

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 51. DEPARTMENT ADMINISTRATION

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML), proposes rule changes in Chapter 51: repeals in Subchapter A (§§51.1 - 51.4), Subchapter D (§§51.300 - 51.304), Subchapter E (§§51.400 - 51.405), and Subchapter F (§§51.500 - 51.506); amendments in Subchapter B (§51.100) and Subchapter C (§51.200); and new rules in Subchapter A (§§51.1 - 51.5) (proposed rules).

Explanation of and Justification for the Rules

The proposed rules are the product of SML's rule review of 7 TAC Chapter 51, Department Administration, conducted in accordance with Government Code §2001.039. The existing rules in Chapter 51 establish various requirements concerning SML's administrative processes and procedures.

Changes Concerning the Reorganization of Chapter 51

SML has determined it should reorganize its rules in 7 TAC Chapter 51 by relocating the existing rules in Subchapter E, Mortgage Grant Fund, to Chapter 52, a vacant chapter. SML has further determined it should relocate the existing rules in Subchapter D, Recovery Fund, and Subchapter F, Mortgage Grant Fund: Recovery Claims for Unlicensed Activity, to Chapter 53, a vacant chapter. The proposed rules, if adopted, would effectuate these changes.

Changes Concerning Consumer Complaints (Subchapter A)

The existing rules in Chapter 51, Subchapter A, Complaints, govern SML's administration of Finance Code §13.011, requiring SML to maintain a system to act on consumer complaints, and establish processes and procedures used by SML to process those complaints. The proposed rules: in §51.1, Purpose, clarify the purpose of the rules in Subchapter A; in §51.2, Definitions, adopt new definitions for "Consumer Responsiveness Unit," "respondent," and "SML," and eliminate the definition for "Department"; in §51.3, Computation of Time, clarify how time periods measured in calendar days are computed; in §51.4, Processing Inquiries and Complaints, clarify SML's processes and procedures for processing inquiries and complaints, reduce the time period during which a complainant is allowed to request reconsideration of the disposition of their complaint from 90 days to 60 days, establish a four-year limitations period to file a complaint, and clarify that SML will make reasonable efforts to re-

solve a complaint within 120 days after the date the complaint is received instead of within 90 days after the date the complaint investigation is complete.

Changes Concerning Hearings and Appeals (Subchapter B)

The existing rules in Chapter 51, Subchapter B, Hearings and Appeals, establish procedural requirements for contested cases and augment the commission's rules in 7 TAC Chapter 9, Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings. The proposed rules: in §51.100, Appeals, Hearings, and Informal Settlement Conferences, clarify that the rules of the State Office of Administrative Hearings (SOAH) apply to contested cases referred to SOAH, and clarify that an appeal for judicial review must be brought in a district court in Travis County, Texas.

Changes Concerning Advisory Committees (Subchapter C)

The existing rules in Chapter 51, Subchapter C, Advisory Committees, govern advisory committees created by SML under Finance Code §13.018, allowing SML to appoint advisory committees to assist in discharging its duties. SML has one advisory committee created under Finance Code §13.018 - the Mortgage Grant Advisory Committee (MGAC) - to assist in administering the mortgage grant fund under Finance Code Chapter 156, Subchapter G. The proposed rules: in §51.200, Advisory Committees, change the date on which advisory committees created under Finance Code §13.018 are abolished from September 1, 2031 to September 1, 2030, to align more closely with SML's schedule for rule review, list the MGAC as an advisory committee subject to the rule, and remove references to the mortgage industry advisory committee created under Finance Code §156.104 which is not subject to the rule since it is not created under Finance Code §13.018.

Other Modernization and Update Changes

The proposed rules, if adopted, would make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for SML, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs or losses or increases in revenue

to the state overall that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to SML because SML is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because SML does not contribute to the state's general revenue fund.

Public Benefits

Hector Retta, the SML Commissioner, has determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be for members of the public to better understand SML's administrative processes and procedures.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

Hector Retta has determined that for the first five years the proposed rules are in effect there are no probable economic costs to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, SML is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, SML 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 legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to Changes Concerning Consumer Complaints (Subchapter A), Changes Concerning Hearings and Appeals (Subchapter B), and Changes Concerning Advisory Committees (Subchapter C) establish various rule requirements, as discussed in those sections; (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Changes Concerning Consumer Complaints (Subchapter A) expand or limit existing rule requirements, as discussed in such section; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses or rural communities because there are no

probable economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. Comments must be received within 30 days after publication of this notice.

