owner personnel;

(G) associated with operating costs incurred by the critical facility that are not directly required by the TBPP; or

(H) refueling costs or additional operations and maintenance costs outside the service agreement with the approved vendor.

(e) Application requirements and process. An application must be submitted by an eligible applicant in the form and manner prescribed by the commission. An applicant may submit one or more applications for an award under this section. Each application must only contain one critical facility project. An application must contain the information required by this subsection. An applicant may withdraw an application at any time while under commission review.

(1) Applicant.

(A) A corporate sponsor or the most senior parent corporation or owner entity may submit an application on behalf of a subsidiary applicant. An application for a TBPP with multiple owners must be submitted by the highest level of the entity with managing authority over the critical facility (e.g., owner with controlling interest, managing partner, or cooperative).

(B) Each application must include information about the applicant, including:

(i) the applicant's legal name;

(ii) the applicant's form of organization;

(iii) the applicant's relationship to the critical facility in the proposed project;

(iv) the applicant's primary contact name and title, mailing address, business telephone number, business e-mail address, and web address;

(v) information showing that the applicant is in good financial standing with relevant financial institutions and is meeting all compliance requirements;

(vi) the applicant's agreement to adhere to TBPP performance requirements;

(vii) description of any past grant and loan management and administration experience, if applicable;

(viii) information showing that control of the site at which a TBPP may be installed for a duration is at least as long as the compliance and monitoring period;

(ix) an attestation that the applicant is authorized to operate the TBPP at the critical facility; and

(x) the applicant's justification for seeking loan funds to cover a portion of TBPP costs.

(2) Critical facility information. For the critical facility for which an applicant is seeking a TBPP, the application must include:

(A) Critical facility information, including:

(i) the facility's name;

(ii) the facility type as enumerated under subsection (b)(1)(C) of this section;

(iii) the facility's physical address and mailing address;

(iv) the facility's owners and details about facility ownership;

(v) the key personnel associated with TBPP project operation;

(vi) a description of activities that the critical facility undertakes to support community welfare;

(vii) a description of the facility's community impact, including the service area and the quantity and type of population served;

(viii) a statement describing the manner in which a TBPP installation will enhance the community impact of the critical facility;

(ix) average daily energy consumption measured in kilowatt-hours and maximum daily demand measured in kilowatts; and

(x) for an applicant that submits more than one application at the same time, a ranked priority for each of the proposed critical facility projects.

(B) Backup power information, including:

(i) information related to any existing backup power system, including a description of the type of technology used and the system's rated maximum capacity; and

(ii) the facility's required backup power capacity and requested TBPP size.

(3) Project information. For the critical facility for which an applicant is seeking a TBPP, the application must include project information required by this subsection, as provided by the vendor. An eligible applicant authorized by the commission to coordinate with an approved vendor must provide all relevant project information to the vendor to satisfy the requirements of this subsection.

(A) Project information, including:

(i) the total TBPP project budget;

(ii) the respective portions of the project budget to be funded through a grant and loan;

(iii) the respective portions of the project budget by site preparation, package costs, installation, and maintenance;

(iv) any ineligible costs that the applicant will fund separately; and

(v) the vendor quotation and an indication of applicant approval of the quotation.

(B) A project work plan, including:

(i) a proposed installation schedule;

(ii) information demonstrating the feasibility of the project, including documentation establishing that the TBPP can be installed at the critical facility;

(iii) documentation that all permissions, approvals, and permits required by applicable laws and regulations have been obtained, or a detailed plan for obtaining all required permissions, approvals, and permits; and

(iv) an operation and maintenance plan.

(4) Information submitted to the commission as part of the application process is confidential and not subject to disclosure under Chapter 552, Government Code.

(f) Application review.

(1) Applicant approval. An applicant must be approved as eligible and obtain notice of eligibility before submitting a TBPP project proposal under paragraph (2) of this subsection.

(A) The TxEF administrator will review applications in the order in which they are received.

(B) The TxEF administrator will review the application to determine applicant eligibility in accordance with subsection (b)(1) of this section.

(C) The executive director or his or her designee will determine applicant eligibility and will provide notice that an eligible applicant is authorized to coordinate with an approved vendor for the purpose of submitting a TBPP project application to the commission.

(2) Project approval. The executive director or his or her designee will approve, deny, or approve with modifications an application submitted by an eligible applicant for each TBPP project based on the screening and evaluation criteria outlined in this subsection.

(A) Each proposed TBPP project will be evaluated based on:

(i) the project cost;

(ii) the timeline for TBPP installation and commissioning;

(iii) the TBPP's expected benefits and impact. While evaluating benefits and impact, the executive director or his or her designee will consider factors such as the applicant's facility type and the criticality of services offered, the number of people served by the facility, and geography served by the critical facility;

(iv) the applicant's resources to implement the project and comply with compliance and performance requirements;

(v) the critical facility's current backup power capabilities;

(vi) the applicant's stated priority level for the facility, if the applicant has applied for more than one critical facility; and

(vii) the creditworthiness of the applicant to determine eligibility for a loan.

(B) The TxEF administrator may request additional information associated with the items in this subsection if necessary to evaluate any project.

(g) Award amount. Eligible applicants may receive a grant or a loan towards eligible costs in accordance with subsection (c) of this section.

(1) The amount of the award will be determined by the executive director or his or her designee based on availability of program funds and evaluation of the applicant and project by the TxEF administrator.

(2) A grant award may not exceed $500 per kilowatt.

(3) A loan award will be structured as a forgivable loan consistent with subsection (h)(5) of this section.

(h) Funding structure and terms.

(1) To receive an award payment under this section, an applicant must enter into an award agreement or agreements in the form and manner specified by the commission.

(2) Any costs funded by a grant or loan under this section must not be collected from customers or constituents of the critical facility.

(3) An uncured breach of the executed award agreement will be grounds for the TxEF administrator to determine that an applicant is ineligible to obtain any future payments or forgiveness under this section.

(4) Funding terms for grants.

(A) Payment terms for a project will be specified in the corresponding grant agreement. An awardee must comply with all terms and conditions outlined in the grant agreement, including all reporting requirements, and all federal or state statutes, rules, regulations, or guidance applicable to the grant award to be eligible for grant fund disbursement.

(B) Grant funds will be paid directly to an approved vendor as a reimbursement payment upon submission of required documentation in accordance with the grant agreement.

(C) All other costs required for project completion must be financed by the applicant or awarded through a loan under this section.

(D) The commission will withhold or require the return of payments for costs that are found ineligible or if an awardee fails to comply with the requirements described in subsection (i) of this section.

(5) Funding structure and terms for loans.

(A) Loan structure. An approved loan will have the following characteristics:

(i) Loan term. The loan will have a term of 1 to 5 years, which will be contingent upon the size of the loan, attributes of the critical facility, and financial capabilities of the applicant.

(ii) Forgivability. Up to 100 percent of the loan funds are forgivable, if the awardee meets the performance expectations delineated in the loan agreement. Loans will be forgiven on a prorated basis based on the duration of performance during the com-

pliance period. Failure to meet any requirements for loan forgiveness will result in the full loan amount plus any accrued interest becoming immediately due and payable.

(iii) Loan interest rate. Unforgiven loan amounts will bear an interest rate equal to the effective federal funds rate published the date an award agreement is executed plus one percent.

(B) Loan terms and agreements. Each awardee must enter into one or more award agreements with the commission and approved vendor. Such agreements may include a:

(i) credit agreement, which is the primary award agreement between the awardee and the commission that will govern the terms and conditions under which the commission will loan funds to the awardee; and

(ii) performance covenant, which requires that a TBPP that is financed by a loan under this section must comply with the performance milestones, performance metrics and targets, and deliverables.

(i) Compliance and monitoring period.

(1) Each project will be subject to a compliance period of up to 5 years, based on the cost of the TBPP, which will be stated in the award agreement. Any specific project milestones which are stated in the award agreement will apply during this period.

(2) During the compliance and monitoring period, the TBPP must be available to operate during any period of time when the critical facility experiences a power outage.

(A) An awardee must ensure the routine maintenance and testing of the TBPP. Such maintenance and testing must be performed under contract by an approved vendor.

(B) Failure of the TBPP to be available to operate during an outage event may result in the commission demanding the return of a grant payment or determining that a loan payment is unforgivable.

(3) An awardee must continue to provide critical services at the critical facility during the compliance period. Change in status as a critical facility during the compliance period may result in the commission demanding the return of an award payment or termination of the award agreement.

(4) Reporting requirements.

(A) Vendor reporting. An approved vendor must annually file with the commission a report in accordance with the grant and loan reporting requirements.

(B) Critical facility reporting. Each awardee must annually submit to the commission a report containing an attestation that the TBPP was maintained in good working condition and was available to provide backup power during the compliance period; and that the awardee continued to provide critical services at the critical facility during the compliance period. Each awardee must also submit an after-action report with the commission that contains details of the TBPP performance in the event of a distribution system outage lasting more than 12 consecutive hours.

(j) No contested case or appeal. An application for a grant or loan under this section is not a contested case. A commission decision on a grant or loan award is not subject to a motion for rehearing or appeal under the commission's procedural rules.

(k) Relationship to distribution service provider network. An applicant requesting to install a TBPP at a critical facility in a manner that involves interactivity with the distribution network must coordinate with the appropriate distribution service provider to facilitate safe operation for the TBPP and the distribution network. The distribution service provider must expedite a request from a customer with a commission-approved TBPP application.

(l) Expiration. This section expires September 1, 2050.

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 December 19, 2025.

TRD-202504760
Seaver Myers
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 936-7433

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PART 8. TEXAS RACING COMMISSION

CHAPTER 321. PARI-MUTUEL WAGERING
SUBCHAPTER A. MUTUEL OPERATIONS
DIVISION 3. MUTUEL TICKETS AND VOUCHERS

16 TAC §321.37

The Texas Racing Commission (Commission) proposes amendments to 16 Texas Administrative Code §321.37, relating to Cashed Tickets and Vouchers. The amendments modernize recordkeeping requirements by clarifying secure procedures for digitally stored files associated with cashed tickets, vouchers, and outstanding ticket and voucher files.

Background and Purpose

The Commission's existing rules reference physical storage of tickets and vouchers. As wagering systems and audit records move to digital formats, the rule text is updated to require secure procedures for accessing and maintaining digitally stored files and to clarify access limitations. These changes support integrity of pari-mutuel wagering operations and modern auditing practices.

Fiscal Note

David Holmes, Interim Executive Director, has determined that for the first five-year period the proposed amendments are in effect, there will be no significant fiscal implications for state or local governments.

Public Benefit/Cost Note

For each year of the first five years the amendments are in effect, the public benefit anticipated is an increase in the integrity and auditability of pari-mutuel wagering through clearer security and access controls for digitally stored files. There are no anticipated costs to persons required to comply beyond ordinary costs associated with implementing and maintaining reasonable information security procedures.

Government Growth Impact Statement

For each year of the first five years the rule is in effect, the proposed amendments do not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing positions; (3) require an increase or decrease in future appropriations; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation beyond the clarifications described; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect the state's economy.

Local Employment Impact Statement

The proposed amendments are not expected to have an adverse effect on local employment in any locality.

Economic Impact Statement and Regulatory Flexibility Analysis

The proposed amendments are not anticipated to have an adverse economic effect on small businesses, micro-businesses, or rural communities, as the changes clarify security procedures applicable to licensed associations that already maintain wagering systems with digital records. Therefore, a regulatory flexibility analysis is not required.

Takings Impact Assessment

The Commission has determined that no private real property interests are affected by this rulemaking and that the proposal does not burden, restrict, or limit an owner's right to property that would otherwise exist in the absence of government action. Accordingly, a takings impact assessment under Texas Government Code §2007.043 is not required.

Public Comment

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

Statutory Authority

The amendments are proposed under Texas Occupations Code §2023.001, which authorizes the Commission to license and regulate all aspects of horse and greyhound racing in this state, and §2023.004, which requires the Commission to adopt rules for conducting racing that involves wagering and for administering the Texas Racing Act.

Cross-Reference to Statute

Texas Occupations Code §§2023.001 and 2023.004.

§321.37. Cashed Tickets and Vouchers.

(a) An association shall maintain [~~facilities and use~~] procedures that ensure the security of physically or digitally stored files of scanned and manually cashed tickets and vouchers and the integrity of physically or digitally stored files [~~records~~] of outstanding tickets and outstanding vouchers.

(b) The association shall maintain secure procedures for accessing digitally stored files or store cashed tickets and vouchers in a secure area.

(c) The association shall prohibit individuals other than the association's mutuel manager from having access to physically or digitally stored files of [~~the~~] cashed tickets and vouchers or digitally stored files of [~~to storage areas for~~] outstanding ticket files [~~records~~] and outstanding voucher files [~~records~~].

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 December 17, 2025.

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David Holmes
Interim Executive Director
Texas Racing Commission
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 833-6699

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16 TAC §321.39

The Texas Racing Commission (Commission) proposes the repeal of 16 Texas Administrative Code §321.39, relating to Altering Cashed Tickets and Cashed Vouchers. The amendment is proposed in conjunction with amendments to §321.37 that modernize requirements for secure handling and access to digitally stored files of cashed tickets and vouchers, rendering §321.39 unnecessary for digitally stored files.

Background and Purpose

Section 321.39 required physical alteration of cashed or refunded mutuel tickets and cashed vouchers to indicate their status without destroying identity. With contemporary digital records and scanning practices addressed in §321.37, separate alteration requirements in §321.39 are not necessary if the records are kept digitally.

Fiscal Note

David Holmes, Interim Executive Director, has determined that for the first five-year period the proposed repeal is in effect, there will be no significant fiscal implications for state or local governments.

Public Benefit/Cost Note

For each year of the first five years the repeal is in effect, the public benefit anticipated is regulatory clarity by eliminating duplicative provisions and aligning rule text with modern digital record-keeping practices. There are no anticipated costs to persons required to comply.

Government Growth Impact Statement

For each year of the first five years the amendment is in effect, the proposed action does not: (1) create or eliminate a government program; (2) require the creation of new positions or the elimination of existing positions; (3) require an increase or decrease in future appropriations; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation beyond the repeal described; (7) increase or decrease the number of individuals subject to regulation; or (8) positively or adversely affect the state's economy.

Local Employment Impact Statement

The proposed amendment is not expected to have an adverse effect on local employment in any locality.

Economic Impact Statement and Regulatory Flexibility Analysis

The proposed amendment is not anticipated to have an adverse economic effect on small businesses, micro-businesses, or rural communities. Accordingly, a regulatory flexibility analysis is not required.

Takings Impact Assessment

The Commission has determined that this action does not affect private real property interests and does not impose a burden that would constitute a taking under Texas Government Code §2007.043. A takings impact assessment is not required.

Public Comment

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

Statutory Authority

The amendment is proposed under Texas Occupations Code §2023.001, which authorizes the Commission to license and regulate all aspects of horse and greyhound racing in this state, and §2023.004, which requires the Commission to adopt rules for conducting racing that involves wagering and for administering the Texas Racing Act.

Cross-Reference to Statute

Texas Occupations Code §§2023.001 and 2023.004.

§321.39. Altering Cashed Tickets and Cashed Vouchers.

Whether it is stored physically or digitally an [~~An~~] association shall ensure that each cashed or refunded mutuel ticket and cashed voucher is altered in a manner that indicates the mutuel ticket or voucher has been cashed or refunded, but does not destroy the identity of the ticket or voucher.

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 December 17, 2025.

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David Holmes
Interim Executive Director
Texas Racing Commission
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 833-6699

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SUBCHAPTER B. TOTALISATOR REQUIREMENTS AND OPERATING ENVIRONMENT

16 TAC §321.101

The Texas Racing Commission (Commission) proposes amendments to 16 Texas Administrative Code §321.101, relating to Totalisator Requirements and Operating Environment, in Chapter 321, Pari-Mutuel Wagering, Subchapter B. The amendments update the incorporated technical standards for totalisator systems and remove outdated address language.

Background and Purpose

Section 321.101 requires each association to conduct wagering using a Commission-approved pari-mutuel system that meets specified technical standards. The proposal updates the reference to the Association of Racing Commissioners International (ARCI) Totalisator Technical Standards to the version amended in December 2020, and prospectively to subsequent amendments, and removes obsolete mailing address references for where standards are available. These changes align the rule with current industry standards and Commission practice.

Fiscal Note

David Holmes, Interim Executive Director, has determined that for the first five-year period the proposed amendments are in effect, there will be no significant fiscal implications for state or local governments.

Public Benefit/Cost Note

For each year of the first five years the amendments are in effect, the public benefit anticipated is enhanced consistency with current totalizator technical standards, which supports wagering integrity and interoperability. There are no anticipated costs to persons required to comply beyond ordinary costs associated with maintaining and updating systems to meet recognized industry standards.

Government Growth Impact Statement

For each year of the first five years the rule is in effect, the proposed amendments do not: (1) create or eliminate a government program; (2) require the creation of new positions or the elimination of existing positions; (3) require an increase or decrease in future appropriations; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation beyond the clarifications described; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect the state's economy.

Local Employment Impact Statement

The proposed amendments are not expected to have an adverse effect on local employment in any locality.

Economic Impact Statement and Regulatory Flexibility Analysis

The proposed amendments are not anticipated to have an adverse economic effect on small businesses, micro-businesses, or rural communities. Accordingly, a regulatory flexibility analysis is not required.

Takings Impact Assessment

The Commission has determined that no private real property interests are affected by this rulemaking and that the proposal does not burden, restrict, or limit an owner's right to property that would otherwise exist in the absence of government action. A takings impact assessment under Texas Government Code §2007.043 is not required.

Public Comment

Comments on the proposal may be submitted to the Texas Racing Commission Interim Executive Director, David Holmes, via webpage comment form at https://www.txrc.texas.gov/texas-

rules-of-racing or through the agency customer service desk at customer.service@txrc.texas.gov, or by calling the customer service phone number at 512-833-6699. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

Statutory Authority

The amendments are proposed under Texas Occupations Code §2023.001, which authorizes the Commission to license and regulate all aspects of horse and greyhound racing in this state, and §2023.004, which requires the Commission to adopt rules for conducting racing that involves wagering and for administering the Texas Racing Act.

Cross-Reference to Statute

Texas Occupations Code §§2023.001 and 2023.004.

§321.101. Totalisator Requirements and Operating Environment.

Each association shall conduct wagering using a pari-mutuel system approved by the Commission. The pari-mutuel system shall operate in accordance with applicable laws and rules and meet the technical standards set forth in the Association of Racing Commissioners International Totalisator Technical Standards as amended in December 2020 and any subsequent amendments [~~July 2012~~]. Copies of the Totalisator Technical Standards are available at the Texas Racing Commission, Austin Headquarters office [~~P.O. Box 12080, Austin, Texas 78711, or at the Commission office at 8505 Cross Park Dr., #110, Austin, Texas 78754~~].

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

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David Holmes
Interim Executive Director
Texas Racing Commission
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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER EE. ACCREDITATION STATUS, STANDARDS, AND SANCTIONS

DIVISION 3. RESOURCE CAMPUSES

19 TAC §97.1081

The Texas Education Agency (TEA) proposes new §97.1081, concerning accreditation status, standards, and sanctions. The proposed new rule would implement House Bill (HB) 2, 89th Texas Legislature, Regular Session, 2025, related to designation of resource campuses, including application requirements and eligibility.

BACKGROUND INFORMATION AND JUSTIFICATION: Proposed new §97.1081 would define requirements for the resource campus designation authorized under Texas Education Code (TEC), §29.934. The resource campus designation is a school turnaround model designed to improve student outcomes at historically low-performing campuses by incentivizing districts to implement evidence-backed strategies such as accelerated campus excellence (ACE), teacher incentive allotment (TIA), high-quality instructional materials (HQIM), and additional days school year (ADSY) to transform student outcomes and accelerate academic growth. The designation provides state funding and comprehensive supports to accelerate academic growth and sustain improvements over time.

Proposed new §97.1081(b) would define key words and concepts related to the resource campus designation.

Proposed new §97.1081(c) would outline application requirements, including application elements and the process school districts must follow in order to be designated by TEA. This process would include submission of a letter of intent and application form, attendance at mandatory training sessions, and alignment to eligibility approval criteria.

Proposed new §97.1081(d) would outline eligibility requirements for the resource campus designation.

Proposed new §97.1081(e) would outline requirements and procedures for continued eligibility of the designation.

Proposed new §97.1081(f) would outline the standards for eligibility for a closed campus to maintain the resource campus designation.

Proposed new §97.1081(g) would outline the standards for removal and revocation of the resource campus designation, including the timeline for TEA to make renewal and revocation decisions and the criteria by which TEA will make renewal or revocation decisions.

Proposed new §97.1081(h) would specify the finality of the commissioner's decision.

FISCAL IMPACT: Andrew Hodge, associate commissioner for system innovation, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking

would be in effect, it would create a new regulation to define the requirements for a resource campus designation.

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

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Hodge has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to ensure the implementation of evidence-based strategies that significantly improve academic performance and accountability ratings. It would provide students attending historically low-performing campuses with access to highly effective teachers, extended learning time, and comprehensive supports, while providing dedicated funding for districts to sustain these improvements over time. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: TEA has determined that the proposed new rule would have a data and reporting impact for campuses that choose to apply for the resource campus designation. Eligible campuses must submit an application that collects the following information: campuses participating in the resource campus program through a new designation process; Targeted Improvement Plan, if not previously submitted to TEA; ACE Turnaround Plan, if not previously submitted to TEA; teacher roster showing at least 50% of foundation curriculum teachers of record hold a current TIA designation; ADSY calendar; HQIM plan and timeline to develop and implement HQIM; HQIM professional development plan; HQIM evidence of school board adoption; HQIM master schedule; teacher roster showing that all foundation curriculum teachers of record have at least two years of experience; resume of certified school counselor; resume of appropriately licensed professional; copy of positive behavior plan; and copy of family engagement plan.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: TEA requests public comments on the proposal, including, per Texas Government Code, §2001.024(a)(8), information related to the cost, benefit, or effect of the proposed rule and any applicable data, research, or analysis, from any person required to comply with the proposed rule or any other interested person. The public comment period on the proposal begins January 2, 2026, and ends February 2, 2026. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on January 2, 2026. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code, §29.934, as amended by House Bill 2, 89th Texas Legislature, Regular Session, 2025, which requires the commissioner to establish and administer the resource campus designation to incentivize and support campuses with a history of unacceptable ratings through a comprehensive plan for school turnaround. Subsection (j) allows the commissioner to adopt rules to implement the statute.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §29.934, as amended by House Bill 2, 89th Texas Legislature, Regular Session, 2025.

§97.1081. Resource Campuses.

(a) Applicability. This section applies only to a school district that intends to apply for a resource campus designation for a campus or campuses under Texas Education Code (TEC), §29.934.

(b) Definitions. For purposes of this division, the following words and terms shall have the following meaning, unless the context clearly indicates otherwise.

(1) Applicant--This term refers to the school district submitting the application for a resource campus designation.

(2) Closed campus--This term refers to a campus whose county-district-campus number has been retired by the commissioner of education or the school district under §97.1066 of this title (relating to Campus Repurposing and Closure).

(3) County-district-campus number (CDCN)--This term refers to the nine-digit identifier assigned to a campus under §97.1051 of this title (relating to Definitions).

(4) Receiving campus--This term refers to a campus that enrolls students previously served by a closed campus.

(5) Resource campus--This term has the meaning assigned by TEC, §29.934.

(6) Resource campus designation--This term refers to a campus that has satisfactorily met the eligibility criteria included in TEC, §29.934, and this section and is eligible for additional funding as provided by TEC, §48.252.

(c) Application requirements.

(1) To apply to be designated as a resource campus, the campus must have received an overall performance rating under TEC, §39.054, of D, F, or NR/NR1365 for three years over a 10-year period at the time of application.

(A) The calculation of the 10-year period begins with the school year prior to the year in which the applicant submits the request for the resource campus designation, regardless of whether a rating was issued.

(B) An Academically Unacceptable or Improvement Required rating will be considered an unacceptable rating for determining eligibility.

(C) The three D, F, or NR/NR1365 ratings do not have to be consecutive.

(2) Annually, the Texas Education Agency (TEA) will release a list of campuses that meet the application eligibility requirement described in paragraph (1) of this subsection and application package requirements, which may include, but are not limited to:

(A) a letter of intent;

(B) an application form;

(C) the application deadline;

(D) requirements, including mandatory training sessions for school districts and campuses, that must be met in order for applications to be approved; and

(E) eligibility approval criteria aligned to subsection (d) of this section.

(3) If TEA determines that an application package is not complete and/or the applicant does not meet the eligibility criteria in TEC, §29.934, and this section, TEA may notify the applicant and allow 10 business days for the applicant to submit any missing or explanatory (supplementary) documents.

(A) If, after giving the applicant the opportunity to provide supplementary documents, TEA determines that the resource campus designation request remains incomplete and/or the eligibility requirements of TEC, §29.934, have not been met, the resource campus designation request will be denied.

(B) If the documents are not timely submitted, TEA shall remove the resource campus designation request without further processing.

(C) Failure by TEA to identify any deficiency or notify an applicant thereof does not constitute a waiver of the requirement and does not bind the commissioner.

(4) TEA staff may interview applicants, specify individuals from the school district and campus required to attend the interview, and require the submission of additional information and documentation prior to an interview.

(d) Eligibility criteria.

(1) To be eligible for a resource campus designation, a school district must demonstrate that a campus meets all criteria provided in TEC, §29.934, related to the resource campus designation beginning in the school year in which it applies for the designation.

(2) The school district must provide evidence that the campus is:

(A) implementing a targeted improvement plan as described by TEC, Chapter 39A, Subchapter A, and §97.1061(e)(4) of this title (relating to Interventions and Sanctions for Campuses) and has established a school community partnership team;

(B) adopting and implementing an accelerated campus excellence (ACE) turnaround plan as provided by TEC, §39A.105(b), which must include:

(i) a staffing plan that aligns with the staffing provisions in paragraph (3) of this subsection and includes:

(I) the requirement that the principal assigned to the campus must have:

(-a-) demonstrated a history of improvement in student academic growth at campuses at which the principal has previously worked; and

(-b-) final authority over personnel decisions at the campus;

(II) the requirement that at least 60% of classroom teachers assigned to the campus must satisfy the requirements for demonstrated instructional effectiveness under TEC, §39A.105(b)(3);

(III) a detailed description of the employment and compensation structures for the principal and classroom teachers, which must include significant incentives for a high-performing principal or teacher to remain at the campus and a commitment by the district to continue incentives for the principal and teachers. Teacher compensation structures must align to the approved local optional teacher designation system;

(IV) a plan that describes how the district will determine that the principal and classroom teachers are meeting determined student growth measures aligned to the campus compensation model; and

(V) the requirement that by August 1 of the school year in which the campus will begin receiving funding for the resource campus designation, the campus principal and all teachers must have applied for a position to continue at the campus at the beginning of ACE implementation, regardless of past employment or assignment to the campus, and the district must demonstrate that the leader continues to meet requirements in the district's blueprint;

(ii) a board policy that includes the commitment to continue incentives for principals and teachers, and no other board policy related to staffing compensation in the district may contradict the staffing and compensation provisions in the ACE plan; and

(iii) policies and procedures for the implementation of best practices at the campus described in TEC, §39A.105(b)(4), including:

(I) a performance management system providing at least weekly insight for all administrators and at least monthly insights for all teachers on classroom instructional delivery;

(II) a system of observation of classroom teachers and feedback for classroom teachers;

(III) positive student culture on the campus;

(IV) family and community engagement;

(V) extended learning opportunities for students, which may include service or workforce learning opportunities; and

(VI) providing student services before or after the instructional day that improve student performance, which may include tutoring, extracurricular activities, counseling services, and offering breakfast, lunch, and dinner to all students at the campus;

(C) developing and implementing a plan to utilize both full-subject high-quality instructional materials (HQIM) and supplemental instructional materials to support intervention tiers with detailed descriptions of how accelerated support will be provided to students who have not yet mastered prior content in English language arts (ELA) and mathematics at full fidelity that have been approved through the instructional materials review and approval (IMRA) process.

(i) If the campus has already adopted and can demonstrate implementation of HQIM as described in this subparagraph, it may receive full approval for the resource campus designation based on review and acceptance by TEA.

(ii) If there are no IMRA-approved materials in ELA or mathematics for a grade level served by the campus at the time of application, the campus may submit a plan to adopt and implement materials as soon as available.

(iii) Conditional approval may be granted if high-quality instructional materials are not yet implemented as described in this subparagraph, but to receive full approval and benefits, the campus must submit artifacts by May 31 of the same school year as the application that the campus will fully implement HQIM in the subsequent school year. Campuses that do not submit verification artifacts will not be fully approved and will not receive the resource campus designation or funding;

(D) implementing, if serving a grade level from prekindergarten-Grade 8, an Additional Days School Year (ADSY) calendar for funding under TEC, §48.0051, designed to include a base calendar of 175 days plus at least six additional ADSY days for all students;

(E) implementing a campus-level positive behavior program as provided by TEC, §37.0013, that aligns with the ACE plan described in subparagraph (B) of this paragraph;

(F) developing partnerships with parent and community groups and implementing a family engagement plan as described by TEC, §29.168, that aligns with the ACE plan described in subparagraph (B) of this paragraph;

(G) demonstrating that all teachers of record assigned to foundation curriculum subjects, as defined in TEC, §28.002, have a minimum of two years' experience serving as a classroom teacher as defined in TEC, §5.001, prior to the start of the school year in which the resource campus designation is awarded;

(H) demonstrating that at least 50% of teachers of record assigned to foundation curriculum subjects, as defined in TEC, §28.002, currently hold a designation under a local optional teacher designation system as described in TEC, §21.3521;

(I) verifying that at least one full-time school counselor is dedicated to the campus for every 300 students with fractional school counselor assignment allowed if over 300 students (i.e., 1.5 FTE for 450 students); and

(J) verifying that at least one appropriately licensed professional, either directly employed or contracted, is assigned full time to the campus to support the social and emotional needs of students and staff. This individual must be dedicated solely to the campus and must be one of the following:

(i) a family and community liaison;

(ii) a clinical social worker;

(iii) a specialist in school psychology; or

(iv) a professional counselor.

(3) A campus that receives a resource campus designation must be in a school district that has adopted an approved local optional teacher designation system under TEC, §21.3521, that includes the campus to receive the resource campus designation. The local designation system must:

(A) meet all requirements under §150.1041 of this title (relating to Local Optional Teacher Designation System) for all foundation subject teachers in all grade levels served by the resource campus; and

(B) receive full approval by TEA no later than the school year prior to the year that the resource campus designation begins.

(e) Continued eligibility.

(1) To maintain the resource campus designation and receive benefits under TEC, §29.934 and §48.252, the school district and campus holding the resource campus designation must continuously meet the requirements in subsection (d) of this section.

(2) The school district and campus holding the resource campus designation must comply with all information requests or monitoring visits deemed necessary by TEA staff to monitor the ongoing eligibility of the resource campus designation.

(A) TEA will annually release monitoring requirements and timelines.

(B) School districts will submit data and information required by TEA to assess fidelity of implementation upon request by TEA.

(C) A school district or campus holding the resource campus designation that fails to respond to implementation monitoring requests by the published deadline will be subject to subsection (g) of this section related to removal of resource campus designation.

(3) TEA will annually notify school districts of their resource campus designation status.

(f) Closed campus eligibility to maintain resource campus designation.

(1) A receiving campus may maintain resource campus designation if:

(A) the receiving campus assumes the CDCN of the closed resource campus or is otherwise assigned its accountability performance history by the commissioner; and

(B) the receiving campus continues to meet all requirements for resource campus designation under TEC, §29.934, and this chapter.

(2) The district must submit a request to the commissioner to maintain the resource campus designation for the receiving campus.

(A) The request must include documentation demonstrating compliance with subsections (d) and (e) of this section.

(B) The commissioner may approve the request if all conditions are met.

(g) Removal of resource campus designation.

(1) A campus fails to maintain status as a resource campus if:

(A) the campus or school district does not continuously meet the requirements in subsection (d) of this section; or

(B) the campus or school district fails to comply with information requests or monitoring visits by TEA staff needed to determine the ongoing implementation of resource campus eligibility criteria.

(2) If a campus fails to maintain status as a resource campus for two consecutive years, the campus is not eligible for designation as a resource campus.

(A) The financial benefits awarded to a campus under TEC, §48.252, will end at the end of the second consecutive school year in which the campus failed to maintain its resource campus status.

(B) A campus subject to this subsection may reapply for designation as a resource campus if the campus qualifies under TEC, §29.934(b).

(h) Decision finality. A decision of the commissioner made under this section is final and is not subject to appeal, including under TEC, §7.057.

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 December 19, 2025.

TRD-202504768
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 173. OFFICE-BASED ANESTHESIA SERVICES

SUBCHAPTER B. PARENTERAL KETAMINE THERAPY

22 TAC §§173.6 - 173.15

The Texas Medical Board (Board) proposes new rule concerning Chapter 173, Office-Based Anesthesia Services, Subchapter B, concerning Parenteral Ketamine Therapy, §§173.6 - 173.15.

The proposed new sections are as follows:

New §173.6, Definitions, set forth definitions for ketamine administration and psychotropic ketamine therapy.

New §173.7, Exception for Licensed Hospice Provider, provides an exception to the application of the rules under the subchapter for patients enrolled in a hospice program licensed by Texas Health and Human Services.

New §173.8, Mandatory Registration, proposes to require registration for practice settings providing psychotropic ketamine therapy and provides exceptions to registration for certain practice settings.

New §173.9, Operation of PKT Clinics, proposes to limit the provision of psychotropic ketamine therapy to physicians, midlevel providers, or RNs. The new section further specifies training, certification, and delegation requirements for the provision of psychotropic ketamine therapy.

New §173.10, Physician Requirements, sets forth requirements for physicians ordering PKT for psychiatric indications.

New §173.11, Minimum Standards When Administering PKT, proposes to set forth minimum standards related to medical record documentation, patient evaluation, diagnosis, informed consent, and monitoring, and equipment standards when providing psychotropic ketamine therapy.

New §173.12, Prohibited PKT Uses, prohibits any home use, prescribing, or administration of parenteral ketamine.

New §173.13, Complaints and Investigations, proposes to clarify that the medical director and physician owner(s) are responsible for the clinic's operations and regulatory compliance.

New §173.14, Renewal of PKT Clinic Registration, proposes to set forth a registration term of two years and registration renewal requirements.

New §173.15, Audits, Inspections, and Investigations, proposes that psychotropic ketamine therapy clinics will be subject to audits, inspection and investigations as outlined in Chapter 172 of the Board rules related to pain management clinics.

Mr. Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed new rules are in effect, the public benefit anticipated as a result of enforcing these proposed new rules will be to enhance the safety of the public health and welfare through the establishment of minimum standards for the provision of psychotropic ketamine therapy.

Mr. Freshour has also determined that for the first five-year period these proposed new rules are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed new sections are in effect there will be a probable minimal economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed new sections and determined that for each year of the first five years these proposed new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed, and the agency has determined that for each year of the first five years these proposed new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed new sections;

(3) there is no estimated loss and no increase in revenue to the state or to local governments as a result of enforcing or administering these proposed new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed amendments will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed new sections. For each year of the first five years these proposed new sections will be in effect, Mr. Freshour has determined the following:

(1) the proposed rules do not create or eliminate a government program;

(2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions;

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

(4) the proposed rules do not require an increase in fees paid to the agency;

(5) the proposed rules do create a new regulation;

(6) the proposed rules do not expand, limit, or repeal an existing regulation;

(7) the proposed rules do not increase the number of individuals subject to the rule's applicability; and

(8) the proposed rules do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link https://forms.cloud.microsoft/g/WrgW5yPyKm or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The proposed new rule(s) are proposed pursuant to Texas Occupations Code Section 153.001.

No other statutes, articles or codes are affected by this proposal.

§173.6. Definitions.

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

(1) Ketamine Administration--The administration of parenteral ketamine (IV, subcutaneous and IM) is the practice of medicine under §157.002 of the Act and is subject to regulation by the Texas Medical Board, including required registration under this Chapter.

(2) Psychotropic Ketamine Therapy (PKT)--The administration of parenteral ketamine in a low-dose for psychiatric indications that have been evaluated and diagnosed by a physician such as PTSD, treatment-resistant depression and suicidal ideation.

§173.7. Exception for Licensed Hospice Provider.

The rules promulgated under this subchapter do not apply to ketamine administration for patients enrolled in a hospice program licensed by Texas Health and Human Services.

§173.8. Mandatory Registration.

(a) Any medical practice, clinic or facility providing PKT must be registered with the Board, except the following:

(1) a medical school or an outpatient clinic associated with a medical school;

(2) a hospital, including any outpatient facility or clinic of a hospital;

(3) a facility maintained or operated by this state;

(4) a medical clinic maintained or operated by the United States; or

(5) a health organization certified by the board under Section 162.001 of the Act.

(b) Registration requires completion of a board-approved application filed by a physician owner or medical director of the clinic including providing all required information and documentation.

(c) Applications are valid for 180 days from the date of submission. If the applicant fails to provide all required information and documentation the application will be deemed withdrawn.

(d) If the application is approved, the registration is good for two years from the date of approval.

§173.9. Operation of PKT Clinics.

(a) The provision of PKT must comply with all applicable federal and state laws.

(b) The physician prescribing PKT for psychiatric indications must have successfully completed:

(1) training in mental health treatment; or

(2) a course on the use of ketamine for psychiatric conditions.

(c) The physician ordering the PKT must have a properly established physician/patient relationship and have properly documented and diagnosed psychiatric indication supporting PKT.

(d) PKT may be administered only by a physician, advanced practice registered nurse (APRN), physician assistant (PA), or registered nurse (RN) acting under appropriate delegation by a licensed physician for psychiatric indication as identified in the definition of PKT.

(e) A physician, APRN, PA, or RN working under physician delegation must have formal airway management education or must have completed a course on airway management for moderate sedation.

(f) There must be an APRN, PA, or RN present at all times when administering PKT, and the delegating physician must be immediately available onsite for in-person consultation and emergency management throughout the PKT administration.

(g) Any location administering PKT must keep and maintain an adverse event reporting log, organized by year. Each log must be maintained for a period of at least three years. The log must list any event involving airway intervention, EMS transport, hospitalization, or death. The log must include the following information:

(1) patient name;

(2) date of adverse event;

(3) type of adverse event; and

(4) outcome, if known.

§173.10. Physician Requirements.

(a) The physician ordering PKT for psychiatric indications must have successfully completed:

(1) training in mental health treatment; or

(2) a course on the use of ketamine for psychiatric conditions.

(b) The physician ordering the PKT must have a properly established physician/patient relationship and have properly documented and diagnosed psychiatric indication supporting PKT.

(c) The physician ordering PKT must review the Prescription Monitoring Program when establishing a physician/patient relationship and on at least a quarterly basis for existing patients.

(d) If the physician ordering the PKT delegates the administration of PKT, they need to have protocols or standing delegation orders issued and maintained at the location where the PKT is being administered.

§173.11. Minimum Standards When Administering PKT.

(a) The physician, APRN, PA or RN administering PKT must:

(1) verify the PKT order from the delegating physician, if applicable;

(2) follow the standard of care;

(3) obtain informed consent including:

(A) a discussion of known risks of PKT; and

(B) the identity and licensure credentials of the person administering the PKT;

(4) implement a time out period immediately prior to beginning administration of PKT;

(5) maintain complete, contemporaneous, and legible medical records regarding patient monitoring and status throughout the administration of PKT.

(b) Patient monitoring and status must include continuous appropriate physiologic monitoring of the patient, both during and post procedure until ready for discharge.

(c) Continuous monitoring of the following:

(1) blood pressure;

(2) pulse;

(3) respiration;

(4) O2 saturation;

(5) cardiovascular status; and

(6) appropriate responsiveness to verbal stimuli.

(d) Discharge assessment requires:

(1) A minimum 30-minute observation period upon completion of PKT;

(2) at least two blood pressure readings 10 minutes apart; and

(3) a full cognitive assessment (including an Aldrete score).

(e) Minimum Equipment Requirements. The following equipment must be utilized for continuous cardiorespiratory monitoring of the patient during and after administration of PKT:

(1) pulse oximetry;

(2) incremental blood pressure checks; and

(3) an end-tidal carbon dioxide (CO2) analyzer.

(f) The following items must be on-site at all times and readily available, in case of an emergency:

(1) Supplemental oxygen,

(2) a bag-valve mask, and

(3) an AED (or defibrillator).

§173.12. Prohibited PKT Uses.

Any home use, prescribing, or administration of parenteral ketamine is prohibited.

§173.13. Complaints and Investigations.

The Medical Director and physician owner(s) are responsible for the clinic's operations and patient care and ensuring compliance with all applicable regulations.

§173.14. Renewal of PKT Clinic Registration.

(a) Registration is effective for two years following the date of initial registration. At least 60 days prior to the expiration of the PKT registration, a physician, clinic or facility seeking renewal must submit:

(1) a board-approved application; and

(2) an attestation stating that the requirements, standards and equipment comply with all applicable laws and board rules.

(b) Upon expiration of the current registration, the clinic must cease PKT operations until the registration is renewed.

§173.15. Audits, Inspections, and Investigations.

PKT clinics are subject to audits, inspection and investigations as outlined in Chapter 172 of the Board rules related to pain management clinics.

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 December 18, 2025.

TRD-202504730
Scott Freshour
General Counsel
Texas Medical Board
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 305-7059

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PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 271. EXAMINATIONS

22 TAC §271.4

The Texas Optometry Board (Board) proposes 22 TAC Title 14 Chapter 271 - Examinations, new §271.4 - Licensing for Military Service Member, Military Veteran, and Military Spouse to incorporate legislation passed by the 89th Texas Legislature. The current rule relating to military licensing (§273.14 - License Applications for Military Service Member, Military Veteran, and Military Spouse) is being repealed in a separate *Texas Register* submission.

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

HB 5629 and SB 1818, adopted by the 89th Legislature, Regular Session, established new criteria for licensing agencies to consider upon receipt of an application by a member of the military, veteran or a military spouse. Both bills took effect on September 1, 2025.

The purpose of this new rule is to incorporate the updated statutory provisions into language of the current rule (found at TAC §273.14). Additionally, the agency is moving the language related to military licensing from Chapter 273 to Chapter 271 to consolidate agency rules related to licensing into the same chapter for ease of use by applicants and interested parties.

HB 5629 changes the threshold of military licensing from those that have licensing requirements that are substantially equivalent to instead require the Board to consider licenses that are similar in scope of practice and that are in good standing. HB 1818 requires the Board to immediately issue a 180-day provisional license to military applicants while an application for full licensure is pending.

SECTION-BY-SECTION SUMMARY

Section (a) incorporates definitions as found in Chapter 55 of the Texas Occupations Code.

Section (b) outlines how the agency will identify states with similar scope.

Section (c) outlines that the Executive Director can waive licensing requirements except for requiring graduation from optometry school and passage of nationally accepted exams.

Section (d) requires applicants to complete a criminal background check.

Section (e) outlines what it means for a person to be in good standing with another state's licensing board.

Section (f) outlines the procedure the agency will use to license military members, spouses and veterans. It includes language to provide for a 180-day provisional license to be issued while the application is being processed.

Section (g) provides for the recognition of out of state licenses if certain conditions are met. Individuals whose out of state licenses are recognized would not be licensed in Texas and will not be issued an active Texas license number. No verification from Texas will be provided for these recognized licenses.

Section (h) outlines which fees an applicant under this section would be required to pay.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Janice McCoy, Executive Director, has determined that for each year of the first five years that the proposed rule is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules. Additionally, Mrs. McCoy has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Because Mrs. McCoy has determined that the proposed rule will not affect a local economy, the agency is not required to prepare a local employment impact statement under Texas Government Code §2001.022.

PUBLIC BENEFIT

Ms. McCoy has determined for the first five-year period the proposed rule is in effect, the intended public benefit will be a reduction of the complexity of the administrative rules related to the licensing of members of the military, veterans, and military spouses.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mrs. McCoy has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIIES

The proposed new rules will have no direct adverse economic impact on small businesses, micro-businesses, or rural communities. Accordingly, the preparation of an economic impact statement and a regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is not required.

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

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Texas Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code §2001.0221, for the first five-year period the proposed rules are in effect Ms. McCoy has determined the following:

The proposed rule does not create or eliminate a government program.

The proposed rule does not require the creation or elimination of employee positions.

The proposed rule does not require the increase or decrease in future legislative appropriations to the agency.

The proposed rule does not require an increase or decrease in fees paid to the agency.

The proposed rule does not create a new regulation.

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

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

The proposed rule does not positively or adversely affect the state's economy.

TAKINGS IMPACT ASSESSMENT

Ms. McCoy has determined that there are no private real property interests affected by the proposed rules. Thus, the Board is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

PUBLIC COMMENTS

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

STATUTORY AUTHORITY

The Board proposes this rule pursuant to the authority found in §351.151 of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties. The statutory provisions affected by the proposed rules are those set forth in Chapter 55 of the Tex. Occ. Code.

No other sections are affected by the rulemaking.

§271.4. Licensing for Military Service Member, Military Veteran, and Military Spouse.

(a) The Board adopts by reference the definitions set forth in Chapter 55 of the Occupations Code.

(b) The Board has sole discretion in determining whether an applicant's out-of-state license is similar in scope to a license issued by the Board. Applicants may only practice optometry to the extent allowed by Texas law.

(c) To protect the health and safety of the citizens of this state, a license to practice optometry or therapeutic optometry requires a doctorate degree in optometry and passing scores on nationally accepted examinations. An alternative method to demonstrate competency is not available.

(d) An applicant under this section must pass a criminal-background check. The Board may deny an application is the applicant has a disqualifying criminal history.

(e) A person is in good standing with another state's licensing authority if the person:

(1) holds a license that is current, has not been suspended or revoked, and has not been voluntarily surrendered during an investigation for unprofessional conduct;

(2) has not been disciplined by the licensing authority with respect to the person's practice of optometry or therapeutic optometry; and

(3) is not currently under investigation by the licensing authority for unprofessional conduct related to the practice of optometry or therapeutic optometry.