SUBCHAPTER A. COMPLAINTS

7 TAC §§51.1 - 51.4

Statutory Authority

This proposal is made under the authority of: Government Code §2001.004(1), requiring a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Finance Code §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks; Finance Code §156.102(a), authorizing the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act; Finance Code §157.0023(a), authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act; Finance Code §158.003(b), authorizing the commission to adopt and enforce rules necessary for the purposes of or to ensure compliance with Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act; Finance Code §159.108, authorizing the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 159, Subchapter C; Finance Code §180.004(b), authorizing the commission to implement rules necessary to comply with Finance Code Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 (Texas SAFE Act); and Finance Code §180.061(5), authorizing the commission to adopt rules establishing requirements for investigation and examination authority for purposes of investigating a violation or complaint arising under the Texas SAFE Act. This proposal is also made under the authority of, and to implement, Finance Code §§11.307, 13.011, 156.301, 157.0022, 157.009, 157.021, 157.026, 158.059, and 158.102.

This proposal affects the statutes in Finance Code: Title 3, Subtitles B and C; and Chapters 13, 156, 157, 158, 159, and 180.

§51.1. Definitions.

§51.2. Complaint Processing.

§51.3. Complaint Resolution and Disposition.

§51.4. Complaint Review and Reporting.

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



SUBCHAPTER A. CONSUMER COMPLAINTS

7 TAC §§51.1 - 51.5

Statutory Authority

This proposal is made under the authority of: Government Code §2001.004(1), requiring a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Finance Code §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks; Finance Code §156.102(a), authorizing the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act; Finance Code §157.0023(a), authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act; Finance Code §158.003(b), authorizing the commission to adopt and enforce rules necessary for the purposes of or to ensure compliance with Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act; Finance Code §159.108, authorizing the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 159, Subchapter C; Finance Code §180.004(b), authorizing the commission to implement rules necessary to comply with Finance Code Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 (Texas SAFE Act); and Finance Code §180.061(5), authorizing the commission to adopt rules establishing requirements for investigation and examination authority for purposes of investigating a violation or complaint arising under the Texas SAFE Act. This proposal is also made under the authority of, and to implement, Finance Code §§11.307, 13.011, 156.301, 157.0022, 157.009, 157.021, 157.026, 158.059, and 158.102.

This proposal affects the statutes in Finance Code: Title 3, Subtitles B and C; and Chapters 13, 156, 157, 158, 159, and 180.

§51.1. Purpose.

This subchapter governs SML's administration of Finance Code §13.011, requiring SML to maintain a system to act on consumer complaints. This subchapter establishes processes and procedures used by SML to process inquiries and complaints submitted by consumers.

§51.2. Definitions.

In this chapter, the following definitions apply, unless the context clearly indicates otherwise:

(1) "Commissioner" means the savings and mortgage lending commissioner appointed under Finance Code Chapter 13.

(2) "Complainant" means a person who submits a complaint to SML.

(3) "Complaint" means a signed, written communication received by the Consumer Responsiveness Unit that expresses dissatisfaction with a transaction or alleges wrongful conduct.

(4) "Consumer Responsiveness Unit" or "CRU" means the section or unit within SML that receives inquiries and complaints from consumers and investigates complaints.

(5) "Inquiry" means a communication received by the Consumer Responsiveness Unit that expresses dissatisfaction with a transaction or alleges wrongful conduct but is not a complaint.

(6) "Respondent" means an entity or individual who is the subject of a complaint.

(7) "SML" means the Department of Savings and Mortgage Lending.

§51.3. Computation of Time.

In this subchapter, the calculation of any time period measured in days is made using calendar days unless clearly stated otherwise. In computing a period of calendar days, the first day is excluded, and the last day is included. If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday, unless clearly stated otherwise.

§51.4. Processing Inquiries and Complaints.

(a) Processing Inquiries. When an inquiry is received, the CRU will determine whether SML has jurisdiction and regulates the entity and the issue that is the subject of the inquiry. If SML does not, the CRU will inform the person making the inquiry of the appropriate regulatory authority, if known. If SML regulates the entity and the issue that is the subject of the inquiry, the CRU will inform the person making the inquiry of the procedure for submitting a complaint.

(b) Submitting a Complaint. Complaints may be submitted on SML's website (sml.texas.gov), by mail (Attn: Consumer Responsiveness Unit, 2601 N. Lamar Blvd., Suite 201, Austin, Texas 78705), or by email (complaintsubmission@sml.texas.gov). SML will collect the following items and information, if available:

(1) the complainant's name and contact information;

(2) the respondent's name, Nationwide Multistate Licensing System ID, if applicable, and contact information;

(3) the date and place of the alleged misconduct, violation, or transaction;

(4) a description of the facts or conduct alleged to violate applicable statutes or rules; and

(5) any written documentation supporting the complaint.

(c) Processing Complaints.

(1) Jurisdiction review. When a complaint is received, the CRU will determine whether SML has jurisdiction and regulates the entity and the issue that is the subject of the complaint. If SML does not, the CRU will inform the person making the complaint of the appropriate regulatory authority, if known, and the complaint will be closed. The CRU may conduct a preliminary investigation that is limited in scope to determine if SML has jurisdiction and regulates the entity and the issue that is the subject of the complaint.