(f) Alternate licensing procedure for military service member, military spouse, or military veteran authorized by Texas Occupations Code §55.004.

(1) A license shall be issued to a military service member, military veteran, or military spouse upon proof of one of the following:

(A) the applicant holds a current license in another state that is similar in scope of practice to Texas scope of practice and is in good standing with the other state's licensing authority; or

(B) within the five years preceding the application date, the applicant held the license sought in this state.

(2) As part of the application process, the Executive Director may waive any prerequisite for obtaining a license, other than the requirements listed in subsection (c) and (d) of this rule, if it is determined that the applicant's education, training, and experience provide reasonable assurance that the applicant has the knowledge and skills necessary for entry-level practice under the license sought. No waiver may be granted where a military service member or military veteran holds a license issued by another jurisdiction that has been restricted.

(3) While a license application is being processed, the applicant shall be issued a provisional license to practice. The provisional license shall expire on the earlier of the date the agency approves or denies the license application or the 180th day after the date the provisional license is issued.

(4) Not later than 10 days after receipt of a complete application including required supplemental documents and fingerprint criminal history background check, the agency shall process the application.

(5) An applicant applying as a military spouse must submit proof of marriage to a military service member.

(6) The initial renewal date for a license issued pursuant to this rule shall be set in accordance with the agency's rule governing initial renewal dates.

(g) Recognition of out-of-state license of military service member or military spouse authorized by Texas Occupations Code §55.0041

(1) Notwithstanding any other law a military service member or military spouse may engage in the practice of optometry or therapeutic optometry without obtaining a Texas license if the applicant currently holds a license similar in scope of practice to Texas issued by the licensing authority of another state and is in good standing with that licensing authority.

(2) In order for an out-of-state license to be recognized, a military service member or military spouse must submit an application on a form prescribed by the Board that includes:

(A) a copy of the member's military orders showing relocation to Texas;

(B) if the applicant is a military spouse, a copy of the military spouse's marriage license and spouse's order showing relocation to Texas; and

(C) a notarized affidavit affirming under penalty of perjury that:

(i) the applicant is the person described and identified in the application;

(ii) all statements in the application are true, correct, and complete;

(iii) the applicant understands the scope of practice for the applicable license in this state and will not perform outside of that scope of practice; and

(D) the applicant is in good standing in each state in which the applicant holds or has held an applicable license.

(3) Not later than 10 days after receipt of an application for recognition of an out-of-state license, the agency shall notify the applicant:

(A) the agency recognizes the applicant's out-of-state license;

(B) the application is incomplete; or

(C) the agency is unable to recognize the applicant's out-of-state license because the agency does not issue a license similar in scope of practice to the applicant's license in another state or the applicant has a disqualifying criminal history.

(4) In order to ensure the public can verify if a person is recognized to practice optometry or therapeutic optometry in Texas, the Board will post the person's name and out of state license number on its website. The person is not considered licensed by the Board and no license verifications will be issued.

(5) A service member or military spouse authorized to practice with a recognized out of state license is subject to the enforcement authority granted under the Texas Optometry Act, and the laws and regulations applicable to a licensed provider.

(6) A service member or military spouse may practice under this recognized status only while the service member is stationed at a military installation in this state.

(7) In the event of a divorce or similar event (e.g., annulment, death of spouse) affecting a military spouse's marital status, a former spouse who relied upon this rule to obtain authorization to practice may continue to practice under the authority of this rule until the third anniversary of the date of confirmation referenced in paragraph (3)(A) of this subsection.

(8) In order to obtain and maintain the privilege to practice without a license in this state, a service member or military spouse must remain in good standing with every licensing authority that has issued a license to the service member or military spouse at a similar scope of practice and in the discipline applied for in this state.

(h) Pursuant to Texas Occupations Code §55.002, application fees are waived for military service members, military veterans, and military spouses. The applicant is responsible for paying any examination fees that are charged by a third-party examination vendor.

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 December 17, 2025.

TRD-202504679
Janice McCoy
Executive Director
Texas Optometry Board
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 305-8500

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CHAPTER 273. GENERAL RULES

22 TAC §273.14

The Texas Optometry Board (Board) proposes to repeal to §273.14 -- License Applications for Military Service Member, Military Veteran, and Military Spouse. The rule is being re-proposed under Chapter 271-Examinations with changes to incorporate legislation passed by the 89th Texas Legislature in a separate *Texas Register* submission.

EXPLANATION OF AND JUSTIFICATION FOR THE REPEAL

HB 5629 and SB 1818, adopted by the 89th Legislature, Regular Session, established new criteria for licensing agencies to consider upon receipt of an application by a member of the military, veteran or a military spouse. Both bills take effect on September 1, 2025. In the scope of incorporating the new provisions of the legislation, the Board has determined it makes sense to move the current rule regarding licensing military related optometrist to the Chapter of its rules related to licensing.

The substance of the language will be proposed for amendment to Chapter 271 in a separate rule submission with the *Texas Register*.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Janice McCoy, Executive Director, has determined that for each year of the first five years that the proposed repeal is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules. Additionally, Mrs. McCoy has determined that for each year of the first five years the proposed repeal is in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Because Mrs. McCoy has determined that the proposed repeal will not affect a local economy, the agency is not required to prepare a local employment impact statement under Texas Government Code §2001.022.

PUBLIC BENEFIT

Ms. McCoy has determined for the first five-year period the proposed repeal is in effect, the intended public benefit will be a reduction of the complexity of the administrative rules related to the licensing of members of the military, veterans, and military spouses.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mrs. McCoy has determined that for each year of the first five-year period the proposed repeal is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

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

The proposed new repeal will have no direct adverse economic impact on small businesses, micro-businesses, or rural communities. Accordingly, the preparation of an economic impact statement and a regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is not required.

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

The proposed repeal does not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Texas Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code §2001.0221, for the first five-year period the proposed repeal is in effect Ms. McCoy has determined the following:

1. The proposed repeal does not create or eliminate a government program.

2. The proposed repeal does not require the creation or elimination of employee positions.

3. The proposed repeal does not require the increase or decrease in future legislative appropriations to the agency.

4. The proposed repeal does not require an increase or decrease in fees paid to the agency.

5. The proposed repeal does not create a new regulation.

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

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

8. The proposed repeal does not positively or adversely affect the state's economy.

TAKINGS IMPACT ASSESSMENT

Ms. McCoy has determined that there are no private real property interests affected by the proposed repeal. Thus, the Board is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

PUBLIC COMMENTS

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

STATUTORY AUTHORITY

The Board proposes this repeal pursuant to the authority found in §351.151 of the Tex. Occ. Code which vests the Board with

the authority to adopt rules necessary to perform its duties. No other sections are affected by the repeal.

§273.14. License Applications for Military Service Member, Military Veteran, and Military Spouse.

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 December 17, 2025.

TRD-202504681
Janice McCoy
Executive Director
Texas Optometry Board
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 305-8500

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CHAPTER 279. INTERPRETATIONS

22 TAC §279.16

The Texas Optometry Board (Board) proposes amendments to 22 TAC Title 14 Chapter 279 - Interpretations §279.16 - Telehealth Services.

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The proposed rule specifies the informed consent documentation that is required when licensees perform telehealth services for optometry. The Board proposes this rule in accordance with House Bill 1700 of the 89th Texas Legislature, Regular Session (2025), and Chapter 111, Texas Occupations Code.

SECTION-BY-SECTION SUMMARY

The amendment adds language that informed consent for the provision of telehealth services shall be in writing and must be maintained in the patient record. However, it does provide that if the informed consent was obtained in an audio-only format, the licensee shall document in the patient record the time and date that the consent was granted.

It goes to list minimum requirements for the written informed consent to include: (1) the patient's consent to treatment by the optometrist or therapeutic optometrist via telehealth services; (2) the patient's acknowledgement that patient's health data is being collected and shared using electronic and digital communication; and (3) the patient's acknowledgement of a potential for breach of confidentiality, or inadvertent access, of protected health information using electronic and digital communication in the provision of care.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Janice McCoy, Executive Director, has determined that for each year of the first five years that the proposed rule is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules. Additionally, Mrs. McCoy has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Because Mrs. McCoy has determined that the proposed rule will not affect a local economy, the agency is not required to prepare a local employment impact statement under Texas Government Code §2001.022.

PUBLIC BENEFIT

Ms. McCoy has determined for the first five-year period the proposed rule is in effect, the intended public benefit will be clarity for patients and optometrists to know when and how the requirements of an initial visit must be met.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mrs. McCoy has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIIES

The proposed new rules will have no direct adverse economic impact on small businesses, micro-businesses, or rural communities. Accordingly, the preparation of an economic impact statement and a regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is not required.

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

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Texas Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code §2001.0221, for the first five-year period the proposed rules are in effect Ms. McCoy has determined the following:

The proposed rule does not create or eliminate a government program.

The proposed rule does not require the creation or elimination of employee positions.

The proposed rule does not require the increase or decrease in future legislative appropriations to the agency.

The proposed rule does not require an increase or decrease in fees paid to the agency.

The proposed rule does not create a new regulation.

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

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

The proposed rule does not positively or adversely affect the state's economy.

TAKINGS IMPACT ASSESSMENT

Ms. McCoy has determined that there are no private real property interests affected by the proposed rules. Thus, the Board is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

PUBLIC COMMENTS

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

STATUTORY AUTHORITY

The Board proposes this rule pursuant to the authority found in §351.151 of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties. The statutory provisions affected by the proposed rules are those set forth in §111.004 of the Tex. Occ. Code.

No other sections are affected by the amendments.

§279.16. Telehealth Services.

(a) - (c) (No change.)

(d) Notice.

(1) Privacy Practices and Informed Consent.

(A) Unless previously provided, optometrists or therapeutic optometrists that communicate with patients by electronic communications other than telephone or facsimile must provide patients with written notification of the optometrists' or therapeutic optometrists' privacy practices prior to evaluation or treatment, with a good faith effort to obtain the patient's written acknowledgement, including by e-mail, of the notice.

(B) The notice of privacy practices shall include language that is consistent with federal standards under 45 C.F.R. Parts 160 and 164 relating to privacy of individually identifiable health information.

(2) The optometrist or therapeutic optometrist providing or facilitating the use of telehealth services shall ensure that the informed consent of the patient, or another appropriate individual authorized to make health care treatment decisions for the patient, is obtained before telehealth services are provided.

(A) A licensee shall maintain a patient's informed consent in the patient record and, whenever possible, shall be in writing. If the licensee must obtain the informed consent in an audio-only format, the licensee must document in the patient record the time and date that the patient granted the consent.

(B) At a minimum, the informed consent must include:

(i) the patient's consent to treatment by the optometrist or therapeutic optometrist via telehealth services;

(ii) the patient's acknowledgement that patient's health data is being collected and shared using electronic and digital communication; and

(iii) the patient's acknowledgement of a potential for breach of confidentiality, or inadvertent access, of protected health information using electronic and digital communication in the provision of care.

(3) Complaints to the Board. Optometrists or therapeutic optometrists that use telehealth services must provide notice of how patients may file a complaint with the Board on the optometrist's or therapeutic optometrist's website or with informed consent materials provided to patients prior to rendering telehealth services.

(e) - (g) (No change.)

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

Filed with the Office of the Secretary of State on December 18, 2025.

TRD-202504708
Janice McCoy
Executive Director
Texas Optometry Board
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 305-8502

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 507. END STAGE RENAL DISEASE FACILITIES

SUBCHAPTER Z. PHYSICAL PLANT AND CONSTRUCTION REQUIREMENTS

26 TAC §507.516

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §507.516, concerning Tables.

BACKGROUND AND PURPOSE

The purpose of this proposal is to repeal the staffing table located in Texas Administrative Code (TAC) Title 26, Chapter 507, End Stage Renal Disease Facilities, Subchapter Z, Physical Plant and Construction Requirements, §507.516, Tables. A new staffing table was adopted in 26 TAC §507.60 and was effective on December 23, 2025.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the repeal is in effect:

(1) the proposed repeal will not create or eliminate a government program;

(2) implementation of the proposed repeal will not affect the number of HHSC employee positions;

(3) implementation of the proposed repeal will result in no assumed change in future legislative appropriations;

(4) the proposed repeal will not affect fees paid to HHSC;

(5) the proposed repeal will not create a new regulation;

(6) the proposed repeal will not expand, limit, or repeal existing regulations;

(7) the proposed repeal will not change the number of individuals subject to the rule; and

(8) the proposed repeal will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed repeal does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule. The proposed repeal is only removing outdated information that has already been updated and adopted in §507.60 of the same chapter.

LOCAL EMPLOYMENT IMPACT

The proposed repeal will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this repeal because the repeal does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the repeal is in effect, the public benefit will be improved clarity and accuracy for staffing levels of patient care staff and ensure stakeholders can easily find relevant, up-to-date regulations.

Trey Wood has also determined that for the first five years the repeal is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeal because the proposed repeal is only removing outdated information that has already been updated and adopted in §507.60 of the same chapter.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal, including information related to the cost, benefit, or effect of the proposed rule, as well as any applicable data, research, or analysis, may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 14 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 26R035" in the subject line.

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; and Texas Health and Safety Code §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

The repeal affects Texas Government Code §524.0151 and Texas Health and Safety Code §251.003 and §251.014.

§507.516. Tables.

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 December 16, 2025.

TRD-202504652
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 221-9021

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 328. WASTE MINIMIZATION AND RECYCLING

SUBCHAPTER L. THIRD-PARTY CERTIFICATION SYSTEMS FOR MASS BALANCE ATTRIBUTION

30 TAC §§328.301, 328.302, 328.304

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§328.301, 328.302, and 328.304.

Background and Summary of the Factual Basis for the Proposed Rules

The commission proposes this rulemaking to implement House Bill (HB) 4413, 89th Texas Legislature, 2025. HB 4413 amended Texas Health and Safety Code (THSC), §361.421 (Definitions) by adding definitions for "renewable biomass" and "renewable chemical," and §361.4215 (Mass Balance Attribution) by requiring TCEQ to adopt rules to identify third-party mass balance attribution certification systems for the purpose of identifying a renewable chemical.

Although renewable biomass feedstocks may be used to produce a renewable chemical, HB 4413 does not exempt renewable biomass from regulation as a solid waste or any other applicable statutes or rules.

Section by Section Discussion

§328.301, Purpose and Applicability

The commission proposes to amend §328.301(a)(3) by including recycled plastics and a renewable chemical as recycled material in subparagraph (A) and replacing subparagraph (B) with the content of subparagraph (C). This amendment would expand the purpose of the subchapter to include the identification of a renewable chemical and clarify that the term recycled material includes both recycled plastics and a renewable chemical.

§328.302, Definitions

The commission proposes to amend §328.302(1), the definition of "mass balance attribution," by applying the term to a renewable chemical.

The commission proposes to amend §328.302(2), to expand the definition of "recycled material," to include a renewable chemical.

The commission proposes new §328.302(5) to add the definition of "renewable biomass or renewable biomass feedstocks."

The commission proposes new §328.302(6) to add the definition of "renewable chemical."

The commission proposes to amend renumbered §328.302(7), the definition of "third-party certification system", by including recycled plastics and a renewable chemical as recycled material for the purpose of third-party certification.

§328.304, Recycled Products

The commission proposes to amend §328.304(b) by adding a renewable chemical to the materials that may be included when determining the minimum content of a recycled product using mass balance attribution certified by a third-party certification system.

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit will be compliance with state law, specifically HB 4413 from the 89th Regular Legislative Session (2025). The proposed rulemaking is not anticipated to result in fiscal implications for individuals or businesses during the first five-year period the proposed rules are in effect.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Community Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation, and it does not create, expand, repeal, or limit this regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Written comments concerning the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking under the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code §2001.0225 applies to a "Major environmental rule," which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

The rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed rulemaking is to promulgate rules that: (1) establish a renewable chemical as eligible to be considered part of a recycled product in accordance with THSC, §361.4215 and §361.427; and (2) identify third-party certification systems for mass balance attribution in THSC, §361.421.

Additionally, the rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The cost of complying with the proposed rules is not anticipated to be significant with respect to the economy as a whole or with respect to a sector of the economy, and therefore the rulemaking will not adversely affect the economy in a material way.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements.

This proposed rulemaking does not meet the statutory definition of a "Major environmental rule," nor does it meet any of the four applicability requirements for a "Major environmental rule." Therefore, this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission has prepared a takings impact assessment for these proposed rules in accordance with Texas Government Code, §2007.043. The commission's preliminary assessment is that implementation of these proposed rules would not constitute a taking of real property. The commission proposes this rulemaking for the purpose of promulgating rules that: (1) establish a renewable chemical as eligible to be considered part of a recycled product in accordance with THSC, §361.4215 and §361.427; and (2) identify third-party certification systems for mass balance attribution in THSC, §361.421.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these proposed rules because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). HB 4413 amended THSC, §361.421 (Definitions) and §361.4215 (Mass Balance Attribution). These statutory enactments require the commission to promulgate rules to: (1) establish a renewable chemical as eligible to be considered part of a recycled product in accordance with THSC, §361.4215 and §361.427; and (2) identify third-party certification systems for mass balance attribution in THSC, §361.421, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Therefore, Texas Government Code, Chapter 2007 does not apply to these proposed rule changes because the proposed rulemaking falls within the exception under Texas Government Code, §2007.003(b)(4).

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a hold a hybrid virtual and in-person public hearing on this proposal in Austin on January 27, 2026 at 10:00 a.m. in Building E, Conference Room E201S at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by January 23, 2026. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on January 26, 2026, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_OTA1YTllYjEtYmIxMi00M2MzLThiYmMtY2NmNDg3NDQ3MzQ4%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%223aa8b0dc-fc48-48e4-98da-84f3b2eb020c%22%7d

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

If you need translation services, please contact TCEQ at 800-687-4040. Si desea información general en español, puede llamar al 800-687-4040.

Submittal of Comments

Written comments may be submitted to Vanessa Onyskow-Lang, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted at: *https://tceq.commentinput.com/comment/search*. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2025-026-328-WS. The comment period closes on February 3, 2026. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Jarita Sepulvado, Waste Permits Division, (512) 239-4413.

Statutory Authority

The amendments are proposed under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides

the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; the Administrative Procedures Act under Texas Government Code, Chapter 2001, which authorizes the commission as a state agency to adopt rules pursuant to the rulemaking process; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act; THSC, §361.0151, which requires the commission to base its goals or requirements for recycling or the use of recycled materials on the definitions and principles established by Subchapter N, THSC, §§361.421 through 361.431; THSC, §361.022 and §361.023, which set public policy in the management of municipal solid waste and hazardous waste to include reuse or recycling of waste; THSC, §361.041, which conditionally excludes post-use polymers and recoverable feedstock from classification as solid waste when are converted using pyrolysis, gasification, solvolysis, or depolymerization into valuable raw materials, valuable intermediate products or valuable final products, that include plastic monomers, chemicals, waxes, lubricants, and chemical feedstocks; THSC, §361.078 which identifies that THSC Chapter 361 Subchapter B does not abridge, modify or restrict the commission's authority to adopt rules issue permits and enforce the terms of permits as necessary to maintain state authorization of Texas' hazardous waste program; THSC, §361.119, which requires the commission to adopt rules and to adopt rules consistent with THSC Chapter 361 to ensure that solid waste processing facilities are regulated as solid waste facilities and not allowed to operate unregulated as recycling facilities; THSC, §361.4215 which authorizes the commission to identify third-party certification systems for mass balance attribution that may be used for the purposes of THSC, §361.421(6) and (6-a); THSC, §361.425 which provides that the commission shall adopt rules for administering governmental entity recycling programs; THSC, §361.426, which provides that the commission shall adopt rules for administering governmental entity preferences for recycled products; and THSC, §361.427 which authorizes the commission to promulgate rules to establish guidelines by which a product is eligible to be considered a recycled product.

The proposed amendments to §§328.301, 328.302, and 328.304, would implement House Bill (HB) 4413, 89th Texas Legislature, 2025, by adding the definitions of "Renewable biomass" and "Renewable chemical" so that they are consistent with the definitions under THSC, §361.421. The proposed amendments to §328.302 and §328.304 would also implement HB 4413 by amending the definition of "Mass balance attribution" so that it is consistent with the definitions under THSC, §361.4215.

§328.301. Purpose and Applicability.

Purpose. The purpose of this subchapter is to:

(1) establish guidelines by which a product is eligible to be considered a recycled product;

(2) identify what is not eligible to be considered a recycled product; and

(3) identify third-party certification systems for mass balance attribution to certify:

(A) "Recycled material," including "Recycled plastics" and a "Renewable chemical"; and

(B) the portion of the total content of a product that consists of recycled material.

~~[(B) "Recycled plastics"; and]~~

~~[(C) the portion of the total content of a product that consists of recycled material.]~~

(b) Applicability. This subchapter is applicable to determining that a product is eligible to be considered a recycled product and third-party certification systems for mass balance attribution.

§328.302. Definitions.

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

(1) Mass balance attribution--A chain of custody accounting methodology with rules defined by a "Third-party certification system" that enables the attribution of "Recycled material," including "Recycled plastics," and a "Renewable chemical" [~~" and "Recycled plastics~~]," as those terms are defined in this section, to a "Recycled product," as described in §328.304 of this title (relating to Recycled Products).

(2) Recycled material--Materials, goods, or products that consist of recovered "Recyclable material," as defined in §330.3 of this title (relating to Definitions), materials derived from "Recoverable feedstocks" or "Post-use polymers" as those terms are defined in §330.3 of this title, or postconsumer waste, industrial waste, or hazardous waste which may be used in place of a raw or virgin material in manufacturing a new product or that are certified under a "Third-party certification system" for "Mass balance attribution," as those terms are defined in this section. The term includes "Recycled plastics" and a "Renewable chemical" as defined in this section.

(3) Recycled plastics--Products that are produced from:

(A) mechanical recycling of post-use polymers; or

(B) nonmechanical recycling of "Recoverable feedstocks" or "Post-use polymers" as those terms are defined in §330.3 of this title, that are certified under a "Third-party certification system" for "Mass balance attribution," as those terms are defined in this section.

(4) Recycling--A process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials or feedstocks used in the manufacture of new products. The term includes the conversion of post-use polymers and recoverable feedstocks through pyrolysis, gasification, solvolysis, or depolymerization, but does not include waste-to-energy processes or incineration of plastics in an incinerator as defined in §335.1 of this title (relating to Definitions).

(5) Renewable biomass or renewable biomass feedstocks--

(A) materials, pre-commercial thinnings, or invasive species from National Forest System land and public lands, as that term is defined by 43 U.S.C. Section 1702, that:

(i) are byproducts of preventive treatments that are removed:

(I) to reduce hazardous fuels;

(II) to reduce or contain disease or insect infestation; or

(III) to restore ecosystem health;

(ii) would not otherwise be used for higher value products; and

(iii) are harvested in accordance with:

(I) applicable law and land management plans; and

(II) requirements for old growth stand maintenance, restoration, and management direction and large tree retention under Sections 102(e) and (f), Healthy Forests Restoration Act of 2003 (16 U.S.C. Sections 6512(e) and (f)); or

(B) any organic matter that is available on a renewable or recurring basis from nonfederal land or land belonging to an Indian or Indian tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(i) renewable plant material, including:

(I) feed grains and other agricultural commodities;

(II) plants and trees;

(III) algae; and

(IV) microorganisms; and

(ii) waste material, including:

(I) crop residue;

(II) vegetative waste material, including wood waste and wood residue;

(III) animal waste and byproducts, including fats, oils, greases, and manure;

(IV) food waste and yard waste;

(V) plant-derived waste oils;

(VI) municipal solid waste; and

(VII) waste derived from a wastewater treatment facility.