(2) Reasonable cause review. If SML has jurisdiction and regulates the entity and the issue that is the subject of the complaint, the CRU will determine if reasonable cause exists to conduct an investigation. Reasonable cause exists if the complaint presents facts and evidence indicating that a violation of law more likely than not occurred

that is within SML's authority to take action to address. The CRU may conduct a preliminary investigation that is limited in scope to determine if reasonable cause exists. If reasonable cause does not exist, the complaint will be closed. SML may close a complaint for lack of reasonable cause if it involves facts and evidence that are substantially similar to those investigated in a previous complaint submitted by the complainant.

(3) Respondent's response. If reasonable cause exists, SML will send a copy or a summary of the complaint and appropriate supporting documentation to the respondent to request a response unless SML determines that doing so would jeopardize investigation of the complaint or an enforcement action. A respondent must respond within 14 days after the date the request is sent, unless an extension is given. The respondent must respond by the new deadline if an extension is given. If the respondent fails to respond, the factual matters alleged in the complaint may be construed against the respondent and may constitute grounds for an enforcement action against the respondent. SML will provide a copy of the response to the complainant unless the respondent requests that the response be kept confidential from the complainant, or SML determines that providing the response would jeopardize investigation of the complaint or an enforcement action. The respondent may provide a copy of the response to the complainant at the time it sends its response to SML, and if so, the respondent must indicate as such in the response (i.e., by listing the complainant as a carbon copy recipient).

(4) Investigation. On receipt of the respondent's response, the CRU will conduct an investigation. Investigations will be conducted as SML considers appropriate based on the relevant facts and circumstances known or reasonably inferred. An investigation may include:

(A) review of documentary evidence;

(B) interviews with complainants, respondents, and third parties, and the taking of sworn written statements;

(C) obtaining information from other state or federal agencies, regulatory authorities, or self-regulatory organizations;

(D) requiring complainants or respondents to provide explanatory, clarifying, or supplemental information; and

(E) other lawful investigative methods SML considers appropriate.

(5) Closing the complaint after an investigation. When investigation and analysis of the complaint are complete, the complaint will be closed. SML will send written notice (closing notice) to the complainant and the respondent within 10 business days after the date the complaint is closed, except as provided by subparagraph (E) of this paragraph. The closing notice will include a general description of how the complaint was closed (disposition) but will not include the investigator's specific findings or other information obtained during the investigation that is made confidential by law. Common dispositions include:

(A) Litigation. The complaint involves facts and issues that are being litigated or arbitrated by the parties or have been determined by a judicial or arbitration decision.

(B) Resolution. The complaint is resolved by agreement of the parties or is resolved to the satisfaction of SML through corrective action taken by the respondent.

(C) No violation. SML has determined that no violation occurred.

(D) Insufficient evidence. SML has determined that there is insufficient evidence to establish that a violation occurred.

(E) Enforcement referral. SML has determined that there is sufficient evidence to establish that a violation occurred and the complaint is referred for an enforcement action. A respondent referred for an enforcement action will be notified through the enforcement action and does not receive a closing notice.

(6) Request for Reconsideration. A complainant who disagrees with the disposition of a complaint (including a complaint closed for lack of jurisdiction under paragraph (1) of this subsection or for lack of reasonable cause under paragraph (2) of this subsection) may request reconsideration within 60 days after the date the closing notice is sent. On receipt of a timely request, a senior investigator from the CRU (other than the investigator who made the initial determination) or a staff attorney will review the file and determine the disposition. The individual assigned to review the file may investigate the complaint further to determine the disposition. SML will send written notice to the complainant within 10 business days after the date the disposition is determined. The disposition determined as a result of a request for reconsideration under this subparagraph is considered final and may not be challenged further by the complainant.

(d) Limitations Period. A complaint must be submitted within four years after the date the alleged act or omission giving rise to the complaint occurred or should reasonably have been discovered by the complainant. A complaint submitted outside this period for which SML has jurisdiction will be closed for lack of reasonable cause under subsection (c)(2) of this section.

(e) Public Information. Complaints and inquiries submitted to SML are generally considered public information unless a specific statutory exception applies.

(f) Protecting the Complainant's Identity. At the request of the complainant, SML will take reasonable measures to protect the complainant's identity to the extent possible. However, complainants are cautioned that, as provided by subsections (c)(3) and (e) of this section, complaints are generally considered public information, and the respondent is generally given notice of and the opportunity to respond to the complaint. The information provided to the respondent may show or indicate the complainant's identity. If the complaint results in SML taking enforcement action that requires an administrative hearing or judicial proceeding, SML may be required to prove the violation using evidence that shows or indicates the complainant's identity.

(g) Prioritizing Complaints. SML will prioritize complaints to determine the order in which complaints are investigated, considering the seriousness of the allegations and the length of time a complaint has been open.

(h) Complaint Monitoring. SML will monitor how long each complaint is open and will make reasonable efforts to resolve a complaint within 120 days after the date the complaint is received. SML will notify the complainant of the status of his or her complaint at least quarterly until the complaint is closed unless doing so would jeopardize investigation of the complaint or an enforcement action

§51.5. Complaint Information.

(a) SML will maintain records of complaints received in accordance with its records retention policy.

(b) SML will report complaint activity to the Finance Commission of Texas at each of its regular meetings.

(c) SML will make information available on its website describing the processes and procedures in §51.4 of this title (relating to Processing Inquiries and Complaints).

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 April 27, 2025.

TRD-202501373

Iain A. Berry

General Counsel

Department of Savings and Mortgage Lending

Earliest possible date of adoption: June 8, 2025

For further information, please call: (512) 475-1535



SUBCHAPTER B. HEARINGS AND APPEALS

7 TAC §51.100

Statutory Authority

This proposal is made under the authority of Government Code: §2001.004(1), requiring a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and §2009.051(c), authorizing a state agency to adopt alternative dispute resolution procedures by rule. This proposal is also made under the authority of, and to implement, Finance Code §§13.017, 66.107, 96.107, 156.209, 156.302, 156.303, 156.401, 156.406, 156.504, 157.009, 157.010, 157.017, 157.023, 157.024, 157.026, 157.031, 158.059, 158.105, 158.059, 159.301, and 180.202.

This proposal affects the statutes in Finance Code Title 3, Subtitles B and C; and Chapters 13, 156, 157, 158, 159, and 180.

§51.100. Appeals, Hearings, and Informal Settlement Conferences.

(a) Alternative Resolution of Appeal. If ~~[legal or enforcement staff determines]~~ an enforcement action is appealed, SML ~~[that has been appealed]~~ may resolve the matter ~~[be resolved without a hearing, legal or enforcement staff may pursue settlement]~~ through negotiation, mediation, agreed order, consent order, informal settlement conference, alternative dispute resolution, or other appropriate means.

(b) Informal Settlement Conferences. ~~[The Department may conduct an informal settlement conference in order to resolve an enforcement action that has been appealed.]~~ An individual or entity subject to an enforcement action may request an informal settlement conference. An informal settlement conference does not create any new rights or obligations. Informal settlement conferences:

(1) are conducted at the discretion of legal ~~and~~ ~~[or]~~ enforcement staff;

(2) may not be requested for purposes of delay ~~[used as a delay tactic]~~; and

(3) may be ~~[primarily]~~ conducted remotely, including ~~by~~ ~~[solely over the]~~ phone or videoconference~~[, or by email]~~.

(c) Mediation. SML ~~[As applicable under Finance Code §13.017, the Department]~~ may, at the discretion of the Commissioner or his or her designee, arrange for the services of a qualified mediator or subject matter expert to assist in resolving complaints or other matters.

(d) Hearings. Hearings are governed by the rules in ~~[may be conducted in accordance with]~~ Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings)~~]; with Texas Government Code Chapter 2001, and may be conducted by the State Office of Administrative Hearings (SOAH)].~~ Cases

referred to the State Office of Administrative Hearings (SOAH) are also governed by SOAH's rules in 1 TAC Chapter 155 (concerning Rules of Procedure). All hearings are held in Austin, Texas. An appeal for judicial review under Government Code §2001.171 must be brought in a district court in Travis County, Texas.

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 April 27, 2025.

TRD-202501374

Iain A. Berry

General Counsel

Department of Savings and Mortgage Lending

Earliest possible date of adoption: June 8, 2025

For further information, please call: (512) 475-1535



SUBCHAPTER C. ADVISORY COMMITTEES

7 TAC §51.200

Statutory Authority

This proposal is made under the authority of Government Code §2110.008, authorizing a state agency that has established an advisory committee to designate, by rule, the date on which the committee will be automatically abolished. This proposal is also made under the authority of, and to implement, Finance Code §13.018.

This proposal affects Finance Code §13.018.

§51.200. Advisory Committees [and Informal Conferences].

~~[(a)]~~ The following advisory committees created under Finance Code §13.018 are continued ~~[Advisory Committees. The mortgage industry advisory committee referenced in Finance Code §§156.104 and 157.0024, as well as any advisory committees which may be created under Finance Code §13.018, shall continue]~~ in existence, and unless continued further, are ~~[shall be]~~ automatically abolished on September 1, 2030: ~~[2031-]~~

(1) the mortgage grant advisory committee under §52.5 of this title (relating to Mortgage Grant Advisory Committee); and

(2) any other advisory committee created under Finance Code §13.018 that exists at the time this rule is adopted.

~~[(b) Informal Conferences. The Commissioner, in addition to obtaining evidence and guidance from an advisory committee, may use informal conferences and consultations with other interested persons to obtain advice and guidance, and assist the Commissioner in carrying out his or her duties.]~~

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 April 27, 2025.