(6) Renewable chemical--A monomer, polymer, plastic, formulated product, or chemical substance produced from renewable biomass feedstocks or certified under a "Third-party certification system" for "Mass balance attribution" as these terms are defined in this section.

(7) [~~(5)~~] Third-party certification system--An international or multinational third-party certification system that consists of a set of rules to implement "Mass balance attribution" approaches for attribution of "Recycled material," including "Recycled plastics," and a "Renewable chemical," to a "Recycled product" as these terms are defined in this section.

§328.304. Recycled Products.

(a) A product is eligible to be considered a recycled product when it conforms with the minimum content of recycled material as specified in the Comprehensive Procurement Guidelines (CPG) and the Recovered Materials Advisory Notice (RMAN) published by the Environmental Protection Agency (EPA) as described in §328.7(4) of this title (relating to Definitions of Terms and Abbreviations).

(b) Manufacturers may use a third-party certification system for mass balance attribution as identified under §328.303 of this title (relating to Third-party Certification Systems for Mass Balance Attribution) to identify the portion of the total content of a product which consists of recycled material, recycled plastics, and renewable chemicals [~~and recycled plastics~~].

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 December 18, 2025.

TRD-202504700
Amy L. Browning
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 239-0682

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

The Texas Water Development Board (TWDB) proposes an amendment to 31 Texas Administrative Code (TAC) §§363.2, 363.17, 363.402, 363.405, 363.1302, 363.1304, and §363.1305.

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

Chapter 363 contains the TWDB's programmatic rules for many of the agency's state funded financial assistance programs. The TWDB proposes to amend the rules to implement legislation.

House Bill 3582, 88th R.S. (2023) and Senate Bill 469, 88th R.S. (2023), amended Chapters 15 of the Water Code by adding two similar but non-identical general definitions of "rural political subdivision." Senate Bill 971, 89th R.S. (2025) repealed SB 469's definition of rural political subdivision. HB 3582 also amended Chapter 15 of the Water Code by making a conforming change to a permissible use of funds category in the Flood Infrastructure Fund program by substituting "a rural political subdivision" in place of "an area outside of a metropolitan statistical area". This rulemaking implements HB 3582's definition of "rural political subdivision" applicable to the agency's state funded financial assistance programs in Chapter 363.

Senate Bill 1967, 89th R.S. (2025), amended Chapter 15 of the Water Code by specifying that under the TWDB's Water Loan Assistance Fund program, certain drainage districts are eligible to receive grants for water supply projects, including projects that contain a flood control element, and prohibits disqualification because a district lacks historical data water use, does not provide retail water service, or does not have a certificate of convenience and necessity. This rulemaking implements SB 1967's grant eligibility of certain drainage districts under the Water Loan Assistance Fund program rules in Chapter 363.

SB 1967 also amended Chapter 15 of the Water Code by adding additional criterion that TWDB must consider when prioritizing

projects for financial assistance under the State Water Implementation Fund for Texas (SWIFT) program. When prioritizing projects under the SWIFT program, the TWDB must also consider whether a project is a water supply project that contains a flood component, regardless of whether the applicant holds a certificate of convenience and necessity. This rulemaking implements SB 1967's additional prioritization consideration under the SWIFT program rules in Chapter 363.

SB 1967 additionally amended Chapter 15 of the Water Code by expanding the definition of "Flood project" applicable to the TWDB's Flood Infrastructure Fund (FIF) program. The definition of "Flood project" now includes the construction of multi-purpose flood mitigation and drainage infrastructure projects that control, divert, capture, or impound flood water, stormwater, agricultural runoff water, or treated wastewater effluent and treat and distribute the water for the purpose of creating an additional source of water supply. This rulemaking implements SB 1967's expanded definition of a Flood Project under the FIF program rules in Chapter 363.

Senate Bill 1261, 89th R.S. (2025), amended TWDB's SWIFT Program in Chapter 15 of the Water Code by specifying the not to exceed term for an "eligible project", as defined by Section 1373.001 of the Government Code. The loan term for an "eligible project" may not exceed the lesser of the expected useful life of the facility or 40 years. This rulemaking implements SB 1261's not to exceed term parameters for an "eligible project" under TWDB's SWIFT program rules in Chapter 363.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

Chapter 363 Financial Assistance Programs

Subchapter A. General Provisions

Division 1. Introductory Provisions

§363.2. Definitions of Terms.

The proposed amendment revises the definition of rural political subdivision in §363.2(26) to implement HB 3582.

Division 2. General Application Provisions

§363.17. Grants from Water Loan Assistance Fund.

The amendment proposes §363.17(c) and (d) to implement SB 1967, expanding grant eligibility of certain drainage districts under the Water Loan Assistance Fund program as well as a renumbering of the remaining subsections.

Subchapter D. Flood Financial Assistance.

§363.402. Definitions.

The proposed amendment expands the definition of flood project by the addition of §363.402(6)(G) to implement SB1967. The proposed amendment also removes the definition of a metropolitan statistical area currently in §363.402(8) to implement HB 3582 and renumbers the remaining subsections. To avoid duplicative definitions across Subchapters in Chapter 363, TWDB intends to rely on the proposed amended definition of rural political subdivision in §363.2(26) for TWDB's FIF program projects.

§363.405. Use of Funds.

The proposed amendment revises §363.405(a)(2) to substitute "a rural political subdivision" in place of "an area outside of a metropolitan statistical area" to implement HB 3582.

Subchapter M. State Water Implementation Fund for Texas and State Water Implementation Revenue Fund for Texas Water Development Board

§363.1302. Definition of Terms.

The amendment proposes to add a definition of flood control component and to remove the definition of rural political subdivision currently in §363.1302(15) and to renumber the subsections accordingly. Unless in conflict, Subchapter A of Chapter 363 applies to projects under Subchapter M of Chapter 363. To avoid duplicative definitions across Subchapters in Chapter 363, TWDB intends to rely on the proposed amended definition of rural political subdivision in §363.2(26) for TWDB's SWIFT program projects.

§363.1304. Prioritization Criteria.

The amendment proposes §363.1304(12) to implement SB 1967's additional criterion that TWDB must consider when prioritizing SWIFT projects for financial assistance and renumbers the remaining subsection. The amendment proposes awarding one point for water supply projects that contain a flood control component and zero points for water supply projects that do not contain a flood component. An amendment is also proposed for §363.1304(6) to correct a typographical error and to account for the addition of proposed criterion.

§363.1305. Use of Funds.

The amendment proposes a revision to §363.1305(a)(2)(B) to implement SB 1261, which establishes "not to exceed" term parameters for an "eligible project" under TWDB's SWIFT Program, as defined by §1373.001 of the Texas Government Code.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Georgia Sanchez, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for state or local governments as the rules are necessary to implement legislation and participation in TWDB's financial assistance programs is voluntary. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are necessary to implement legislation.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Georgia Sanchez also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it clarifies eligibility requirements for TWDB applicants and implements legislation. Ms. Georgia Sanchez also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as participation in TWDB financial assistance programs is voluntary.

ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to implement legislation and clarify eligibility requirements.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather Texas Water Code §6.101, §15.011, §15.439, §15.472, and §15.537. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to implement legislation and clarify requirements for borrowers. The proposed rule would substantially advance this stated purpose by aligning the rule's definitions, permissible use of funds, eligibility, and loan term parameters with Water Code, Chapter 15.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that implements the applicable financial assistance programs.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule is merely an amendment to conform with statutory changes by aligning the rule's definitions, permissible use of funds, borrower eligibility, and loan term parameters with Water Code, Chapter 15. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy. The rules are not regulatory and participation in TWDB programs is voluntary.

SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. If sent via email, all public comments should be sent directly to rulescomments@twdb.texas.gov. Please do not submit

comments through any third-party forms or websites. Receipt of third-party submissions cannot be guaranteed. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the *Texas Register*. Include Chapter 363 in the subject line of any comments submitted.

SUBCHAPTER A. GENERAL PROVISIONS
DIVISION 1. INTRODUCTORY PROVISIONS

31 TAC §363.2

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §15.011, §15.439, §15.472, and §15.537.

This rulemaking affects Water Code, Chapter 15.

§363.2. Definitions of Terms.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the Texas Water Code, Chapter 15, 16 or 17, and not defined here shall have the meanings provided by the appropriate Texas Water Code chapter.

(1) Applicant--The entity applying for financial assistance, including the entity that receives the financial assistance, the entity that owns the project funded under this chapter, or an entity authorized to act on behalf of the applicant.

(2) Alternative Delivery Guidance--A document prepared by the Board after public review and comment and reviewed periodically that identifies alternative methods of project delivery available to applicants for financial assistance and the requirements for utilizing an alternative delivery method.

(3) Board--Texas Water Development Board.

(4) Building--Erecting, building, acquiring, altering, remodeling, improving, or extending a water supply project, treatment works, or flood control measures.

(5) Certification of trust--An instrument executed by a home-rule municipality pursuant to Chapter 104, Local Government Code, governing the management of the loan proceeds in accordance with §114.086, Texas Property Code.

(6) Closing--The time at which the requirements for loan closing have been completed under §363.42 of this title (relating to Loan Closing) and an exchange of debt for delivery of funds to either the applicant, an escrow agent bank, or a trust agent has occurred.

(7) Commission--Texas Commission on Environmental Quality.

(8) Commitment--An offer by the board to provide financial assistance to an applicant who timely fulfills the conditions required in a board resolution.

(9) Community Water System - Has the meaning assigned by 30 TAC §290.38.

(10) Construction account--A separate account created and maintained for the deposit of loan funds and utilized by the applicant to pay eligible expenses of the project.

(11) Corporation--A nonprofit water supply corporation created and operating under Texas Water Code, Chapter 67.

(12) Debt--All bonds, notes, certificates, book-entry obligations, and other obligations authorized to be issued by any political subdivision.

(13) Department--Texas Department of State Health Services.

(14) Escrow account--A separate account maintained by an escrow agent for the board's deposit of escrowed funds until such funds are eligible for release to the construction account.

(15) Escrow agent--Any of the following:

(A) a state or national bank designated by the comptroller as a state depository institution in accordance with Texas Government Code, Chapter 404, Subchapter C;

(B) a custodian of collateral as designated in accordance with Texas Government Code, Chapter 404, Subchapter D; or

(C) a municipal official responsible for managing the fiscal affairs of a home-rule municipality in accordance with Local Government Code, Chapter 104.

(16) Executive administrator--The executive administrator of the board or a designated representative.

(17) Financial assistance--Loans, grants, or state acquisition of facilities by the board pursuant to the Texas Water Code, Chapters 15, Subchapters B, C, E, G, H, O, P, and Q; Chapter 16, Subchapters E, and F; Chapter 17, Subchapters D, F, G, I, K, and L; and Chapter 36, Subchapter L.

(18) Grants--Financial assistance provided by the board for which repayment is not required.

(19) Innovative technology--Nonconventional methods of treatment such as rock reed, root zone, ponding, irrigation or other technologies which represent a significant advance in the state of the art.

(20) Legislative Designation--A designation made by the legislature in accordance with §16.051(f) and (g), Texas Water Code.

(21) Municipal use in gallons per capita per day--The total average daily amount of water diverted or pumped for treatment for potable use by a public water supply system. The calculation is made by dividing the water diverted or pumped for treatment for potable use by population served. Indirect reuse volumes shall be credited against total diversion volumes for the purpose of calculating gallons per capita per day for targets and goals developed pursuant to a water conservation plan.

(22) Pre-design commitment--A commitment by the board prior to completion of planning or design pursuant to §363.16 of this title (relating to Pre-design Funding Option).

(23) Private placement memorandum--A document functionally similar to an official statement used in connection with an offering of municipal securities in a private placement.

(24) Release--The time at which funds are made available to the loan or grant recipient or to a state participation recipient pursuant to a master agreement.

(25) Risk-Based Review-- Method of review of plans, specifications, and related documents for sewage collection, treatment, and disposal system projects that are compliant with existing state statutes and good public health engineering practices pursuant to Texas Water Code §17.276.

(26) Rural Political Subdivision--

(A) a [A] nonprofit water supply or sewer service corporation created and operating under Chapter 67 of the Texas Water Code or a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, no part of the service area of which is located in an urban area with a population of more than 50,000;

(B) a municipality:

(i) with a population of 10,000 or less no part of the service area of which is located in an urban area with a population of 50,000 or more; or

(ii) located wholly in a county in which no urban area has a population of more than 50,000;

(C) a county in which no urban area has a population of more than 50,000; or

(D) an entity that:

(i) is a nonprofit water supply or sewer service corporation created and operating under Chapter 67 of the Texas Water Code, a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, municipality, county, or other political subdivision of the state, or an interstate compact commission to which the state is a party; and

(ii) demonstrates in a manner satisfactory to the board that the entity is rural or the area to be served by the project is a wholly rural area despite not otherwise qualifying under subparagraph (A), (B), (C) of this paragraph.

(27) SWIFT--The state water implementation fund for Texas.

(28) SWIRFT--The state water implementation revenue fund for Texas.

(29) Water Plan--The current state water plan prepared and adopted in accordance with Texas Water Code, §16.051.

(30) WIF--The water infrastructure fund.

(31) WLAF--The water loan assistance fund.

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 December 18, 2025.

TRD-202504735
Ashley Harden
General Counsel
Texas Water Development Board
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 475-1673

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DIVISION 2. GENERAL APPLICATION PROCEDURES

31 TAC §363.17

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §15.537.

This rulemaking affects Water Code, Chapter 15.

§363.17. Grants from Water Loan Assistance Fund.

(a) The board may provide grants from the Water Loan Assistance Fund for projects that include supplying water or wastewater service to areas in which:

(1) water supply services:

(A) from a community water system do not provide drinking water of a quality that meets the standards set forth by the commission in 30 TAC 290, Subchapter D, and any applicable standards of any governmental unit with jurisdiction over such area;

(B) from individual wells after treatment do not provide drinking water of a quality that meets the standards set forth by the commission in 30 TAC 290, Subchapter D, and any applicable standards of any governmental unit with jurisdiction over such area; or

(C) do not exist or are not provided, including a temporary interruption of service due to emergency conditions; and

(D) the financial resources are inadequate to provide water supply or sewer services that meet the standards and requirements of the commission as set forth herein; or

(2) sewer services:

(A) from any organized sewage collection and treatment facilities, do not comply with the standards and requirements set forth by the commission in 30 TAC Chapter 305;

(B) for on-site sewerage facilities, do not comply with the standards and requirements set forth by the commission in 30 TAC Chapter 285; or

(C) do not exist or are not provided, including a temporary interruption of service due to emergency conditions; and

(D) the financial resources are inadequate to provide water supply or sewer services that meet the standards and requirements of the commission as set forth herein; or

(3) for purposes of any federal funds for colonias deposited in the water assistance fund, such area meets the federal criteria for use of such funds.

(b) The board may also provide grants from the Water Loan Assistance Fund for projects:

(1) for which federal grant funds are placed in the loan fund;

(2) for which a specific legislative appropriation is made; or

(3) for water conservation, desalination, brush control, weather modification, and regionalization and for providing regional water quality enhancement services as defined by board rule, including regional conveyance systems.

(c) The board may also provide grants to drainage districts established under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, for water supply projects, including projects that contain a flood control component.

(d) The board may not disqualify a drainage district from receiving a grant under subsection (c) of this section because the district does not:

(1) notwithstanding §16.012(m) of the Texas Water Code and §358.5 of this title (relating to Ground Water and Surface Water Use Surveys), have historical data about water use;

(2) provide retail water service to consumers; or

(3) have a certificate of convenience and necessity under which it provides retail water or wastewater service.

(e) [~~(c)~~] Grant funds will be administered according to the terms of an agreement between the board and the grantee.

(f) [~~(d)~~] For purposes of this section, conservation means those practices, techniques, and technologies that will reduce the consumption of water, reduce the real or apparent loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

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

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Ashley Harden
General Counsel
Texas Water Development Board
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For further information, please call: (512) 475-1673

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SUBCHAPTER D. FLOOD FINANCIAL ASSISTANCE

31 TAC §363.402, §363.405

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §15.439 and §15.472.

This rulemaking affects Water Code, Chapter 15.

§363.402. Definitions.

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

(1) Drainage--includes, but is not limited to, the construction or rehabilitation of bridges, catch basins, channels, conduits, creeks, culverts, detention ponds, ditches, draws, flumes, pipes, pumps, sloughs, treatment works, and appurtenances to those items, whether natural or artificial, or using force or gravity, that are used to draw off surface water from land, carry the water away, collect, store, or treat the water, or divert the water into natural or artificial watercourses.

(2) Eligible political subdivision--a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a district or river authority that is subject to Chapter 49 of the Texas Water Code and participates in cooperative flood control planning, a municipality, or a county.

(3) Flood control--the construction or rehabilitation of structural mitigation or anything that retains, diverts, redirects, impedes, or otherwise modifies the flow of water.

(4) Flood mitigation--the implementation of actions, including both structural and nonstructural solutions, to reduce flood risk to protect against the loss of life and property.

(5) Flood Intended Use Plan--a document adopted by the board that identifies the uses of the funds for flood projects.

(6) Flood project--a drainage, flood mitigation, or flood control project, including:

(A) planning and design activities;

(B) work to obtain regulatory approval to provide nonstructural and structural flood mitigation and drainage;

(C) construction of structural flood mitigation and drainage projects, including projects that use nature-based features to protect, mitigate, or reduce flood risk;

(D) construction and implementation of nonstructural projects, including projects that use nature-based features to protect, mitigate, or reduce flood risk;

(E) nonstructural or natural flood control strategies; [~~and~~]

(F) a federally authorized project to deepen a ship channel affected by a flooding event; and [~~.~~]

(G) construction of multi-purpose flood mitigation and drainage infrastructure projects that control, divert, capture, or impound floodwater, stormwater, agricultural runoff water, or treated wastewater effluent and treat and distribute the water for the purpose of creating an additional source of water supply.

(7) Nonstructural flood mitigation--includes, but is not limited to, measures such as acquisition of floodplain land for use as public open space, acquisition and removal of buildings located in a floodplain, relocation of residents of buildings removed from a floodplain, flood warning systems, educational campaigns, land use planning policies, watershed planning, flood mapping, and acquisition of conservation easements.

[~~(8) Metropolitan statistical area--an area so designated by the United States Office of Management and Budget.~~]

(8) [~~(9)~~] Project Watershed--the area upstream and downstream substantially affected by the proposed flood project, as documented in the project application and sealed by a Professional Engineer or Professional Geoscientist.

(9) [~~(10)~~] Structural flood mitigation--includes, but is not limited to, measures such as construction of storm water retention basins, enlargement of stream channels, modification or reconstruction of bridges, coastal erosion control measures, or beach nourishment.

§363.405. Use of Funds.

(a) The board may use the funds for financial assistance to eligible political subdivisions as follows:

(1) to make a loan to an eligible political subdivision at or below market interest rates for a flood project;

(2) to make a grant or loan at or below market interest rates to an eligible political subdivision for a flood project to serve a rural political subdivision [an area outside of a metropolitan statistical area] in order to ensure that the flood project is implemented;

(3) to make a loan at or below market interest rates for planning and design costs, permitting costs, and other costs associated with state or federal regulatory activities with respect to a flood project;

(4) to make a grant to an eligible political subdivision to provide matching funds to enable the eligible political subdivision to participate in a federal program for a flood project;

(5) to make a grant to an eligible political subdivision for a flood project if the board determines that the eligible political subdivision does not have the ability to repay a loan;

(6) to meet matching requirements for projects funded partially by federal money; and

(7) to make a loan to an eligible political subdivision below market interest rates and under flexible repayment terms, including a line of credit or loan obligation with early repayment terms, to provide financing for the local share of a federally authorized ship channel improvement project.

(b) The board may also use the fund to make transfers to the research and planning fund created under Texas Water Code Section 15.402, which may be used to provide money for flood control planning, as described in Texas Water Code Chapter 15, Subchapter F and 31 Texas Administrative Code Chapter 355.

(c) The board reserves the right to limit the amount of funding available to an individual entity.

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

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Ashley Harden
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Texas Water Development Board
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SUBCHAPTER M. STATE WATER IMPLEMENTATION FUND FOR TEXAS AND STATE WATER IMPLEMENTATION REVENUE FUND FOR TEXAS

31 TAC §§363.1302, 363.1304, 363.1305

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §15.439 and §15.472.

This rulemaking affects Water Code, Chapter 15.

§363.1302. Definition of Terms.

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

(1) Agricultural water conservation--Those practices, techniques or technologies used in agriculture, as defined in Texas Agriculture Code, which will improve the efficiency of the use of water and further water conservation in the state, including but not limited to those programs or projects defined in Texas Water Code §§17.871 - 17.912.

(2) Agricultural irrigation project--Those projects which improve water delivery or application efficiency on agricultural lands, or involve purchase and installation on agricultural public or private property of new water sources, new irrigation systems, or devices designed to indicate the amount of water withdrawn for agricultural irrigation purposes.

(3) Alternate facility--A construction project that would be necessary to serve the excess capacity of the area to be served by the facility in the event that the facility was not initially constructed to meet the excess capacity.

(4) Commission--The Texas Commission on Environmental Quality or its successor.

(5) Entity--A political subdivision or nonprofit water supply or sewer service corporation.

(6) Excess capacity--The difference between the foreseeable needs of the area to be served by the useful life of the facility and the existing needs for the area to be served by the facility.

(7) Executive administrator--The executive administrator of the board or a designated representative.

(8) Existing needs--Maximum capacity necessary for service to the area receiving service from the facility for current population and including the service necessary to serve the estimated population in the area ten years from the date of the application.

(9) Facility--A regional facility for which an application has been submitted requesting board participation and that includes sufficient capacity to serve the existing needs of the applicant and excess capacity.

(10) Flood control component--A component that provides a quantified reduction of risk and impact of flooding to life and property.

(11) [~~(10)~~] Historically Underutilized Business--The meaning assigned by Government Code §2161.001, and the regulations adopted pursuant thereto.

(12) [~~(11)~~] Household Cost Factor--The average annual cost of service per household divided by the median household income.

(13) [~~(12)~~] Nonprofit water supply or sewer service corporation--A water or sewer service corporation operating under Texas Water Code, Chapter 67.

(14) [~~(13)~~] Political subdivision--Includes a city, county, district or authority created under the Texas Constitution Article III, Section 52, or Article XVI, Section 59, any other political subdivision of the state, any interstate compact commission to which the state is a party, and any nonprofit water supply corporation created and operating under Texas Water Code, Chapter 67.

(15) [~~(14)~~] Reuse--The beneficial use of groundwater or surface water that has already been beneficially used.

[~~(15) Rural political subdivision--A nonprofit water supply or sewer service corporation, district, or municipality with a service area of 10,000 or less in population based upon the most current data available from the U.S. Bureau of the Census or board-approved projections, or that otherwise qualifies for financing from a federal agency; or a county in which no urban political subdivision exceeds 50,000 in population based upon the most current data available from the U.S. Bureau of the Census or board-approved projections.~~]

(16) Rural population--Residents of a rural political subdivision.

(17) Urban population--Residents of a political subdivision with a population of more than 10,000 individuals based upon the most current data available from the U.S. Bureau of the Census or board-approved projections.

(18) Water conservation--Those practices, techniques, programs, and technologies that will protect water resources, reduce the consumption of water, reduce the loss or waste of water, or improve the efficiency in the use of water, so that a water supply is made available for future or alternative uses.

(19) Water plan project--A project that is a recommended water management strategy in the current board-adopted state water plan.

(20) Water supply need--Projected water demands in excess of existing supply as identified in the state water plan.

§363.1304. Prioritization Criteria.

The executive administrator will prioritize applications based on the following point system:

(1) Projects will be evaluated on the criteria provided in paragraphs (2) - (5) of this section. The points awarded for paragraphs (2) - (5) of this section shall be the lesser of the sum of the points for paragraphs (2) - (5) of this section, or 50 points.

(2) Either stand-alone projects or projects in conjunction with other recommended water management strategies relying on the same volume of water that the project relies on, in accordance with Chapter 357 of this title (relating to Regional Water Planning), that will serve in total when the project water supply volume is fully operational:

(A) at least 10,000 population, but not more than 249,999 population, 6 points; or

(B) at least 250,000 population, but not more than 499,999 population, 12 points; or

(C) at least 500,000 population, but not more than 749,999 population, 18 points; or

(D) at least 750,000 population, but not more than 999,999 population, 24 points; or

(E) at least 1,000,000 population, 30 points; or

(F) less than 10,000 population, zero points.

(3) Projects that will serve a diverse urban and rural population:

(A) serves one or more urban populations and one rural population, 10 points; and

(B) for each additional rural population served, 4 points up to a maximum of 30 points; or

(C) serves only an urban population, or only a rural population, zero points.

(4) As specified in the application, projects which provide regionalization:

(A) serves additional entities other than the applicant, 5 points per each political subdivision served for a maximum of 30 points; or

(B) serves only applicant, zero points.

(5) Projects that meet a high percentage of the water supply needs of the water users to be served calculated from those served and needs that will be met during the first decade the project becomes operational, based on state water plan data:

(A) at least 50 percent of needs met, 10 points; or

(B) at least 75 percent of needs met, 20 points; or

(C) at least 100 percent of needs met, 30 points; or

(D) less than 50 percent of needs met, zero points.

(6) Projects will receive additional points of the project's score on each of the criteria of paragraphs (7) - (13) [~~(17)~~ - ~~(12)~~] of this section.

(7) Local contribution to be made to implement the project, including federal funding, and including up-front capital, such as funds already invested in the project or cash on hand and/or in-kind services to be invested in the project, provided that points will not be given for principal forgiveness or grants from the board:

(A) other funding at least 10 percent, but not more than 19 percent, of total project cost, 1 point; or

(B) other funding at least 20 percent, but not more than 29 percent, of total project cost, 2 points; or

(C) other funding at least 30 percent, but not more than 39 percent, of total project cost, 3 points; or

(D) other funding at least 40 percent, but not more than 49 percent, of total project cost, 4 points; or

(E) other funding at least 50 percent of total project cost, 5 points; or

(F) other funding less than 10 percent of total project cost, zero points.

(8) Financial capacity of the applicant to repay the financial assistance provided:

(A) applicant's household cost factor is less than or equal to 1 percent, 2 points; or

(B) applicant's household cost factor is greater than 1 percent but not more than 2 percent, 1 point; or

(C) applicant's household cost factor is greater than 2 percent, zero points.

(9) Projects which address an emergency need:

(A) applicant, or entity to be served by the project, is included on the list maintained by the Commission of local public water systems that have a water supply that will last less than 180 days without additional rainfall, or is otherwise affected by a Commission emergency order, and drought contingency plan has been implemented by the applicant or entity to be served, 3 points; plus

(B) water supply need is anticipated to occur in an earlier decade than identified in the most recent state water plan, 1 point; plus

(C) applicant has used or applied for federal funding for emergency, 1 point; or

(D) none of the above, zero points.

(10) Projects which are ready to proceed:

(A) preliminary planning and/or design work (30 percent of project total) has been completed or is not required for the project, 3 points; plus

(B) applicant is able to begin implementing or constructing the project within 18 months of application deadline, 3 points; plus

(C) applicant has acquired all water rights associated with the project or no water rights are required for the project, 2 points; or

(D) none of the above, zero points.

(11) Entities that have demonstrated water conservation or projects which will achieve water conservation, including preventing the loss of water:

(A) for municipal projects, applicant has already demonstrated significant water conservation savings, as determined by comparing the highest rolling four-year average total gallons per capita per day within the last twenty years to the average total gallons per capita per day for the most recent four-year period based on board water use data; or significant water conservation savings will be achieved by implementing the proposed project, as determined by comparing the conservation to be achieved by the project with the average total gallons per capita per day for most recent four-year period:

(i) 2 to 5.9 percent total gallons per capita per day reduction, 2 points; or

(ii) 6 to 9.9 percent total gallons per capita per day reduction, 4 points; or

(iii) 10 to 13.9 percent total gallons per capita per day reduction, 6 points; or

(iv) 14 to 17.9 percent total gallons per capita per day reduction, 8 points; or

(v) 18 percent or greater total gallons per capita per day reduction, 10 points; or

(vi) less than 2 percent total gallons per capita per day reduction, zero points.

(B) for municipal projects, applicant has achieved the water loss threshold established by §358.6 of this title (relating to Water Loss Audits), as demonstrated by most recently submitted water loss audit:

(i) less than the threshold, 5 points; or

(ii) at or above the threshold, zero points.

(C) for wholesale water providers, applicant has already demonstrated significant water conservation savings, as determined by comparing the highest rolling four-year average total gallons per capita per day within the last twenty years to the average total gallons per capita per day for the most recent four-year period based on board water use data for customers affiliated with the application; or significant water conservation savings will be achieved by implementing the proposed project, as determined by comparing the conservation to be achieved by the project with the average total gallons per capita per day for the most recent four-year period for customers affiliated with the application.

(i) 2 to 5.9 percent total gallons per capita per day reduction, 2 points; or

(ii) 6 to 9.9 percent total gallons per capita per day reduction, 4 points; or

(iii) 10 to 13.9 percent total gallons per capita per day reduction, 6 points; or

(iv) 14 to 17.9 percent total gallons per capita per day reduction, 8 points; or

(v) 18 percent or greater total gallons per capita per day reduction, 10 points; or

(vi) less than 2 percent total gallons per capita per day reduction, zero points.

(D) for agricultural projects, significant water efficiency improvements will be achieved by implementing the proposed project, as determined by the projected percent improvement:

(i) 1 to 1.9 percent increase in water use efficiency, 1 point; or

(ii) 2 to 5.9 percent increase in water use efficiency, 3 points; or

(iii) 6 to 9.9 percent increase in water use efficiency, 6 points; or

(iv) 10 to 13.9 percent increase in water use efficiency, 9 points; or

(v) 14 to 17.9 percent increase in water use efficiency, 12 points; or

(vi) 18 percent or greater increase in water use efficiency, 15 points; or

(vii) less than 1 percent increase in water use efficiency, zero points.

(12) If the project is a water supply project that contains a flood control component, regardless of whether the applicant holds a certificate of convenience and necessity under which it provides retail water or wastewater service:

(A) does contain a flood control component, 1 point; or

(B) does not contain a flood control component, zero points.

(13) [~~(12)~~] If two or more projects receive the same priority ranking, priority will be assigned based on the relative score(s) from paragraph (11) of this section. If after considering the relative scores of the projects based on the criteria of paragraph (11) of this section, then priority will be assigned based on the relative score(s) from paragraph (9) of this section.

§363.1305. Use of Funds.

(a) The board may use the funds for financial assistance to political subdivisions as follows:

(1) to make loans at or below market interest rates, but not lower than 50 percent of the board's market rate;

(2) to make loans with terms not to exceed the lesser of:

(A) the expected useful life of the project assets; or

(B) 30 years or, for an eligible project, as defined by §1373.001 of the Texas Government Code, 40 years;

(3) to defer loan repayments, including deferral of principal and interest or accrued interest under criteria developed by the board;

(4) to make loans with incremental repurchase terms for an acquired facility, including terms for no initial repurchase payment followed by progressively increasing incremental levels of interest payment, repurchase of principal and interest, and ultimate repurchase of the entire state interest in the facility using simple interest calculations; or

(5) a combination of the financing outlined in paragraphs (1) - (4) of this subsection.

(b) The board may make funding available under subsection (a) of this section only for implementation of water plan projects.

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 December 18, 2025.

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Ashley Harden
General Counsel
Texas Water Development Board
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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

SUBCHAPTER A. ADMISSION, PLACEMENT, RELEASE, AND DISCHARGE

DIVISION 5. PROGRAM COMPLETION AND RELEASE

37 TAC §380.8565

The Texas Juvenile Justice Department (TJJD) proposes to amend 37 TAC, Part 11, §380.8565, Discharge of Youth with Determinate Sentences upon Transfer to TDCJ or Expiration of Sentence.

SUMMARY OF CHANGES

Amendments to §380.8565 will include adding that TJJD requests a juvenile court hearing to recommend the transfer of a youth to the Texas Department of Corrections (TDCJ), Correctional Institutions Division, if the youth is adjudicated or convicted of conduct that meets the following criteria: 1) the adjudication or conviction is classified as a first- or second-degree felony or is the offense of assault of a public servant; 2) the conduct occurred while the youth was committed to TJJD custody; 3) the youth was at least 16 years old when the conduct occurred; and 4) the youth has not completed the sentence.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the amended section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Policy Director, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be to clarify that youth who have engaged in certain conduct defined in the section are transferred to TDCJ.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the amended section as proposed. No private real property rights are affected by adoption of the section.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the amended section is in effect, the section will have the following impacts.

(1) The proposed section does not create or eliminate a government program.

(2) The proposed section does not require the creation or elimination of employee positions at TJJD.

(3) The proposed section does not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed section does not impact fees paid to TJJD.

(5) The proposed section does not create a new regulation.

(6) The proposed section does not expand, limit, or repeal an existing regulation.

(7) The proposed section does not increase or decrease the number of individuals subject to the section's applicability.

(8) The proposed section will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The amended section is proposed under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs; and §244.014(a-1), Human Resources Code, which requires TJJD to refer a child with a determinate sentence to the juvenile court for a hearing for possible transfer to the TDCJ for confinement if the child is convicted or adjudicated for certain conduct.

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

§380.8565. Discharge of Youth with Determinate Sentences upon Transfer to TDCJ or Expiration of Sentence.

(a) Purpose. This rule establishes criteria and an approval process for:

(1) requesting court approval to transfer sentenced offenders to adult prison; and

(2) discharging sentenced offenders:

(A) whose sentences have expired; or

(B) who did not previously qualify for release or transfer by completing required programming.

(b) Applicability.

(1) This rule applies only to the disposition of a youth's determinate sentence(s).

(2) This rule applies only to sentenced offenders.

(3) This rule does not apply to:

(A) sentenced offenders who qualify for release or transfer to parole by completing required programming. See §380.8559 of this chapter; or

(B) sentenced offenders adjudicated for capital murder. See §380.8569 of this chapter.

(c) General Requirements.

(1) By law, a sentenced offender is transferred from the custody of the Texas Juvenile Justice Department (TJJD) no later than the youth's 19th birthday.

(2) The youth must serve the entire minimum period of confinement that applies to the committing offense in a high-restriction facility unless:

(A) the youth is transferred by the committing court to the Texas Department of Criminal Justice-Correctional Institutions Division (TDCJ-CID);

(B) the youth is approved by the committing court to attain parole status before completing the minimum period of confinement;

(C) the youth's sentence expires before the minimum period of confinement expires; or

(D) the executive director waives the requirement that the youth be assigned to a high-restriction facility. This subparagraph does not allow a youth to be placed on parole status.

(3) TJJD reviews each youth's progress:

(A) six months after admission to TJJD;

(B) when the minimum period of confinement is complete;

(C) when the youth becomes 16 years of age;

(D) when the youth becomes 18 years of age and again at 18 years and six months of age to determine eligibility or make a recommendation for transfer to TDCJ-CID or to the Texas Department of Criminal Justice-Parole Division (TDCJ-PD);

(E) within 45 days after revocation of parole, if applicable; and

(F) at other times as appropriate, such as after a major rule violation is proven at a Level II hearing.

(4) TJJD jurisdiction is terminated and a youth is discharged when:

(A) the youth is transferred to TDCJ; or

(B) the youth's sentence has expired, except when the youth is committed to TJJD under concurrent determinate and indeterminate commitment orders as described in §380.8525 of this chapter.

(d) Transfer Criteria.

(1) Transfer to TDCJ-CID for Youth Whose Conduct Occurs While on Parole Status. TJJD may request a juvenile court hearing to recommend transfer of a youth to TDCJ-CID if all of the following criteria are met:

(A) the youth's parole has been revoked or the youth has been adjudicated or convicted of a felony offense occurring while on parole status;

(B) the youth is at least age 16;

(C) the youth has not completed the sentence; and

(D) the youth's conduct indicates that the welfare of the community requires the transfer.

(2) Transfer to TDCJ-CID for Youth Whose Conduct Occurs While in a High-Restriction Facility. TJJD may request a juvenile court hearing to recommend transfer of a youth in a high-restriction facility to TDCJ-CID if the following criteria are met:

(A) the youth is at least age 16; and

(B) except as provided by subparagraph (D)(i) of this paragraph, the youth has spent at least six months in high-restriction facilities, which is counted as follows:

(i) if the youth received a determinate sentence for conduct that occurred in the community, the six months begins upon admission to TJJD; or

(ii) if the youth received a determinate sentence for conduct that occurred in a TJJD or contract facility, the six months begins upon the youth's initial admission to TJJD, regardless of whether the initial admission resulted from a determinate or indeterminate commitment; and

(C) the youth has not completed the sentence; and

(D) the youth meets at least one of the following behavior criteria:

(i) the youth has engaged in conduct meeting the elements of a felony or Class A misdemeanor while assigned to a residential facility; however, if the conduct meets the elements of the offense of assault of a public servant as defined in §22.01, Penal Code, subparagraph (B) of this paragraph does not apply; or

(ii) the youth has committed major rule violations as proven at a Level II due process hearing on three or more occasions; or

(iii) the youth has engaged in conduct that has resulted in at least five security program admissions or extensions in one month or ten in three months (see §380.9740 of this chapter for information on the security program); or

(iv) the youth has demonstrated an unwillingness to progress in the rehabilitation program due to persistent non-compliance with objectives; and

(E) alternative interventions have been tried without success; and

(F) the youth's conduct indicates that the welfare of the community requires the transfer.

(3) Transfer to TDCJ-CID for Youth Engaged in Certain Conduct. Notwithstanding paragraphs (1) and (2) of this subsection, TJJD shall request a juvenile court hearing to recommend transfer of a youth if the youth is adjudicated for or convicted of conduct that meets the following criteria:

(A) the adjudication or conviction is classified as a first-degree felony or a second-degree felony, or is the offense of assault of a public servant under §22.01(b)(1), Penal Code;

(B) the conduct occurred while the youth was committed to TJJD custody;

(C) the youth was at least age 16 when the conduct occurred; and

(D) the youth has not completed the sentence.

(4) [~~(3)~~] Transfer to TDCJ-PD for Youth in Residential Facilities. A youth in a residential facility who has not met program completion criteria in §380.8559 of this chapter and who has not received court approval for transfer to TDCJ-CID must be transferred to TDCJ-PD no later than the youth's 19th birthday.

(5) [~~(4)~~] Transfer to TDCJ-PD for Youth on TJJD Parole. A youth on TJJD parole must be transferred to TDCJ-PD no later than the youth's 19th birthday.

(e) Transfer Recommendation for Youth Who Will Not Complete the Minimum Period of Confinement before Age 19. TJJD requests a court hearing for any youth who cannot complete the minimum period of confinement by the 19th birthday. The purpose of the hearing is to determine whether the youth will be transferred to TDCJ-CID or to TDCJ-PD. Notwithstanding the criteria in subsection (d)(2) of this section, TJJD considers the following factors in forming a recommendation for the committing court:

(1) length of stay in TJJD;

(2) youth's progress in the rehabilitation program;

(3) youth's behavior while in TJJD;

(4) youth's offense/delinquent history; and

(5) any other relevant factors, such as:

(A) risk factors and protective factors the youth possesses as identified in the youth's psychological evaluation;

(B) the welfare of the community; and

(C) participation in or completion of statutorily required rehabilitation programming, including but not limited to:

(i) participation in a reading improvement program for identified youth to the extent required under §380.9155 of this chapter;

(ii) participation in a positive behavior support system to the extent required under §380.9155 of this chapter; and

(iii) completion of at least 12 hours of a gang intervention education program, if required by court order.

(f) Discharge Criteria. TJJD discharges youth from its jurisdiction when one of the following occurs:

(1) expiration of the sentence imposed by the juvenile court, unless the youth is under concurrent commitment orders as described in §380.8525 of this chapter; or

(2) the youth has been transferred to TDCJ-CID under court order or transferred to TDCJ-PD.

(g) Approval Process for Transfer to TDCJ-CID or TDCJ-PD.

(1) Before staff submit a recommendation for transfer to TDCJ-CID or TDCJ-PD, a determinate sentence review shall be held.

(2) TJJD notifies the youth and the youth's parent/guardian of a pending determinate sentence review. The notification informs the recipients that they have the opportunity to present information in person or to submit written comments to TJJD. The notification also specifies the date by which the comments or the request to present in-person information must be received.

(3) Approval from the final decision authority is required before requesting a hearing with the committing juvenile court or initiating a transfer to TDCJ-PD.

(4) A hearing with the committing juvenile court shall be requested when a youth cannot complete the minimum period of confinement before age 19.

(5) The final decision authority ensures the youth's community reentry/transition plan adequately addresses risk factors before approving the transfer from a high-restriction facility to TDCJ-PD.

(6) A youth may not be transferred to TDCJ-CID unless the committing juvenile court orders the transfer.

(h) Active Warrants. At least ten calendar days before the youth's transfer or release, TJJD notifies any entity that has issued an active warrant for the youth.

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 December 16, 2025.

TRD-202504676
Jana Jones
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 490-7130

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SUBCHAPTER B. TREATMENT
DIVISION 1. PROGRAM PLANNING

37 TAC §380.8702

The Texas Juvenile Justice Department (TJJD) proposes to amend 37 TAC, Part 11, §380.8702, Rehabilitation Program Overview.

SUMMARY OF CHANGES

Amendments to §380.8702 will include: 1) adding information related to the residential treatment model framework; 2) describing the core tools used in the treatment model framework, including behavior analysis, treatment targets, behavior modification principles, skills training, and youth and family involvement; 3) adding the expectation that residential treatment is oriented around clear behavioral expectations and privileges associated with progress; 4) outlining TJJD staff priorities that encourage motivation and engagement, including goal-setting with youth, collaborative planning, validating engagement, adaptation of treatment delivery to fit the youth, and explicit linkage between participation in treatment and youth's goals; 5) adding

that the TJJD environment will be structured to reinforce skillful behavior in real time, block or weaken outcomes that reinforce unsafe or unskillful behavior, provide opportunities for skillful behavior, generalize skills across settings and staff, and teach youth to structure their own environments and select effective skills that maximize success; and 6) adding descriptions of egregious maladaptive behavior categories that TJJD staff will target, including life-threatening and aggressive; escape, abscond, and evasion; treatment-interfering and program-destroying; and quality-of-life-interfering.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the amended section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Policy Director, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be to provide specific information pertaining to TJJD's residential treatment model framework.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the amended section as proposed. No private real property rights are affected by adoption of the section.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the amended section is in effect, the section will have the following impacts.

(1) The proposed section does not create or eliminate a government program.

(2) The proposed section does not require the creation or elimination of employee positions at TJJD.

(3) The proposed section does not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed section does not impact fees paid to TJJD.

(5) The proposed section does not create a new regulation.

(6) The proposed section does not expand, limit, or repeal an existing regulation.

(7) The proposed section does not increase or decrease the number of individuals subject to the section's applicability.

(8) The proposed section will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The amended section is proposed under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

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

§380.8702. Rehabilitation Program Overview.

(a) Purpose. The purpose of this rule is to identify the philosophy and approach of the Texas Juvenile Justice Department (TJJD) to the rehabilitation of youth in TJJD's care in order to reduce future delinquent behavior and increase public safety.

(b) Applicability. This rule applies to youth committed to TJJD.

(c) Definitions. See §380.8501 of this chapter for definitions of terms used in this rule.

(d) General Provisions.

(1) TJJD provides a trauma-informed rehabilitative program that is focused on delivering needed treatment, assessing behavioral progress, assessing increases in protective factors and decreases in risk factors, and assessing the ability of youth to use skills learned in treatment and programming.

(2) All treatment and programming is delivered in the least restrictive setting appropriate to the youth, consistent with the rules of this chapter.

(3) To the extent possible, TJJD's rehabilitative program offers programs that ensure youth receive appropriate rehabilitation services, including those recommended by the committing court.

(4) All aspects of the TJJD rehabilitation program are individualized and performance-based, with clearly defined expectations as set forth in §380.8703 of this chapter.

(5) Each youth's individual progress is reviewed monthly. The review addresses identified risk and protective factors and individual abilities.

(6) As youth progress in the rehabilitation program, there are increased expectations for demonstrating developed skills and social responsibility, a decreased need for staff intervention, and an increase in earned privileges.

(7) TJJD facilities maintain a structured daily schedule for all youth. Each day, youth work on components of the rehabilitation program.

(8) TJJD facilities provide for and youth are required to participate in a structured, individually appropriate educational program or equivalent, with appropriate supports.

(9) TJJD facilities provide and eligible youth may participate in work experiences.

(10) TJJD facilities must provide and youth are given the opportunity to participate in regular large-muscle exercise and recreation programs.

(11) Staff members receive appropriate training and certification related to their role in the rehabilitation program and the types of services they provide.

(12) TJJD may pilot new programs or program components for youth whose needs cannot be met by existing program components.

(e) Residential Treatment Model Framework.

(1) TJJD delivers rehabilitation through a residential, milieu-based model. Treatment occurs where youth live, learn, and recreate skillful behavior, and treatment is reinforced across daily routines.

The model coordinates core tools to directly target problem behavior and build replacement skills, including:

(A) behavior analysis (including behavior chain analysis);

(B) TJJD treatment target hierarchy;

(C) behavior modification principles (e.g., reinforcement, shaping, extinction, contingency management);

(D) skills training model and curriculum; and

(E) youth and family involvement in treatment.

(2) Residential treatment delivery is oriented around clear behavioral expectations and privileges associated with progress. Treatment links participation to the youth's own goals and introduces motivation and commitment strategies for staff use (e.g., attainable goal setting, reinforcement of adaptive/skillful behavior, structuring routines and the environment, and providing opportunities to practice skills).