TRD-202501375

Iain A. Berry

General Counsel

Department of Savings and Mortgage Lending

Earliest possible date of adoption: June 8, 2025

For further information, please call: (512) 475-1535

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SUBCHAPTER D. RECOVERY FUND

7 TAC §§51.300 - 51.304

Statutory Authority

This proposal is made under the authority of: Government Code §2001.004(1), requiring a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Finance Code §156.102(a), authorizing the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing Act; and Finance Code §156.102(b-1), authorizing the commission to adopt rules to promote the fair and orderly administration of the recovery fund under Finance Code Chapter 156, Subchapter F, Recovery Fund. This proposal is also made under the authority of, and to implement, Finance Code: §§13.016, 156.504, 157.023, and 157.024.

This proposal affects the statutes in Finance Code Chapter 156, Subchapter F.

§51.300. *Purpose and Applicability.*

§51.301. *Definitions.*

§51.302. *Claims.*

§51.303. *Administrative Penalty Against Originator.*

§51.304. *Liability for Unpaid Claims.*

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 April 27, 2025.

TRD-202501376

Iain A. Berry

General Counsel

Department of Savings and Mortgage Lending

Earliest possible date of adoption: June 8, 2025

For further information, please call: (512) 475-1535

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SUBCHAPTER E. MORTGAGE GRANT FUND

7 TAC §§51.400 - 51.405

Statutory Authority

This proposal is made under the authority of: Government Code §2001.004(1), requiring a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Finance Code §156.102(a), authorizing the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing Act; and Finance Code §156.556, authorizing the commission to adopt rules to administer Finance Code Chapter 156, Subchapter G, Mortgage Grant Fund, including rules to: (i) ensure that a grant awarded from the mortgage grant fund, administered by the department's commissioner under Finance Code Chapter G, is used for a public purpose; and (ii) provide a means of recovering money awarded from the mortgage grant fund that is not used for a public purpose.

This proposal affects the statutes in Finance Code Chapter 156, Subchapter G.

§51.400. *Purpose and Applicability.*

§51.401. *Definitions.*

§51.402. *Commissioner as Manager.*

§51.403. *Grant Coordinator.*

§51.404. *Mortgage Grant Advisory Committee.*

§51.405. *Grant Program.*

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 April 27, 2025.

TRD-202501377

Iain A. Berry

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Department of Savings and Mortgage Lending

Earliest possible date of adoption: June 8, 2025

For further information, please call: (512) 475-1535

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SUBCHAPTER F. MORTGAGE GRANT FUND: RECOVERY CLAIMS FOR UNLICENSED ACTIVITY

7 TAC §§51.500 - 51.506

Statutory Authority

This proposal is made under the authority of: Government Code §2001.004(1), requiring a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Finance Code §156.102(a), authorizing the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing Act; and Finance Code §156.556, authorizing the commission to adopt rules to administer Finance Code Chapter 156, Subchapter G, Mortgage Grant Fund. This proposal is also made under the authority of, and to implement, Finance Code: §§156.555, 157.023, 157.031.

This proposal affects the statutes in Finance Code Chapter 156, Subchapter G.

§51.500. *Purpose and Applicability.*

§51.501. *Definitions.*

§51.502. *Claims.*

§51.503. *Consequences for Unlicensed Individual.*

§51.504. *Liability for Unpaid Claims.*

§51.505. *Eligibility.*

§51.506. *Statute of Limitations at Inception.*

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 April 27, 2025.

TRD-202501378

Iain A. Berry

General Counsel

Department of Savings and Mortgage Lending

Earliest possible date of adoption: June 8, 2025

For further information, please call: (512) 475-1535

CHAPTER 52. MORTGAGE GRANT FUND

7 TAC §§52.1 - 52.6

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML), proposes new rules in Chapter 52: §§52.1 - 52.6 (proposed rules).

Explanation of and Justification for the Rules

The proposed rules are the product of SML's rule review of 7 TAC Chapter 51, Department Administration, conducted in accordance with Government Code §2001.039. The existing rules in Chapter 51 establish various requirements concerning SML's administrative processes and procedures.

Changes Concerning the Reorganization of Chapter 51

SML has determined it should reorganize its rules in 7 TAC Chapter 51 by relocating the existing rules in Subchapter E, Mortgage Grant Fund, to Chapter 52, a vacant chapter. The proposed rules, if adopted, would effectuate this change.