(3) TJJD staff encourage motivation and engagement by prioritizing:

(A) conversations with youth oriented around specific goals and the future;

(B) collaborative planning and unified efforts among staff;

(C) consistent interactions and validating engagement with youth;

(D) adaptation of the treatment delivery to a youth's developmental and cognitive level; and

(E) explicit linkage between participation in treatment and the youth's goals and progress.

(4) TJJD structures the environment so investment in treatment is continuously expected. Daily schedules, living-unit routines, and programming are organized to allow staff to:

(A) prompt, model, and reinforce skillful behavior in real time;

(B) block or weaken outcomes that previously reinforced unsafe or unskillful behavior;

(C) provide frequent, predictable opportunities for shaping successful use of skillful behavior;

(D) generalize skills across settings and staff; and

(E) teach youth to structure their own environments, recognize triggers, select effective skills, and arrange protective factors that maximize short- and long-term success.

(5) Staff prioritize behavior targets using the TJJD treatment hierarchy and concentrate efforts on the most egregious maladaptive behaviors engaged in by a youth at any given time to help ensure meaningful treatment delivery.

(A) Life-Threatening and Aggressive Behavior Targets. Assaultive conduct, sexual aggression, and other dangerous behavior are prioritized in the treatment hierarchy because these behaviors directly threaten others' safety and security and interrupt the youth's treatment participation. When such behavior occurs, staff use an immediate, effective response to protect safety and return the youth to programming as quickly as possible.

(B) Escape, Abscond, and Evasion Behavior Targets. Escape, abscond, and evasion behaviors are the second priority in the treatment hierarchy because a youth cannot access treatment or consistently practice skills when a youth is absent or intent on evasion of treatment. These behaviors are addressed to restore engagement and stabilize predictable participation.

(C) Treatment-Interfering and Program-Destroying Behavior Targets. This category of the treatment hierarchy is considered third in severity and includes behaviors that erode treatment effectiveness (e.g., minimal or sporadic participation, disruption of group work or milieu routines, and conduct that discourages the motivation of staff and providers). Interventions focus on responsivity, restoring predictable expectations and routines, and protecting the treatment milieu to provide all youth the opportunity to participate in programming.

(D) Quality-of-Life-Interfering Behavior Targets. This category includes behaviors that destabilize overall individual functioning, such as: substance abuse; persistent negative thought patterns, beliefs, or interpersonal interactions; or conduct that undermines basic needs (e.g., neglecting education, hygiene, clothing, or health). These behaviors are addressed to create or restore the stability and engagement required for skill acquisition and sustained progress.

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 December 16, 2025.

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Jana Jones
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: February 1, 2026
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SUBCHAPTER E. BEHAVIOR MANAGEMENT AND YOUTH DISCIPLINE

DIVISION 1. BEHAVIOR MANAGEMENT

37 TAC §§380.9503 - 380.9505

The Texas Juvenile Justice Department (TJJD) proposes to amend 37 TAC, Part 11, §380.9503, Rules and Consequences for Residential Facilities, and §380.9504, Rules and Consequences for Youth on Parole. TJJD also proposes new §380.9505, Egregious Behavior Protocol.

SUMMARY OF CHANGES

Amendments to §380.9503 will include: 1) updating language related to major rule violations to include that major rule violations are considered the most serious incidents and are categorized in the TJJD treatment hierarchy as life-threatening behavior targets; escape, abscond, and evasion behavior targets; or treatment-interfering or program-destroying behavior targets; 2) clarifying that responsive treatment is based on the degree of interference or intrusiveness such conduct has on any youth's ability to effectively engage in treatment; 3) adding *chunking fluids other than bodily fluids* as a major rule violation; 4) moving *threatening others* from a minor rule violation to a major rule violation; and 5) updating language related to minor rule violations to clarify that minor rule violations are considered treatment-interfering behavior targets, program-destroying behavior targets, or quality-of-life-interfering behavior targets.

Amendments to §380.9504 will include updating language related to parole rule violations to include that parole rule violations are categorized in the TJJD treatment hierarchy based on the degree of interference or intrusiveness such conduct has on any youth's ability to engage effectively in treatment.

New §380.9505 will include: 1) the rule's applicability and general provisions; and 2) information pertaining to the egregious behavior protocol, safety-based measures, and youth returning to regular programming.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the new and amended sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the sections.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Policy Director, has determined that for each year of the first five years the new and amended sections are in effect, the public benefit anticipated as a result of administering the sections will be: 1) to align existing rules with TJJD's current treatment model; 2) to update what constitutes major and minor rule violations; and 3) to provide information pertaining to TJJD's egregious behavior protocol, safety-based measures, and youth returning to regular programming.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the new and amended sections as proposed. No private real property rights are affected by adoption of the sections.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the new and amended sections are in effect, the sections will have the following impacts.

(1) The proposed sections do not create or eliminate a government program.

(2) The proposed sections do not require the creation or elimination of employee positions at TJJD.

(3) The proposed sections do not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed sections do not impact fees paid to TJJD.

(5) The proposed sections do not create a new regulation.

(6) The proposed sections do not expand, limit, or repeal an existing regulation.

(7) The proposed sections do not increase or decrease the number of individuals subject to the section's applicability.

(8) The proposed sections will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The new and amended sections are proposed under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

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

§380.9503. Rules and Consequences for Residential Facilities.

(a) Purpose. This rule establishes the actions that constitute violations of the rules of conduct for residential facilities. Violations of the rules may result in disciplinary consequences that are proportional to the severity and extent of the violation. Appropriate due process, including a consideration of extenuating circumstances, shall be followed before imposing disciplinary consequences.

(b) Applicability. This rule applies to youth assigned to residential facilities operated by the Texas Juvenile Justice Department (TJJD).

(c) Definitions. The following terms, as used in this rule, have the following meanings unless the context clearly indicates otherwise.

(1) Attempt to Commit--a youth, with specific intent to commit a rule violation, engages in conduct that amounts to more than mere planning that tends but fails to effect the commission of the intended rule violation.

(2) Bodily Injury--physical pain, illness, or impairment of physical condition. Fleeting pain or minor discomfort does not constitute bodily injury.

(3) Direct Someone to Commit--occurs when:

(A) a youth communicates with another youth;

(B) the communication is intended to cause the other youth to commit a rule violation; and

(C) the other youth commits or attempts to commit a rule violation.

(4) Possession--actual care, custody, control, or management. It does not require the item to be on or about the youth's person.

(d) General Provisions.

(1) Formal incident reports are completed for alleged rule violations as required by internal operational procedures.

(2) A formal incident report is not proof that a youth committed an alleged rule violation. An incident report or other document describing conduct is not something that can be appealed or grieved; only the results of a hearing or rule-violation review may be appealed, as provided below.

(3) When a youth is found to be in possession of prohibited money as defined in this rule, a Level II hearing is required to seize the money. Seized money shall be placed in the student benefit fund in accordance with §380.9555 of this chapter.

(4) This paragraph applies only to youth not on parole status who are alleged to have engaged in conduct classified as a first- or second-degree felony while in a residential facility operated by or under contract with TJJD. A Level II hearing shall be requested on these youth unless it is determined that, given all circumstances, a Level II hearing is not appropriate. Such decision shall be documented. If a requested Level II hearing is held and the allegation is proved, the youth shall be reviewed for the most restrictive setting appropriate, including the intervention program described by §380.9510 of this chapter.

(e) Disciplinary Consequences.

(1) Disciplinary consequences shall be established in writing in TJJD's procedural manuals. Appropriate disciplinary consequences may be imposed only if the consequences are established in writing in TJJD's procedural manuals prior to the occurrence of the conduct for which the consequence is issued.

(2) Disciplinary consequences may include, but are not limited to, the following:

(A) suspension of privileges;

(B) restriction from planned activities;

(C) trust-fund restriction; and

(D) disciplinary transfer to a high-restriction facility (available only for youth on institutional status in a medium-restriction facility).

(3) The following are prohibited as disciplinary consequences:

(A) corporal or unusual punishment;

(B) subjecting a youth to humiliation, harassment, or physical or mental abuse;

(C) subjecting a youth to personal injury;

(D) subjecting a youth to property damage or disease;

(E) punitive interference with the daily functions of living, such as eating or sleeping;

(F) purposeless or degrading work, including group exercise as a consequence;

(G) placement in the intervention program under §380.9510 of this chapter;

(H) disciplinary isolation; and

(I) extending a youth's stay in a TJJD facility.

(4) A Level II hearing is required before imposing a disciplinary consequence that materially alters a youth's living conditions, including disciplinary transfer from a medium-restriction facility to a high-restriction facility. TJJD's procedural manuals will specify which disciplinary consequences require a Level II hearing. Disciplinary consequences requiring a Level II hearing are considered major consequences.

(5) This paragraph applies only to youth in high-restriction facilities. To impose a disciplinary consequence that does not require a Level II hearing, a rule-violation review is required. A rule-violation review is a process by which staff review evidence to determine whether a rule violation occurred. A rule-violation review results in a finding that the alleged violation is proven, the alleged violation is not proven, or a different rule was violated than the one alleged. A rule violation is proven if a preponderance of the evidence proves behavior meeting the definition of a rule violation occurred. The following steps are to be taken for every rule-violation review, regardless of whether a consequence is sought:

(A) a written description of the incident must be prepared;

(B) staff must notify the youth which rule violation the youth allegedly committed;

(C) staff must notify the youth which disciplinary consequence(s) staff is considering imposing, if any;

(D) the youth must be given the opportunity to review the relevant evidence considered by staff and to present the youth's own relevant evidence; and

(E) the youth must be given the opportunity to address the allegation, including providing any extenuating circumstances and information on the appropriateness of the intended consequence(s).

(6) If a Level II hearing is not required, a Level III hearing must occur before imposing disciplinary consequences for a youth in a medium-restriction facility, in accordance with §380.9557 of this chapter.

(f) Review and Appeal of Consequences.

(1) All disciplinary consequences shall be reviewed for policy compliance by the facility administrator or designee within three calendar days after issuance. The reviewing staff shall not be the staff who issued the discipline.

(2) The reviewing staff may remove or reduce any disciplinary consequence determined to be excessive or not validly related to the nature or seriousness of the conduct.

(3) Youth may appeal disciplinary consequences issued through a Level II hearing by filing an appeal in accordance with §380.9555 of this chapter.

(4) Youth in medium-restriction facilities may appeal disciplinary consequences issued through a Level III hearing by filing an appeal in accordance with §380.9557 of this chapter.

(5) The findings and disposition from a rule-violation review are not grievable, but they may be appealed to the facility administrator or designee on the grounds that the youth did not commit the rule violation found proven during the review, that the consequence is not appropriate, or that the youth was not provided with the requisite notice or opportunity to be heard. If the result of a rule-violation review is overturned, that fact shall be documented appropriately.

(g) Major Rule Violations. It is a violation to knowingly commit, attempt to commit, direct someone to commit, or aid someone else in committing any of the following conduct.[:] Major rule violations are considered the most serious incidents and are categorized in the TJJD treatment hierarchy as life-threatening behavior targets; escape, abscond, and evasion behavior targets; or treatment-interfering or program-destroying behavior targets. Responsive treatment is based on the degree of interference or intrusiveness such conduct has on any youth's ability to effectively engage in treatment, including placing a youth on the egregious behavior protocol and other appropriate levels of intervention.

(1) Assault of Another Youth (No Injury)--intentionally, knowingly, or recklessly engaging in conduct with the intent to cause bodily injury to another youth but the conduct does not result in bodily injury.

(2) Assault of Staff (No Injury)--intentionally, knowingly, or recklessly engaging in conduct with the intent to cause bodily injury to a staff member, contract employee, or volunteer with the intent to cause injury but the conduct does not result in bodily injury.

(3) Assault Causing Bodily Injury to Another Youth--intentionally, knowingly, or recklessly engaging in conduct that causes another youth to suffer bodily injury.

(4) Assault Causing Bodily Injury to Staff--intentionally, knowingly, or recklessly engaging in conduct that causes a staff member, contract employee, or volunteer to suffer bodily injury.

(5) Attempted Escape--committing an act with specific intent to escape that amounts to more than mere planning that tends but fails to effect an escape.

(6) Chunking Bodily Fluids--causing a person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, and/or feces of another with the intent to harass, alarm, or annoy another person.

(7) Chunking Other Fluids--causing a person to contact any fluid or liquid not considered a bodily fluid with the intent to harass, alarm, or annoy another person.

(8) [~~(7)~~] Distribution of Prohibited Substances--distributing or selling any prohibited substances or items.

(9) [~~(8)~~] Escape--leaving a high-restriction residential placement without permission or failing to return from an authorized leave.

(10) [~~(9)~~] Extortion or Blackmail--demanding or receiving favors, money, actions, or anything of value from another in return for protection against others, to avoid bodily harm, or in exchange for not reporting a violation.

(11) [~~(10)~~] Failure to Comply with Electronic Monitoring Program Conditions (for Youth in Medium-Restriction Residential Placement)--failing to comply with one of the following conditions required by the youth's electronic monitoring program conditions:

(A) remain at the address listed at all designated times;

(B) follow curfew restriction as stated in the youth's conditions of placement or conditions of parole;

(C) remain at the approved placement while on electronic monitoring, going only to school, approved activities, religious functions, and medical/psychological appointments and then return to the approved placement, in accordance with the schedule identified in the conditions of placement or conditions of parole;

(D) wear the electronic monitoring device 24 hours a day;

(E) allow a TJJD staff member to enter the youth's residence to install, maintain, and inspect the device if required;

(F) notify the electronic monitoring officer as soon as possible within 24 hours if the youth experiences any problems with the electronic monitoring system; and

(G) charge the device daily for a minimum of one hour continuously in the morning and one hour continuously in the evening.

(12) [~~(11)~~] Fighting Not Resulting in Bodily Injury--engaging in a mutually instigated physical altercation with another person or persons that does not result in bodily injury.

(13) [~~(12)~~] Fighting That Results in Bodily Injury--engaging in a mutually instigated physical altercation with another person or persons that results in bodily injury.

(14) [~~(13)~~] Fleeing Apprehension--running from or refusing to come to staff when called and such act results in disruption of facility operations.

(15) [~~(14)~~] Misuse of Medication--using medication provided to the youth by authorized personnel in a manner inconsistent with specific instructions for use, including removing the medication from the dispensing area.

(16) [~~(15)~~] Participating in a Major Disruption of Facility Operations--intentionally engaging in conduct that poses a threat to persons or property and substantially disrupts the performance of facility operations or programs.

(17) [~~(16)~~] Possessing, Selling, or Attempting to Purchase Ammunition--possessing, selling, or attempting to purchase ammunition.

(18) [~~(17)~~] Possession of Prohibited Items--possessing the following prohibited items:

(A) cellular telephone;

(B) matches or lighters;

(C) jewelry, unless allowed by facility rules;

(D) money in excess of the amount or in a form not permitted by facility rules (see §380.9555 of this chapter for procedures concerning seizure of such money);

(E) pornography;

(F) items which have been fashioned to produce tattoos or body piercing;

(G) cleaning products when the youth is not using them for a legitimate purpose; or

(H) other items that are being used inappropriately in a way that poses a danger to persons or property or threatens facility security.

(19) [~~(18)~~] Possessing, Selling, or Attempting to Purchase a Weapon--possessing, selling, or attempting to purchase a weapon or an item that has been made or adapted for use as a weapon.

(20) [~~(19)~~] Possession or Use of Prohibited Substances and Paraphernalia--possessing or using any unauthorized substance, including controlled substances or intoxicants, medications not prescribed for the youth by authorized medical or dental staff, alcohol, tobacco products, or related paraphernalia such as that used to deliver or make any prohibited substance.

(21) [~~(20)~~] Refusing a Drug Screen--refusing to take a drug screen when requested to do so by staff or tampering with or contaminating the urine sample provided for a drug screen. Note: If the youth says he/she cannot provide a sample, the youth shall be given water to drink and two hours to provide the sample.

(22) [~~(21)~~] Refusing a Search--refusing to submit to an authorized search of person or area.

(23) [~~(22)~~] Repeated Non-Compliance with a Written, Reasonable Request of Staff (for Youth in Medium-Restriction Residential Placement)--failing on two or more occasions to comply with a specific written, reasonable request of staff. If the request requires the youth to do something daily or weekly, the two failures to comply must be within a 30-day period. If the request requires the youth to do something monthly, the two failures to comply must be within a 60-day period.

(24) [~~(23)~~] Sexual Misconduct--intentionally or knowingly engaging in any of the following:

(A) causing contact, including penetration (however slight), between the penis and the vagina or anus; between the mouth and penis, vagina or anus; or penetration (however slight) of the anal or genital opening of another person by hand, finger, or other object;

(B) touching or fondling, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person;

(C) kissing for sexual stimulation;

(D) exposing the anus, buttocks, breasts, or genitals to another or exposing oneself knowing the act is likely to be observed by another person; or

(E) masturbating in an open and obvious way, whether or not the genitals are exposed.

(25) [~~(24)~~] Stealing--intentionally taking property with an estimated value of $100 or more from another without permission.

(26) [~~(25)~~] Tampering with Monitoring Equipment--a youth intentionally or knowingly tampers with monitoring equipment assigned to any youth.

(27) [~~(26)~~] Tampering with Safety Equipment--intentionally tampering with, damaging, or blocking any device used for safety or security of the facility. This includes, but is not limited to, any locking device or item that provides security access or clearance, any fire alarm or fire suppression system or device, video camera, radio, telephone (when the tampering prevents it from being used as necessary for safety and/or security), handcuffs, or shackles.

(28) [~~(27)~~] Tattooing/Body Piercing--engaging in tattooing or body piercing of self or others. Tattooing is defined as making a mark on the body by inserting pigment into the skin.

(29) Threatening Others--making verbal or physical threats toward another person or persons.

(30) [~~(28)~~] Threatening Another with a Weapon--intentionally and knowingly threatening another with a weapon. A weapon is something that is capable of inflicting bodily injury in the manner in which it is being used.

(31) [~~(29)~~] Unauthorized Absence--leaving a medium-restriction residential placement without permission or failing to return from an authorized leave.

(32) [~~(30)~~] Vandalism--intentionally causing $100 or more in damage to state property or personal property of another.

(33) [~~(31)~~] Violation of Any Law--violating a Texas or federal law that is not already defined as a major or minor rule violation.

(h) Minor Rule Violations. It is a violation to knowingly commit, attempt to commit, direct someone to commit, or aid someone else in committing any of the following conduct.[:] In terms of the TJJD treatment hierarchy, minor rule violations are considered treatment-interfering behavior targets, program-destroying behavior targets, or quality-of-life-interfering behavior targets.

(1) Breaching Group Confidentiality--disclosing or discussing information provided in a group session to another person not present in that group session.

(2) Disruption of Program--engaging in behavior that requires intervention to the extent that the current program of the youth and/or others is disrupted. This includes, but is not limited to:

(A) disrupting a scheduled activity;

(B) being loud or disruptive without staff permission;

(C) using profanity or engaging in disrespectful behavior toward staff or peers; or

(D) refusing to participate in a scheduled activity or abide by program rules.

(3) Failure to Abide by Dress Code--failing to follow the rules of dress and appearance as provided by facility rules.

(4) Failure to do Proper Housekeeping--failing to complete the daily chores of cleaning the living environment to the expected standard.

(5) Gang Activity--participating in an activity or behavior that promotes the interests of a gang or possessing or exhibiting anything related to or signifying a gang, such as, but not limited to, gang-related literature, symbols, or signs.

(6) Gambling or Possession of Gambling Paraphernalia--engaging in a bet or wager with another person or possessing paraphernalia that may be used for gambling.

(7) Horseplay--engaging in wrestling, roughhousing, or playful interaction with another person or persons that does not rise to the level of an assault. Horseplay does not result in any party getting upset or causing injury to another.

(8) Improper Use of Telephone/Mail/Computer--using the mail, a computer, or the telephone system for communication that is prohibited by facility rules, at a time prohibited by facility rules, or to inappropriately access information.

(9) Lending/Borrowing/Trading Items--lending or giving to another youth, borrowing from another youth, or trading with another youth possessions, including food items, without permission from staff.

(10) Lying/Falsifying Documentation/Cheating--lying or withholding information from staff, falsifying a document, and/or cheating on an assignment or test.

(11) Possession of an Unauthorized Item--possessing an item the youth is not authorized to have (possession of which is not a major rule violation), including items not listed on the youth's personal property inventory. This does not include personal letters or photographs.

(12) Refusal to Follow Staff Verbal Instructions--deliberately failing to comply with a specific reasonable verbal instruction made by a staff member.

(13) Stealing--intentionally taking property with an estimated value under $100 from another without permission.

[~~(14) Threatening Others--making verbal or physical threats toward another person or persons.~~]

(14) [~~(15)~~] Unauthorized Physical Contact with Another Youth (No Injury)--intentionally making unauthorized physical contact with another youth without the intent to cause injury and that does not cause injury, such as, but not limited to, pushing, poking, or grabbing.

(15) [~~(16)~~] Unauthorized Physical Contact with Staff (No Injury)--intentionally making unauthorized physical contact with a staff member, contract employee, or volunteer without the intent to cause injury and that does not cause injury, such as, but not limited to, pushing, poking, and grabbing.

(16) [~~(17)~~] Undesignated Area--being in any area without the appropriate permission to be in that area.

(17) [~~(18)~~] Vandalism--intentionally causing less than $100 in damage to state or personal property.

§380.9504. Rules and Consequences for Youth on Parole.

(a) Purpose. This rule establishes the actions that constitute violations of the rules of conduct youth are expected to follow while under parole supervision. Violations of the rules may result in disciplinary consequences, including revocation of parole, that are proportional to the severity and extent of the violation. Appropriate due process must be followed before imposing consequences.

(b) Applicability.

(1) This rule applies to youth on parole status who are assigned to a home placement.

(2) For parole revocation purposes, this rule also applies to youth on parole status who are assigned to a residential placement as a home substitute. However, this rule does not apply to the daily rules of conduct for these youth. For the daily rules of conduct, see §380.9503 of this chapter.

(c) General Provisions.

(1) Conditions of parole are provided to the youth before release on parole.

(2) Conditions of parole, including the rules of conduct, are reviewed with youth when they initially meet with their parole officers and at other times as necessary.

(3) Repeated violations of any rule of conduct may result in more serious disciplinary consequences.

(d) Definition [~~Definitions~~]. Possession--actual care, custody, control, or management. It does not require the item to be on or about the youth's person.

(e) Parole Rule Violations. It is a violation to knowingly commit, attempt to commit, or aid someone else in committing any of the following conduct.[~~:~~] Parole rule violations are categorized in the TJJD treatment hierarchy based on the degree of interference or intrusiveness such conduct has on any youth's ability to effectively engage in treatment.

(1) Abscond--leaving a home placement or failing to return from an authorized leave when:

(A) the youth's parole officer did not give permission; and

(B) the youth's whereabouts are unknown to the youth's parole officer.

(2) Failure to Comply with Electronic Monitoring Program Conditions--failing to comply with one of the following conditions required by the youth's electronic monitoring program conditions:

(A) remain at the address listed at all designated times;

(B) follow curfew restriction as stated in the youth's conditions of placement or conditions of parole;

(C) remain at the approved placement while on electronic monitoring, going only to school, approved activities, religious functions, and medical/psychological appointments and then return to the approved placement, in accordance with the schedule identified in the conditions of placement or conditions of parole;

(D) wear the electronic monitoring device 24 hours a day;

(E) allow a TJJD staff member to enter the youth's residence to install, maintain, and inspect the device if required;

(F) notify the electronic monitoring officer as soon as possible within 24 hours if the youth experiences any problems with the electronic monitoring system; and

(G) charge the device daily for a minimum of one hour continuously in the morning and one hour continuously in the evening.

(3) Failure to Comply with Sex Offender Conditions of Parole--intentionally or knowingly failing to comply with one of the following conditions present in the youth's sex offender conditions of parole addendum:

(A) do not have unsupervised contact with children under the age specified by the conditions of parole;

(B) do not babysit or participate in any activity where the youth is responsible for supervising or disciplining children under the age specified by the conditions of parole; or

(C) do not initiate physical contact or touching of any kind with a child, victim, or potential victim.

(4) Failure to Report an Arrest or Citation--failing to report an arrest or receipt of a citation to the youth's parole officer within 24 hours of arrest or citation.

(5) Participating in a Major Disruption of Facility Operations--intentionally engaging in conduct that poses a threat to persons or property and substantially disrupts the performance of facility operations or programs. (This parole violation applies only to youth assigned to a residential placement as a substitute for home placement.)

(6) Possessing, Selling, or Attempting to Purchase Ammunition--possessing, selling, or attempting to purchase ammunition.

(7) Possessing, Selling, or Attempting to Purchase a Weapon--possessing, selling, or attempting to purchase a weapon or an item that has been made or adapted for use as a weapon.

(8) Refusing a Drug Screen--refusing to take a drug screen when requested to do so by staff or tampering with or contaminating the urine sample provided for a drug screen.

(9) Repeated Non-Compliance with a Written, Reasonable Request of Staff--failing on two or more occasions to comply with a specific condition of release under supervision and/or a specific written, reasonable request of staff. If the request requires the youth to do something daily or weekly, the two failures to comply must be within a 30-day period. If the request requires the youth to do something monthly, the two failures to comply must be within a 60-day period.

(10) Photos, Videos, or Social Media Posts with Weapon, Ammunition, or Unauthorized Substance--appearing in photos, videos, or other images, whether or not posted to social media, with any weapon, ammunition, or unauthorized substance or related paraphernalia, including any object that reasonably resembles a weapon, ammunition, or unauthorized substance or related paraphernalia. The term weapon includes, but is not limited to, guns, explosive devices, knives, blades, and clubs. The term related paraphernalia includes, but is not limited to, items used to make or deliver unauthorized substances.

(11) Tampering with Monitoring Equipment--a youth intentionally or knowingly tampers with monitoring equipment assigned to any youth.

(12) Unauthorized Absence--leaving a medium-restriction residential placement without permission or failing to return from an authorized leave.

(13) Possession or Use of Unauthorized Substances--possessing, ingesting, inhaling, or otherwise consuming any unauthorized substance, including controlled substances or intoxicants, medications not prescribed for the youth by authorized medical or dental staff, alcohol or tobacco products, or related paraphernalia such as that used to deliver or make any unauthorized substance.

(14) Violation of Any Law--violating a federal or state law or municipal ordinance.

(f) Possible Consequences.

(1) A parole rule violation may result in a Level I hearing or a Level hearing conducted in accordance with §380.9551 or §380.9557 of this chapter, respectively.

(A) This subparagraph applies only to youth alleged to have engaged in conduct classified as a first- or second-degree felony while on parole. Except as provided by this subparagraph, a Level I hearing shall be requested on these youth. The hearing may be deferred when requested by local prosecutors, as provided in §380.9551 of this chapter. The designated staff person may determine that, given all circumstances, a Level I hearing is not appropriate. Such decision shall be documented. If a Level I hearing is held and the youth's parole is revoked, the youth shall be reviewed for the most restrictive setting appropriate, including the intervention program described by §380.9510 of this chapter.

(B) Parole officers are encouraged to be creative in determining a consequence appropriate to address and correct the youth's behavior. Staff should use evidence-based interventions that relate to the youth's risk, needs, and responsivity when appropriate. All assigned consequences should be related to the misconduct when possible.

(2) Consequences through a Level hearing for a youth on parole include, but are not limited to:

(A) Verbal Reprimand--conference with a youth including a verbal reprimand that draws attention to the misbehavior and serves as a warning that continued misbehavior could result in more severe consequences.

(B) Curfew Restriction--an immediate change in existing curfew requirements outlined in the youth's conditions of parole.

(C) Community Service Hours--disciplinary assignment of a specific number of hours the youth is to perform community service in addition to the hours assigned when the youth was placed on parole. In no event may more than 20 community service hours be assigned through a Level hearing.

(D) Increased Level of Supervision--an assigned increase in the number of primary contacts between the youth and parole officer in order to increase the youth's accountability.

(E) Electronic Tracking--assignment to a system that electronically tracks a youth's movement and location.

(F) Writing Assignment--an assignment designed for the youth to address the misbehavior and identify appropriate behavior in similar situations.

(3) Consequences through a Level I hearing for a youth on parole, including youth assigned to a residential placement as a home substitute, include:

(A) parole revocation and placement in any high- or medium-restriction program operated by or under contract with the Texas Juvenile Justice Department; and

(B) assignment of a length of stay consistent with §380.8525 of this chapter.

§380.9505. Egregious Behavior Protocol.

(a) Purpose. The Texas Juvenile Justice Department (TJJD) addresses disruptive or unsafe youth behavior by using appropriate levels of intervention, including the egregious behavior protocol.

(b) Applicability.

(1) This rule applies to high-restriction facilities.

(2) This rule does not supersede requirements established by other policies and procedures regarding self-harming or suicidal behavior and ideation.

(c) General Provisions.

(1) Placing a youth out-of-program, as described in this procedure, is used to maintain safety and is not considered a disciplinary consequence.

(2) Being out-of-program includes the following stipulations:

(A) The youth programs individually during group activities on the dorm, generally in an assigned seat. Time is spent working on treatment assignments (e.g., completing Behavior Chain Analysis, practicing skills, working on correction), often with staff assistance.

(B) The youth cannot approach other youth or leave the assigned seat without staff permission.

(C) Other youth cannot approach the out-of-program youth without staff permission.

(D) Recreation is individual, if staffing permits.

(E) Stage privileges do not apply.

(F) Direct-care staff:

(i) assign treatment work, including Behavior Chain Analysis;

(ii) assist the youth with practicing skills to use the next time a similar situation occurs; and

(iii) document the youth's progress, focusing on a behavioral description of the youth's level of engagement and motivation to complete treatment work.

(d) Placing Youth Out-of-Program- Egregious Behavior Protocol.

(1) A direct-care staff member may place the youth on the Egregious Behavior Protocol and the youth is considered out-of-program when: a youth fails to respond positively to redirection from staff, maladaptive behavior escalates, and/or the youth engages in behavior that creates an immediate danger to safety or security or that prevents others from receiving programming.

(2) The staff member:

(A) tells the youth that the youth is out-of-program;

(B) explains the requirements associated with being out-of-program and expectations to return to programming;

(C) gives the youth an opportunity to address the maladaptive behavior and use skillful behavior, including the completion of a Behavior Chain Analysis; and

(D) documents a summary of the incident and engagement strategies.

(e) Additional Safety-Based Measures. Additional safety-based measures may include, but are not limited to:

(1) assigning color-coded clothing to indicate a high risk for unsafe behavior or aggression;

(2) placing the youth on a behavior plan or safety plan; or

(3) referral to a program in the Intervention Program.

(f) Returning Youth to Regular Programming.

(1) Removing the youth from out-of-program status is based on the youth completing all treatment assignments and verbally committing to safe behavior and/or using skills to avoid disruptive behavior. Other factors, such as the youth's level of commitment to work on target behaviors and to make progress in treatment, are considered.

(2) Designated staff members:

(A) review documentation of the youth's behavior;

(B) decide when to remove the youth from out-of-program status; and

(C) document the youth's return to regular programming.

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 December 16, 2025.

TRD-202504678
Jana Jones
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 490-7130

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

SUBCHAPTER A. GENERAL

The Texas Department of Transportation (department) proposes the repeal of §9.4, a new §9.4, and amendments to §§9.2, 9.6, and 9.8, concerning procedures generally applicable to contract and grant management.

EXPLANATION OF PROPOSED AMENDMENTS, REPEAL, AND NEW SECTIONS

This rulemaking provides a new dispute resolution process for the department's design-build projects that are entered into under Transportation Code, Chapter 223, Subchapter F.

Amendments to §9.2, Contract Claim Procedure, provide that a claim concerning a design-build contract authorized by Subchapter F, Chapter 223 of the Transportation Code will be processed under the design-build claim process proposed in new TAC §9.4.

Section 9.4, Civil Rights-Title VI Compliance, is repealed. The substance of §9.4 is combined with and added to §9.8, Enhanced Contract and Performance Monitoring, in order to make a section within Chapter 9, Subchapter A, available for the new rule.

New §9.4, Design-Build Contract Claim Procedure, provides a new procedure for the processing and resolution of a claim under Transportation Code, §201.112, that arises under certain design-build contracts. Under the procedure the claim must be brought by a design-build contractor for a remedy under a design-build contract entered into under Transportation Code, Chapter 223, Subchapter F and administered by the department.

Subsection (f) of the new section details the new procedure. The procedure permits a design-build contractor, after completing the informal dispute resolution process, to file a contract claim request to be evaluated by the executive director. Subsection (f)(2) provides the requirements of a complete contract claim request, the process for filing the contract claim request, and the actions to be taken by the department after receipt of the contract claim request. Subsection (f)(3) sets out the executive director's responsibilities in evaluating and resolving a contract claim request. Subsection (f)(3) further provides the steps to be taken after the executive director gives a written decision on the contract claim request and provides a process for the design builder, if it objects to the executive director's decision on the contract claim, to request a contested case hearing to litigate the contract claim request. Subsection (f)(4) addresses the executive director's responsibilities if a contested case hearing is held. Subsection (f)(6) provides that if there is clear and convincing evidence that a person practiced, or attempted, fraud related to a claim, the claim is forfeited.

Amendments to §9.6, Contract Claim Procedure for Comprehensive Development Agreements and Certain Design-Build Contracts, clarify that §9.6 applies only to a design-build contract that is entered into under Transportation Code, Chapter 223, Subchapter E, and only if such a contract is for a specified amount. The amendments to §9.6 do not change the procedure currently applicable to those contracts.

Amendments to §9.8, Enhanced Contract and Performance Monitoring, add to that section the substance of §9.4, Design-Build Contract Claim Procedure, which is repealed by this rulemaking. The heading of §9.8 is conformed to reflect that addition.

FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of the department's or Texas Transportation Commission's (commission) enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Greg Snider, Alternative Delivery Division Director, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Greg Snider has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be an improved alignment of the design-build informal and formal dispute resolution procedures resulting in a streamlined and expedited dispute resolution process for design-build projects.

COSTS ON REGULATED PERSONS

Greg Snider has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Greg Snider has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. He expects that during the first five years that the rule would be in effect:

(1) it would not create or eliminate a government program;

(2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;

(3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;

(4) it would not require an increase or decrease in fees paid to the agency;

(5) it would not create a new regulation;

(6) it would not expand, limit, or repeal an existing regulation;

(7) it would not increase or decrease the number of individuals subject to its applicability; and

(8) it would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Greg Snider has determined that a written takings impact assessment is not required under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Any person that is required to comply with the proposed rule or any other interested person may provide information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis, or may submit written comments on the repeal of §9.4, the adoption of new §9.4, and the amendments to §§9.2, 9.6, and 9.8. The information or comments must be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "DB Dispute Resolution." The deadline for receipt of comments is 5:00 p.m. on February 2, 2026. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

43 TAC §§9.2, 9.4, 9.6, 9.8

STATUTORY AUTHORITY

The new rule and amendments are proposed 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

Transportation Code, Chapter 223, Subchapters E and F.

§9.2. Contract Claim Procedure.

(a) Applicability. A claim shall satisfy the requirements in paragraphs (1) - (3) of this subsection.

(1) The claim is under a contract entered into and administered by the department, acting in its own capacity or as an agent of a local government, under one of the following statutes:

(A) Transportation Code, §22.018 (concerning the designation of the department as agent in contracting and supervising for aviation projects);

(B) Transportation Code, §391.091 (concerning erection and maintenance of specific information logo, major area shopping guide, and major agricultural interest signs);

(C) Transportation Code, Chapter 223 (concerning bids and contracts for highway projects), subject to the provisions of subsection (c) of this section; or

(D) Government Code, Chapter 2254, Subchapters A and B (concerning professional or consulting services).

(2) The claim is for compensation, or for a time extension, or any other remedy.

(3) The claim is brought by a prime contractor.

(b) Pass-through claim; claim and counter claim.

(1) A prime contractor may make a claim on behalf of a subcontractor only if the prime contractor is liable to the subcontractor on the claim.

(2) Only a prime contractor may submit a claim to begin a claim proceeding under this section. After a claim proceeding has begun the department may make a counter claim.

(3) This section does not abrogate the department's authority to file a claim in a court of competent jurisdiction. The procedure for the department to file a claim in a court of competent jurisdiction, including the deadline to file a claim, is set by other law.

(c) Claim concerning comprehensive development agreement or [~~certain~~] design-build contracts. A claim under a comprehensive development agreement (CDA) [~~entered into under Transportation Code, Chapter 223, Subchapter E,~~] or under a design-build to which [~~contract, as defined in~~] §9.6 of this subchapter (relating to Contract Claim Procedure for Comprehensive Development Agreements and Certain Design-Build Contracts) applies, may be processed under this section if the parties agree to do so in the CDA or design-build contract, or if the CDA or design-build contract does not specify otherwise. However, if the CDA or such a design-build contract specifies that a claim procedure authorized by §9.6 of this subchapter applies, then any claim arising under the CDA[,] or design-build contract shall be processed and resolved in accordance with the claim procedure authorized by §9.6 of this subchapter and not by this section. This section does not apply to a claim under a design-build contract to which §9.4 of this subchapter (relating to Design-Build Contract Claim Procedure) applies. Such a claim may be processed only under §9.4 of this subchapter.

(d) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise[~~, except that when used in subsection (c) of~~

~~this section, the terms claim, comprehensive development agreement, CDA, and design-build contract shall have the meanings given such terms stated in §9.6 of this subchapter~~].

(1) Claim--A claim for compensation, for a time extension, or for any other remedy arising from a dispute, disagreement, or controversy concerning respective rights and obligations under the contract.

(2) Commission--The Texas Transportation Commission.

(3) Committee--The Contract Claim Committee.

(4) Department--The Texas Department of Transportation.

(5) Department office--The department district or[~~,~~] division that is[~~, or office~~] responsible for the administration of the contract.

(6) Department office director--The chief administrative officer of the responsible department office; the officer shall be a district engineer or[~~,~~] division director[~~, or office director~~].

(7) District--One of the 25 districts of the department.

(8) Executive director--The executive director of the Texas Department of Transportation.

(9) Prime contractor--An individual, partnership, corporation, or other business entity that is a party to a written contract with the state of Texas which is entered into and administered by the department under Transportation Code, §22.018, §391.091, Chapter 223, or Government Code, Chapter 2254, Subchapters A and B.

(10) Project--The portion of a contract that can be separated into a distinct facility or work unit from the other work in the contract.

(e) Contract claim committee. The executive director or the director's designee shall name the members and chair of a committee or committees to serve at the executive director's or designee's pleasure. The chair may add members to the committee, including one or more district engineers who will be assigned to the committee on a rotating basis, with a preference, if possible, for district engineers of districts that do not have a current contractual relationship with the prime contractor involved in a contract claim.

(f) Negotiated resolution. To every extent possible, disputes between a prime contractor and the department's project engineer should be resolved during the course of the contract.

(g) Procedure.

(1) Exclusive procedure. Except as provided in subsection (c) of this section, a prime contractor shall file a claim under the procedure in this subsection. A claim filed by the prime contractor must be considered first by the committee before the claim is considered in a contested case hearing.

(2) Filing claim.

(A) The prime contractor shall file a claim after completion of the contract or when required for orderly performance of the contract. For a claim resulting from the enforcement of a warranty, a prime contractor shall file the claim no later than one year after expiration of the warranty period. For all other types of claims, a prime contractor shall file the claim no later than one year after the earlier of the date that the department sends to the contractor notice:

(i) that the contractor is in default;

(ii) that the department terminates the contract; or

(iii) notice of final acceptance of the project that is the subject of the contract.

(B) To file a claim, a prime contractor shall file a contract claim request and a detailed report that provides the basis for the claim. The detailed report shall include relevant facts of the claim, cost or other data supporting the claim, a description of any additional compensation requested, and documents supporting the claim. For a request for additional compensation, the prime contractor may not use a method, however denominated, by which the amount requested is determined by subtracting the contractor's bid prices from the contractor's actual performance costs. The prime contractor shall file the claim with the department's construction division, the department engineer under whose administration the contract was or is being performed, or the committee.

(C) A claim filed by a prime contractor shall include a certification as follows: I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes the department is liable; and that I am duly authorized to certify the claim on behalf of the contractor.

(D) A defective certification shall not deprive the department of jurisdiction over the claim. Prior to the entry by the department of a final decision on the claim the department shall require a defective certification to be corrected.

(E) The construction division or department engineer shall forward the contract claim request and detailed report to the committee.

(F) The deadline for the department to file a counter claim is 45 days before the committee holds an informal meeting under paragraph (3) of this subsection.

(3) Evaluation of claim by the committee.

(A) The committee's responsibility is to gather information, study the relevant issues, and meet informally with the prime contractor if requested. The committee shall attempt to resolve the claim.

(B) The committee shall secure detailed reports and recommendations from the responsible department office and may confer with any other department office deemed appropriate by the committee. The committee shall give the prime contractor the opportunity to submit a responsive report and recommendation concerning a counter claim filed by the department.

(C) If the department disputes the prime contractor's claim, the committee shall afford the prime contractor an opportunity for a meeting to informally discuss the disputed matters and to provide the prime contractor an opportunity to present relevant information and respond to information the committee has received from the department office. The committee chair, in the chair's sole discretion, may reschedule a meeting. Proceedings before the committee are an attempt to mutually resolve a claim without litigation and are not admissible for any purpose in a formal administrative hearing provided in subparagraph (D)(ii) of this paragraph. All oral communications, reports, or other written documentation prepared by department staff in connection with the analysis of a claim are part of the attempt to mutually resolve a claim without litigation and are also not admissible for any purpose in a formal administrative hearing provided in subparagraph (D)(ii) of this paragraph.

(D) The committee chair shall give written notice of the committee's decision on the claim to the department and prime contractor. The department and prime contractor are presumed to receive the decision three days after it is sent by United States mail.

(i) If the prime contractor does not object to the committee's decision, the prime contractor shall file a written statement with the committee's chair stating that the prime contractor does not object. The prime contractor shall file the statement no later than 20 days after receipt of the committee's decision. The chair shall then prepare a document showing the settlement of the claim including, when required, payment to the prime contractor, and the prime contractor's release of all claims under the contract. The prime contractor shall sign it. The executive director may approve the settlement or may request the commission to approve the settlement by issuance of an order. The executive director shall then implement the resolution of the claim. If contemplated in the committee's decision, the executive director shall expend funds as specified in the decision. If contemplated in the committee's decision, the executive director shall order the prime contractor to make payment to the department.

(ii) If the prime contractor objects to the committee's decision the prime contractor shall file a petition with the executive director no later than 20 days after receipt of the committee's decision requesting an administrative hearing to litigate the claim under the provisions of §§1.21 et seq. of this title (relating to Procedures in Contested Cases).

(iii) If the prime contractor fails to file a written petition under clause (ii) of this subparagraph within 20 days of receipt of the committee's decision, the prime contractor waives his right to a contested case hearing. All further litigation of claims on the project or contract by the prime contractor shall be barred by the doctrines of issue and claim preclusion. The chair shall then prepare an order implementing the resolution of the claim under the committee's decision and stating that further litigation on the claim is prohibited. The executive director shall then issue the order and implement the resolution of the claim. If contemplated in the committee's decision, the executive director shall expend funds as specified in the decision. If contemplated in the committee's decision, the executive director shall order the prime contractor to make payment to the department.

(4) Decision after contested case hearing. This paragraph applies if a contested case hearing has been held on a claim. The administrative law judge's proposal for decision shall be submitted to the executive director for adoption. The executive director may change a finding of fact or conclusion of law made by the administrative law judge or may vacate or modify an order issued by the administrative law judge. The executive director shall provide a written statement containing the reason and legal basis for any change.

(5) This section does not abrogate the department's authority to enforce in a court of competent jurisdiction a final department order issued under the section.

(h) Claim forfeiture. A claim against the department shall be forfeited to the department by any person who corruptly practices or attempts to practice any fraud against the department in the proof, statement, establishment, or allowance thereof. In such cases the department shall specifically find such fraud or attempt and render judgment of forfeiture. This subsection applies only if there is clear and convincing evidence that a person knowingly presented a false claim for the purpose of getting paid for the claim.

(i) Relation of contract claim proceeding and sanction proceeding.

(1) Except as provided in paragraphs (2) and (3) of this subsection, the processing of a contract claim under this section is a separate proceeding.

(2) If a contested issue arises that is relevant both to a contract claim proceeding and a sanction proceeding concerning the same contract, the issue shall be resolved in the proceeding that the executive director refers first for a contested case hearing under Chapter 1, Subchapter E of this title (relating to Procedures in Contested Cases). If the issue is decided in the first proceeding that decision shall apply to and be binding in all subsequent department proceedings.

(3) This paragraph applies to a contract under which the parties agreed to submit questions which may arise to the decision of a department engineer. If a dispute under the contract leads to a contract claim proceeding or sanction proceeding, the engineer's decision shall be upheld unless it was based on fraud, misconduct, or such gross mistake as would imply bad faith or failure to exercise an honest judgment.

§9.4. Design-Build Contract Claim Procedure.

(a) Purpose. This section provides the procedure for the processing and resolution of a claim under Transportation Code, §201.112, that arises under a design-build contract.

(b) Applicability. To use the procedure under this section, the claim must be:

(1) made under a design-build contract entered into and administered by the department, acting in its own capacity or as an agent of a local government or transportation corporation, under Transportation Code, Chapter 223, Subchapter F;

(2) for compensation, a time extension, or any other remedy; and

(3) brought by a design-build contractor.

(c) Pass-through claim; claim and counter claim.

(1) A design-build contractor may make a claim on behalf of a subcontractor only if the design-build contractor is liable to the subcontractor on the claim, and the claim is actionable by the design-build contractor against the department and arises from work, materials, or other services provided or to be provided under the design-build contract.

(2) The department may make a counter claim against the design-build contractor.

(3) This section does not abrogate the department's authority to file a claim in a court of competent jurisdiction. The procedure for the department to file a claim in a court of competent jurisdiction, including the deadline to file a claim, is set by other law.