Changes Concerning the Mortgage Grant Fund

The existing rules in Chapter 51, Subchapter E, Mortgage Grant Fund, govern SML's administration of the mortgage grant fund under Finance Code Chapter 156, Subchapter G, which provides grants for financial education relating to mortgage loans. The proposed rules: in §52.2, Definitions, adopt a new definition for "SML" and eliminate the definition for "Department"; in §52.4, Grant Coordinator, clarify that the SML commissioner may designate one or more SML employees to act on behalf of the grant coordinator when the grant coordinator is not available, and clarify that the grant coordinator may appear at hearings and judicial proceedings related to the mortgage grant fund; in §52.6, Grant Program, remove provisions related to disbursements from the mortgage grant fund made for the purpose of Finance Code §156.554(b)(3) as being unrelated to the grant program that is the subject of the rule, clarify that a political subdivision of this state is eligible to receive a grant, and clarify that a residential mortgage loan servicer registered with SML that is a nonprofit organization is eligible to receive a grant, and eliminate the requirement for grantees to make a longitudinal report after the grant cycle is completed.

Other Modernization and Update Changes

The proposed rules, if adopted, would make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for SML, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs or losses or increases in revenue to the state overall that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules.

Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to SML because SML is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because SML does not contribute to the state's general revenue fund.

Public Benefits

Hector Retta, the SML Commissioner, has determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be for members of the public to better understand SML's administrative processes and procedures.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

Hector Retta has determined that for the first five years the proposed rules are in effect there are no probable economic costs to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, SML is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, SML 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 legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to Changes Concerning the Mortgage Grant Fund establish various rule requirements, as discussed in that section; (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Changes Concerning the Mortgage Grant Fund have the effect of repealing existing rule requirements as discussed in such section; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no probable economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. Comments must be received within 30 days after publication of this notice.

Statutory Authority

This proposal is made under the authority of: Government Code §2001.004(1), requiring a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Finance Code §156.102(a), authorizing the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing Act; and Finance Code §156.556, authorizing the commission to adopt rules to administer Finance Code Chapter 156, Subchapter G, Mortgage Grant Fund, including rules to: (i) ensure that a grant awarded from the mortgage grant fund under Finance Code Chapter G, is used for a public purpose; and (ii) provide a means of recovering money awarded from the mortgage grant fund that is not used for a public purpose.

This proposal affects the statutes in Finance Code Chapter 156, Subchapter G.

§52.1. Purpose.

This chapter governs SML's administration of the Mortgage Grant Fund under Finance Code Chapter 156, Subchapter G other than claims made against the Mortgage Grant Fund in accordance with Finance Code §156.555 which are governed by Chapter 53 of this title (relating to Recovery Claims).

§52.2. Definitions.

In this chapter, the following definitions apply, unless the context clearly indicates otherwise:

(1) "Auxiliary mortgage loan activity company" has the meaning assigned by Finance Code §156.002.

(2) "Commissioner" means the savings and mortgage lending commissioner appointed under Finance Code Chapter 13.

(3) "Finance Commission" means the Finance Commission of Texas.

(4) "Grant Coordinator" means the employee of SML that assists the Commissioner in discharging his or her duties related to the Mortgage Grant Fund, as provided by §52.4 of this title (relating to Grant Coordinator).

(5) "Mortgage Grant Advisory Committee" or "MGAC" means the Mortgage Grant Advisory Committee created to advise the Commissioner concerning administration of the MGF grant program, as provided by §52.5 of this title (relating to Mortgage Grant Advisory Committee).

(6) "Mortgage Grant Administration Manual" or "MGAM" means the manual of the policies and procedures governing administration of the MGF and the MGF grant program, as provided by §52.3 of this title (relating to Management by the Commissioner).

(7) "Mortgage Grant Fund" or "MGF" means the fund the Commissioner administers under Finance Code Chapter 156, Subchapter G.

(8) "SML" means the Department of Savings and Mortgage Lending.

§52.3. Management by the Commissioner.

(a) Management by the Commissioner. As provided by Finance Code §156.553, the Commissioner serves as manager and administers all aspects of the MGF.

(b) Periodic Reports to the Finance Commission. The Commissioner or Grant Coordinator will report the status and activities of the MGF to the audit committee of the Finance Commission at each regular meeting of the committee, or as directed by the Finance Commission.

(c) Mortgage Grant Administration Manual. The Commissioner maintains a manual of the policies and procedures governing administration of the MGF and the MGF grant program. The MGAM, and any amendments to the MGAM, must be approved by the Finance Commission.

§52.4. Grant Coordinator.

The Commissioner may appoint an employee of SML to serve as Grant Coordinator to assist the Commissioner in discharging his or her duties related to the MGF. The Commissioner may designate one or more SML employees to act on behalf of the Grant Coordinator when the Grant Coordinator is not available. The Grant Coordinator serves under the direction of the Commissioner and acts as liaison between grantees, the Commissioner, and the MGAC. The Commissioner may delegate any authority of the Commissioner to act as manager of the MGF to the Grant Coordinator, including any duties listed under Finance Code §156.553(a).

§52.5. Mortgage Grant Advisory Committee.