(4) This section does not affect or impede the department's or the design-build contractor's rights to seek judicial relief in connection with the following types of actions or proceedings, and the claim procedures and provisions in this section do not apply to such an action:

(A) equitable relief that the department is permitted to seek to the extent allowed by law; or

(B) other matters or disputes expressly excluded from the dispute resolution procedures authorized by this section, as specified in the design-build contract.

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

(1) Claim--A claim for compensation, time extension, or other contract modification, or any other dispute under the design-build contract.

(2) Contested case hearing--A binding administrative law hearing held before an administrative law judge of the State Office of

Administrative Hearings in which the legal rights, duties, or privileges of a party are to be determined.

(3) Department--The Texas Department of Transportation.

(4) Department office--The department division, which may be specified in the design-build contract, that is responsible for the administration or oversight of the design-build contract.

(5) Department office director--The division director who is responsible for the department office.

(6) Design-build contract--An agreement with a design-build contractor for a highway project entered into under Transportation Code, Chapter 223, Subchapter F, that includes both design and construction services for the construction, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of the highway project.

(7) Design-build contractor--A partnership, corporation, or other legal entity or team that enters into a design-build contract with the department.

(8) District--One of the 25 districts of the department.

(9) Executive director--The executive director of the Texas Department of Transportation.

(e) Negotiated resolution. To every extent possible, disputes between a design-build contractor and the department should be resolved during the course of the contract.

(f) Procedure. For a claim to be considered under the procedure provided by this section, a design-build contractor must file a contract claim request in accordance with this subsection.

(1) Exclusive procedure. A claim must be considered first through the informal dispute resolution process set forth in the design-build contract before the claim may be considered by the executive director under this section and must be considered by the executive director under this section before the claim may be considered in a contested case hearing.

(2) Filing contract claim request.

(A) The design-build contractor may file a contract claim request after the completion of the informal dispute resolution process if that process does not timely resolve the dispute.

(B) The contract claim request must include a detailed report that provides the basis for the claim. The detailed report must include relevant facts of the claim, cost or other data supporting the claim, a description of any additional compensation or time extension requested, and documents supporting the claim. For a request for additional compensation, the design-build contractor may not use a method, however denominated, by which the amount requested is determined by subtracting the design-build contractor's proposal prices from the design-build contractor's actual performance costs. The design-build contractor must file the contract claim request with the department office director.

(C) A contract claim request filed by a design-build contractor must include a certification as follows: I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the design-build contractor believes the department is liable; and that I am duly authorized to certify the claim on behalf of the design-build contractor.

(D) A defective certification does not deprive the department of jurisdiction over the claim. Prior to the entry by the department of a final decision on the claim the department will require a defective certification to be corrected.

(E) The department office director will forward the contract claim request to the executive director not later than the seventh day after the date on which a complete contract claim request is received by the department.

(F) The department may file a counter claim not later than the 21st day after the date on which a complete contract claim request is received by the department. Not later than the 21st day after the design-build contractor receives notice of the counter claim, the design-build contractor shall submit to the executive director a responsive report and recommendation concerning the counter claim.

(3) Evaluation of claim by the executive director.

(A) The executive director's responsibility is to gather information, study the relevant issues, and meet with the design-build contractor, if requested. The executive director will attempt to resolve the claim.

(B) The executive director will secure detailed reports and recommendations from the department office and may confer with any other department personnel deemed appropriate by the executive director.

(C) If the department disputes the design-build contractor's claim, the executive director will give the design-build contractor an opportunity for a meeting to discuss the disputed matters, present relevant information, and respond to information that the executive director has received from the department. Proceedings before the executive director are an attempt to mutually resolve a claim without litigation and are not admissible for any purpose in a contested case hearing provided in subparagraph (D)(ii) of this paragraph. All oral communications, reports, or other written documentation prepared by department staff in connection with the analysis of a claim are part of the attempt to mutually resolve a claim without litigation and are also not admissible for any purpose in a contested case hearing provided in subparagraph (D)(ii) of this paragraph.

(D) The executive director will give written notice of the executive director's decision on the contract claim request to the department office director and design-build contractor. The department office director and design-build contractor are presumed to receive the notice on the third day after the day on which the notice is mailed.

(i) If the design-build contractor does not object to the decision, the design-build contractor shall file with the executive director not later than the 20th day after the date of receipt of the notice under this subparagraph a written statement that the design-build contractor does not object. The executive director will then prepare a document showing the settlement of the contract claim request, including, when required, payment to the design-build contractor, and providing for the design-build contractor's release of all claims under the contract. The design-build contractor shall sign that document. The executive director may request the commission to approve the settlement by issuance of an order. The executive director will then implement the resolution of the contract claim request. If contemplated in the decision, the executive director will expend funds as specified in the decision or will order the design-build contractor to make payment to the department.

(ii) If the design-build contractor objects to the decision, the design-build contractor may file with the executive director not later than the 20th day after the date of receipt of the decision a petition requesting a contested case hearing to litigate the contract claim request under §§1.21 et seq. of this title (relating to Procedures in Contested Cases).

(iii) If the design-build contractor fails to file a written petition within the period prescribed by clause (ii) of this subparagraph, the design-build contractor waives the right to a contested case hearing. All further litigation of claims on the project or contract by the design-build contractor are barred by the doctrines of issue and claim preclusion. The executive director will then prepare an order implementing the resolution of the contract claim request under the decision and stating that further litigation on the contract claim request is prohibited. The executive director will issue the order and implement the resolution of the contract claim request. If contemplated in the decision, the executive director will expend funds as specified in the decision or will order the design-build contractor to make payment to the department.

(4) Decision after contested case hearing. This paragraph applies if a contested case hearing has been held on a contract claim request. The administrative law judge's proposal for decision will be submitted to the executive director for adoption. The executive director may change a finding of fact or conclusion of law made by the administrative law judge or may vacate or modify an order issued by the administrative law judge. The executive director shall provide a written statement containing the reason and legal basis for any change.

(5) Final order enforcement. This section does not abrogate the department's authority to enforce in a court of competent jurisdiction a final department order issued under the section.

(6) Claim forfeiture. If there is clear and convincing evidence that a person, for the purpose of getting paid for a claim against the department, knowingly practices, or attempts to practice, any fraud against the department in the proof, statement, establishment, or allowance of the claim, the claim shall be forfeited to the department by that person. In such a case the executive director will specifically find such a fraud or attempt and render judgment of forfeiture.

(g) Delegation by executive director. The executive director may delegate to an employee of the department any duty required of, or authority granted to, the executive director under this section except for the preparation of an order under subsection (f)(3)(D)(iii) or modification of an administrative law judge's proposal for decision under subsection (f)(4) of this section.

§9.6. Contract Claim Procedure for Comprehensive Development Agreements and Certain Design-Build Contracts.

(a) Purpose. This section concerns processing and resolution of a claim under Transportation Code, §201.112 that arises under a comprehensive development agreement (CDA) or design-build contract, as defined by subsection (c) of this section.

(b) Applicability.

(1) The executive director may enter into a CDA or a design-build contract to which this section applies containing a claim procedure and provisions authorized by this section. When a claim arises under a CDA or design-build contract containing a claim procedure authorized by this section, the requirements of this section apply, §9.2 of this subchapter (relating to Contract Claim Procedure) does not apply, and the parties shall follow the claim procedure contained in the CDA or design-build contract and shall be bound by the outcome of the claim procedure. If a CDA or design-build contract does not contain a claim procedure authorized by this section, either by express reference to this section or by inclusion of provisions required or permitted by this section, then a claim under the agreement shall be processed and resolved under §9.2 of this subchapter.

(2) The claim procedure and provisions authorized by this section may be applied to claims that arise under the CDA or design-build contract, related agreements that collectively constitute a CDA or design-build contract, or other agreements entered into with or for the benefit of the department in connection with the CDA or design-build contract. A CDA or design-build contract shall identify the related agreements and any other agreements to which the claim procedure and provisions apply.

(3) This section and §9.2 of this subchapter do not affect or impede the department's or the developer's or design-build contractor's rights to seek judicial relief in connection with the following types of actions or proceedings, and the claim procedures and provisions in this section or in §9.2 of this subchapter do not apply to such actions:

(A) equitable relief that the department is permitted to seek to the extent allowed by law;

(B) mandamus action that a developer or design-build contractor is permitted to bring against the department or the executive director under Government Code, §22.002(c);

(C) mandamus relief sought by a developer under Transportation Code, §223.208(e) (relating to termination compensation and related security obligations); or

(D) other matters or disputes expressly excluded from the dispute resolution procedures authorized by this section, as specified in the CDA or design-build contract or other related agreement between the department and the developer or design-build contractor that is part of the CDA or design-build contract.

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

(1) Claim--A claim for compensation, or other dispute, disagreement, or controversy concerning respective rights, obligations, and remedies under the CDA or design-build contract, or under related agreements that collectively constitute a CDA or design-build contract or other agreements entered into with or for the benefit of the department in connection with the CDA or design-build contract, including any alleged breach or failure to perform.

(2) Comprehensive development agreement (CDA)--An agreement with a developer that, at a minimum, provides for the design and construction, reconstruction, extension, expansion, or improvement of a project described in Transportation Code, §223.201(a), and may also provide for the financing, acquisition, maintenance, or operation of such a project. A CDA is also authorized under Transportation Code, §91.054 (rail facilities). A CDA includes related agreements that collectively constitute a CDA or other agreements entered into with or for the benefit of the department in connection with the CDA.

(3) Department--The Texas Department of Transportation.

(4) Design-build contract--An agreement with a design-build contractor that is entered into under Transportation Code, Chapter 223, Subchapter E and that is for a highway project with estimated total project costs of $500 million or more that includes both design and construction services for the construction, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of the highway project.

(5) Design-build contractor--A partnership, corporation, or other legal entity or team that enters into a design-build contract with the department.

(6) Developer--The private entity or entities that enter into a CDA with the department.

(7) Disputes board--A group of one or more individuals appointed under the terms of a CDA or design-build contract to fairly and

impartially consider and decide a claim between the department and a developer or design-build contractor.

(8) Disputes board error--One or more of the following actions:

(A) a disputes board acted beyond the limits of its authority established under subsection (b)(3) of this section;

(B) a disputes board failed, in any material respect, to properly follow or apply the procedure for handling, hearing and deciding a claim established under the CDA or design-build contract and the failure prejudiced the rights of a party;

(C) a disputes board decision was procured by, or there was evident partiality by a disputes board member due to a conflict of interest (which may be defined in the CDA or design-build contract), misconduct (which may be defined in the CDA or design-build contract), corruption, or fraud; or

(D) any other error that the parties agree may be the subject of a contested case hearing, as set out in the CDA or design-build contract.

(9) Executive director--The executive director of the Texas Department of Transportation.

(10) Party--The department, or a developer or design-build contractor who has entered into a CDA or design-build contract with the department. The department and the developer or design-build contractor are together referred to as the "parties."

(11) SOAH--State Office of Administrative Hearings.

(d) Mandatory requirements. A CDA or design-build contract that authorizes the use of a claim procedure authorized by this section shall include (or incorporate by reference) provisions substantially consistent with the provisions in this subsection, but such provisions need not apply to claims excluded from the claim procedure under subsection (b)(3) of this section.

(1) A claim under the CDA or design-build contract that is not resolved by the informal dispute resolution process set forth in the CDA or design-build contract shall be referred to a disputes board for rendering of a disputes board decision on the claim.

(2) The processing of a claim shall include a mandatory informal dispute resolution process, such as mediation, and a mandatory dispute resolution procedure using a disputes board.

(3) The party making a claim shall include in its notice of the claim a certification by an authorized or designated representative to the effect that:

(A) the claim is made in good faith;

(B) to the current knowledge of the party, except as to matters stated in the notice of claim as being unknown or subject to discovery, the supporting data is reasonably believed by the party to be accurate and complete, and the description of the claim contained in the certification accurately reflects the amount of money or other right, remedy, or relief to which the party asserting the claim reasonably believes it is entitled; and

(C) the representative is duly authorized to execute and deliver the certificate on behalf of the party.

(4) The certification required under paragraph (3) of this subsection, if defective, shall not deprive a disputes board of jurisdiction over the claim. Prior to the entry by the disputes board of a final decision on the claim, the disputes board shall require a defective certification to be corrected.

(e) Permissive requirements. A CDA or design-build contract that provides for a claim procedure authorized by this section may include (or incorporate by reference) any or all of the provisions in this subsection, or provisions substantially consistent with them, and other terms and conditions regarding claim resolution that are not contrary to the mandatory requirements of this section.

(1) The executive director shall adopt the decision of a disputes board as a ministerial act, subject to a party's right to request a contested case hearing in accordance with the terms of the CDA or design-build contract as to whether disputes board error occurred.

(2) A decision by a disputes board, upon completion of the procedure required in Transportation Code, §201.112, this section, and in the CDA or design-build contract, is final, conclusive, binding upon, and enforceable against the parties, subject to any appeals allowed by the CDA or design-build contract or this section.

(3) A disputes board, upon issuing a decision on a claim, is authorized to direct that an award be paid from the proceeds of any trust or other pool of project funds that the CDA or design-build contract provides shall be available for payment of such claims.

(4) The executive director's discretion or actions in connection with the resolution of a claim are limited or may be purely ministerial in certain circumstances, including:

(A) adoption of the disputes board's decision absent disputes board error;

(B) referral of a disputes board decision to SOAH to determine whether disputes board error occurred; and

(C) issuance of a final order based on the SOAH administrative law judge's proposal for decision.

(5) Certain claims may be categorized and treated by the parties as expedited claims, and informal resolution procedures shall be expedited for such claims.

(6) Certain claims may be categorized and treated by the parties as small claims, and informal resolution procedures shall be expedited for such claims.

(7) The parties may execute a related disputes board agreement, or similar agreement, which shall be part of the CDA or design-build contract and which may govern all aspects of the creation of and procedures to be followed by a disputes board.

(8) The evidence presented to a SOAH administrative law judge in a hearing regarding a claim, and to the Travis County District Court in any appeal, may include: the disputes board's written findings of fact, conclusions of law, and decision; any written dissenting findings, recommendation, or opinions of a disputes board member; all submissions to the disputes board by the parties; and an independent engineer's written evaluations, opinions, findings, reports, recommendations, objections, decisions, certifications, or other determinations, if any, delivered to the parties pursuant to the CDA or design-build contract and related to the claim under consideration.

(9) Certain decisions, orders, or determinations of the executive director may be deemed to have been issued as of a certain date, or after a prescribed number of days, and setting out the parameters of the deemed decision, order, or determination.

(10) The parties are authorized and required to comply with all or certain categories of interim orders of the disputes board, including discovery and procedural orders.

(11) Except as agreed to by the parties in writing, a disputes board shall have no power to alter or modify any terms or provisions

of the CDA or design-build contract, or to render any award that, by its terms or effects, would alter or modify any term or provision of the CDA or design-build contract. Notwithstanding the prior sentence, a disputes board decision that contains error in interpretation or application of a term or provision of the CDA or design-build contract but does not otherwise purport to alter or modify terms or provisions of the CDA or design-build contract may not be appealed on grounds of such error; and such error does not deprive the disputes board of power or authority over the claim.

(12) A developer's claim for termination compensation, or to enforce the department's security obligations that secure payment of termination compensation, is not to be resolved under any dispute resolution procedure in the CDA. Rather, a developer may exercise its rights under Transportation Code, §223.208(e) (relating to Terms of Private Participation) by seeking mandamus against the department.

(13) At all times during the processing of a contract claim, the developer or design-build contractor and its subcontractors shall continue with the performance of the work and their obligations, including any disputed work or obligations, diligently and without delay, in accordance with the CDA or design-build contract, except to the extent enjoined by order of a court or otherwise ordered or approved by the department in its sole discretion.

(f) Pass-through claim. A CDA or design-build contract may provide that a developer or design-build contractor who is a party to a CDA or design-build contract with the department may make a claim on behalf of a subcontractor. In order to make such a claim the developer or design-build contractor must be liable to the subcontractor on the claim.

(g) Mandatory requirements concerning disputes board. A CDA or design-build contract that authorizes the use of a disputes board shall include (or incorporate by reference) provisions substantially consistent with the provisions in this subsection.

(1) A disputes board is not a supervisory, advisory, or facilitating body and has no role other than as expressly described in the CDA or design-build contract, including, if applicable, any disputes board agreement.

(2) A disputes board member shall not have a financial interest in the CDA or design-build contract, in any contract or the facility that is the subject of the CDA or design-build contract, or in the outcome of any claim decided under the CDA or design-build contract, except for payments to that member for services on the disputes board. Any person appointed as a disputes board member shall disclose to the parties any circumstances likely to give rise to justifiable doubt as to such disputes board member's impartiality or independence, including any bias or any financial or personal interest in the result of the dispute resolution or any past or present relationship with the parties or their representatives, or developer's subcontractors and affiliates.

(3) The scope of a SOAH contested case hearing on an appeal of a disputes board decision is limited solely to whether disputes board error occurred.

(h) Punitive damages. A disputes board shall have no power or jurisdiction to award punitive damages.

(i) Permissive requirements concerning disputes board. A CDA or design-build contract that authorizes the use of a disputes board may include (or incorporate by reference) any or all of the provisions in this subsection, or provisions substantially consistent with them, and other terms and conditions regarding the disputes board that are not contrary to the specific requirements of this section.

(1) Each party shall endeavor to have a standing list of candidates from which to select a disputes board member. The CDA or design-build contract may specify the qualifications to be a board member, the procedure by which a party nominates a person to the list of candidates, and the method by which the other party may review and object to a proposed candidate. All disputes board members are chosen from the list of candidates of the department or of the developer or design-build contractor.

(2) A disputes board conducts its proceedings in accordance with procedural rules specified in the CDA or design-build contract. The disputes board may allow for discovery similar to that allowed under the Texas Rules of Civil Procedure, and the admission of evidence conforming to the Texas Rules of Evidence, but may allow for exceptions to or deviations from such requirements and rules.

(3) The parties may jointly modify the procedure applicable to the disputes board's proceedings, under the provisions of the CDA or design-build contract.

(4) During the period that a disputes board member is serving on a disputes board, neither party may communicate ex parte with that member. A party may not communicate ex parte with a person on its list of candidates to be a disputes board member regarding the substance of a dispute.

(5) Each party is responsible for paying one-half the costs of all facilities, fees, support services costs, and other expenses of a disputes board.

(6) A disputes board does not have the authority to order that one party compensate the other party for attorney's fees and expenses.

(j) Permissive requirements on a contested case hearing. A CDA or design-build contract that authorizes the use of a contract claim procedure authorized by this section may include (or incorporate by reference) any or all of the provisions in this subsection, or provisions substantially consistent with them, and other terms and conditions regarding a contested case hearing that are not contrary to the specific requirements of this section.

(1) The executive director's referral of a developer's request to SOAH for a contested case hearing as to whether a decision by a disputes board was affected by disputes board error is a purely ministerial act.

(2) If a determination is made after a contested case hearing that disputes board error occurred, the dispute shall be remanded to a disputes board for further consideration, except that if the error is lack of authority to hear the claim, the decision of the disputes board shall be vacated.

(3) The executive director's issuance of a final order following a contested case hearing is a purely ministerial act, and that if by inaction the executive director does not issue a final order within the time frame established by the CDA or design-build contract, then a final order in a form recommended by the administrative law judge shall be deemed to be automatically issued.

(4) As allowed by Government Code, §2001.144 and §2001.145, an order issued by the executive director after a contested case hearing is final on the date issued and no motion for rehearing is required to appeal the final order.

(5) An executive director's order remanding a dispute to a disputes board, or an executive director's order implementing a disputes board decision following a contested case hearing before SOAH, are subject to judicial review under Government Code, Chapter 2001,

under the substantial evidence rule. Review is limited to whether disputes board error occurred.

(k) Other department rules on a contested case hearing.

(1) The parties may agree in the CDA or design-build contract to adopt, modify or not follow procedural provisions, deadlines, evidentiary rules, and any other matters set out in Chapter 1, Subchapter E of this title (relating to Procedures in Contested Cases).

(2) In the event of any conflict or difference between the procedures set out in this section or a CDA or design-build contract, and in Chapter 1, Subchapter E, of this title, the procedures in this section or the CDA or design-build contract shall govern with respect to any proceeding before SOAH.

(3) In the event of an appeal to SOAH of a disputes board decision:

(A) the department shall present a copy of this section to SOAH as a written statement of applicable rules or policies, under Government Code, §2001.058(c); and

(B) the parties shall request that the administrative law judge modify and supplement SOAH contested case procedures as necessary or appropriate, and consider this section, consistent with 1 TAC §155.3 (relating to Application and Construction of this Chapter).

(C) the parties shall provide the administrative law judge with a stipulation that the substantive provisions, scope of review, and procedural provisions of this section and the CDA or design-build contract shall apply to and govern the contested case proceeding before SOAH, consistent with 1 TAC §155.417 (relating to Stipulations).

(l) Mandamus relief. Nothing in this section shall restrict a developer's or design-build contractor's rights to seek mandamus relief pursuant to Government Code, §22.002(c) if the executive director fails to perform one or more of the ministerial acts set out in this section and included in the CDA or design-build contract as a ministerial act, or any other act specified in the CDA or design-build contract as a ministerial act.

(m) Confidential information.

(1) The parties may agree that, with respect to the mandatory informal dispute resolution process required under subsection (d)(2) of this section, communications between the parties to resolve a dispute, and all documents and other written materials furnished to a party or exchanged between the parties during any such informal resolution procedure, shall be considered confidential and not subject to disclosure by either party.

(2) The parties may agree that with respect to a proceeding before the disputes board, an administrative hearing before an administrative law judge, or a judicial proceeding in court, either or both parties may request a protective order to prohibit disclosure to third persons of information that the party believes is a trade secret, proprietary, or otherwise entitled to confidentiality under applicable law.

§9.8. Enhanced Contract and Performance Monitoring; Civil Rights-Title VI Compliance.

(a) The department shall monitor and report to the Texas Transportation Commission, on a quarterly basis, the performance and status of each contract, other than a low-bid construction and maintenance contract, that is valued at $50 million or more or that the department determines constitutes a high-risk to the department.

(b) The department immediately shall notify the commission of any serious issue or risk that is identified in a contract and that has not been reported in a quarterly report provided under subsection (a) of this section.

(c) Subsections (a) and (b) of this [~~This~~] section do [~~does~~] not apply to a memorandum of understanding, interagency contract, interlocal agreement, or contract for which there is not a cost.

(d) The department will conduct annual Title VI reviews of its special emphasis program areas (planning, project development, right-of-way, construction and research) and Title VI reviews of cities, counties, consultant contractors, suppliers, universities, colleges, planning agencies, and other subrecipients of Federal-aid highway funds to determine the effectiveness of program area activities at all levels in accordance with Title 42, United States Code, Section 2000d, et seq., and with Title 23, Code of Federal Regulations, Part 200.

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 December 16, 2025.

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Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 298-8987

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43 TAC §9.4

STATUTORY AUTHORITY

The repeal is proposed 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 Transportation Code, Chapter 223, Subchapters E and F.

§9.4. Civil Rights-Title VI Compliance.

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

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Becky Blewett
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