(a) Purpose. The MGAC exists as an advisory committee to make recommendations to the Commissioner and Grant Coordinator concerning administration of the MGF grant program. The MGAC will continue in existence until the abolishment date set by §51.200 of this title (relating to Advisory Committees).

(b) Governance. The MGAC is governed by the MGAM.

(c) Advisory Role of the MGAC. The MGAC, at the request of the Commissioner, makes recommendations concerning administration of the MGF grant program including:

(1) evaluating grant applications to determine whether the application should be approved, and the amount of the grant award;

(2) monitoring ongoing grant awards to evaluate performance and determine compliance;

(3) considering potential amendments to the MGAM; and

(4) evaluating potential candidates for appointment to the MGAC.

§52.6. Grant Program.

(a) Purpose. This section governs disbursements made from the MGF to provide grants for financial education relating to mortgage loans, as provided by Finance Code §156.554(b)(1).

(b) Grant Cycle. The fund may have one competitive grant cycle every two years. A new grant cycle begins on January 1 of every odd-numbered year. An applicant may choose to apply for a one-year

grant or a two-year grant. The grant cycle for a one-year grant begins on January 1 and ends on December 31 of the odd-numbered year for the applicable cycle. The grant cycle for a two-year grant begins on January 1 of the odd-numbered year and ends on December 31 of the following even-numbered year for the applicable cycle.

(c) Eligibility. A grant may only be given to a company licensed by SML as an auxiliary mortgage loan activity company, a nonprofit organization, or a political subdivision of this state. Grant funding is not available to entities licensed by or registered with SML other than auxiliary mortgage loan activity companies and residential mortgage loan servicers that operate as a nonprofit organization.

(d) Grant Application. To be considered for the grant program, an applicant must submit a completed grant application by the deadline and in accordance with the instructions for the applicable grant cycle. Late or incomplete grant applications will not be accepted. Meeting eligibility criteria and timely submission of a grant application does not guarantee a grant award.

(e) Review and Approval. The Commissioner, after considering the recommendations of the MGAC and the Grant Coordinator, will review timely and complete applications and determine the grants awarded.

(f) Grant Agreement. To participate in the grant program, a grantee approved by the Commissioner to receive a grant must execute the grant agreement approved by the Commissioner for the applicable grant cycle and tailored to that grantee (grant agreement).

(g) Grantee Compliance. A grantee must comply with applicable financial, administrative, and programmatic terms and conditions, and exercise proper stewardship over grant funds. A grantee must use awarded funds in compliance with the following in effect for the applicable grant cycle:

- (1) all applicable state laws and regulations;
- (2) all applicable federal laws and regulations;
- (3) the MGAM;
- (4) the grant agreement signed by the Commissioner or the Commissioner's designee and the grantee;
- (5) all reporting and monitoring requirements, as outlined in the grant agreement; and
- (6) any other guidance documents posted on the MGF webpage for the applicable grant cycle.

(h) Reporting and Monitoring.

(1) General reporting requirements. To receive reimbursement of grant expenses a grantee must:

(A) submit periodic grant reports as provided by the grant agreement;

(B) maintain satisfactory compliance with the grant agreement including the grantee's goals approved for funding in the grant agreement; and

(C) identify, track, and report performance measures.

(2) Progress Reports. A grantee must submit progress reports that demonstrate performance outcomes over the term of the grant in accordance with and by the deadlines specified in the grant agreement.

(3) Monitoring. The Grant Coordinator may use the following methods to monitor a grantee's performance and expenditures:

(A) Audit. The Commissioner or Grant Coordinator may audit a grantee to review and compare individual source documentation and materials to summary data provided during the reporting process; or

(B) Site Visits. The Commissioner or Grant Coordinator may visit a grantee's place of business or other place where grant activities are conducted to evaluate performance and determine compliance.

(i) Reimbursement.

(1) Eligibility. To be eligible for reimbursement, a grantee must comply with the grant agreement and all other items listed in subsection (g) of this section. To ensure that grant funds are used for a public purpose as provided by Finance Code §156.556(1), grant funds will only be awarded on a cost reimbursement basis for actual, allowable, and allocable costs incurred by a grantee pursuant to the grant agreement. Expenses incurred before the beginning of or after termination of the grant agreement are not eligible for reimbursement. The Commissioner may withhold reimbursements when a grantee is not in compliance with the grant agreement or other items listed in subsection (g) of this section.

(2) Procedure. To request reimbursement, a grantee must submit a progress report and reimbursement request in accordance with and by the deadlines specified in the grant agreement. The progress report and reimbursement request must be made using the current forms prescribed by the Commissioner for the applicable grant cycle. The progress report must be detailed and include supporting documentation to justify the reimbursement request. SML will review and approve requests for reimbursement that satisfy the requirements and promptly disburse funds for approved requests.

(j) Misuse of Grant Funds. The Commissioner may require a refund of grant funds already disbursed to the grantee and may cancel the grant agreement or disqualify the grantee from receiving future grants if:

(1) grant funds are not used for a public purpose allowable under Finance Code §156.554(b)(1);

(2) grant funds are used in an illegal manner;

(3) the grantee violates the grant agreement or other items listed in subsection (g) of this section; or

(4) the Commissioner determines that the grantee made a material misrepresentation in obtaining the grant or in seeking reimbursement of 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 April 27, 2025.

TRD-202501379

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Department of Savings and Mortgage Lending

Earliest possible date of adoption: June 8, 2025

For further information, please call: (512) 475-1535



CHAPTER 53. RECOVERY CLAIMS

7 TAC §§53.1 - 53.12

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML), proposes new rules in Chapter 53: §§53.1 - 53.12 (proposed rules).

Explanation of and Justification for the Rules

The proposed rules are the product of SML's rule review of 7 TAC Chapter 51, Department Administration, conducted in accordance with Government Code §2001.039. The existing rules in Chapter 51 establish various requirements concerning SML's administrative processes and procedures.

Changes Concerning the Reorganization of Chapter 51

SML has determined it should reorganize its rules in 7 TAC Chapter 51 by relocating the existing rules in Subchapter D, Recovery Fund, and Subchapter F, Mortgage Grant Fund: Recovery Claims for Unlicensed Activity, to Chapter 53, a vacant chapter. The proposed rules, if adopted, would effectuate this change.

Changes Concerning Recovery Claims

The existing rules in Chapter 51, Subchapter D, Recovery Fund, govern SML's administration of Finance Code §13.016 and Chapter 156, Subchapter F, Recovery Fund, which creates a recovery fund that allows for claims to compensate persons for actual, out-of-pocket damages incurred because of violations committed by an individual licensed by SML as a residential mortgage loan originator under Finance Code Chapter 157. The existing rules in Chapter 51, Subchapter F, Mortgage Grant Fund: Recovery Claims for Unlicensed Activity, govern SML's administration of Finance Code §156.555, allowing for claims to be made against the Mortgage Grant Fund created under Finance Code Chapter 156, Subchapter G, Mortgage Grant Fund, to compensate persons for actual, out-of-pocket damages incurred because of fraud committed by an individual who acted as a residential mortgage loan originator but did not hold a residential mortgage loan originator license under Finance Code Chapter 157. The proposed rules: in §53.2, Definitions, adopt new definitions for "Consumer Responsiveness Unit," "recovery claim," and "SML," and eliminate the definition for "Department"; in §53.3, Submitting a Claim, clarify where a claim application should be sent, clarify that, if a claimant submits a scanned copy of the claim application, the claimant must maintain the original application and send it by mail to SML on request, and clarify that a claim application that is incomplete may be deemed withdrawn after notice is sent to the claimant and the claimant fails to provide the additional information within 30 days; in §53.4, Investigating the Claim, clarify that claims are generally investigated in the same manner as a complaint, and that, if the claim relates a pending complaint, the investigator may investigate the claim and the complaint simultaneously, and, if the claim relates to a closed complaint, the investigator may adopt the findings of that complaint investigation; in §53.5, Resolution by Agreement, clarify where notice to SML of a claim being resolved by the parties should be sent, and that, upon resolution of a claim by the parties, SML may consider the claim withdrawn or hold the claim in abatement pending satisfaction of the agreement; in §53.6, Preliminary Determination; Requests for Appeal, clarify where an appeal of SML's preliminary determination of the claim should be sent; in §53.7, Administrative Hearings, clarify that, at an administrative hearing on a recovery claim, SML will present its preliminary determination and then allow the claimant to present their claim and the respondent to contest or defend against the claim, and clarify that the claimant has the burden of proving they are entitled to recovery; in

§53.12, Recoverable Damages, clarify the types of damages that a claimant may recover.

Other Modernization and Update Changes

The proposed rules, if adopted, would make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for SML, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs or losses or increases in revenue to the state overall that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to SML because SML is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because SML does not contribute to the state's general revenue fund.

Public Benefits

Hector Retta, the SML Commissioner, has determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be for members of the public to better understand SML's administrative processes and procedures.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

Hector Retta has determined that for the first five years the proposed rules are in effect there are no probable economic costs to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, SML is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, SML 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 legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to Changes Concerning Recovery Claims establish various rule requirements, as discussed in that section; (6) the proposed

rules do not expand, limit, or repeal an existing regulation (rule requirement); (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no probable economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. Comments must be received within 30 days after publication of this notice.

Statutory Authority

This proposal is made under the authority of: Government Code §2001.004(1), requiring a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Finance Code §156.102(a), authorizing the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing Act; Finance Code §156.102(b-1), authorizing the commission to adopt rules to promote the fair and orderly administration of the recovery fund under Finance Code Chapter 156, Subchapter F, Recovery Fund; and Finance Code §156.556, authorizing the commission to adopt rules to administer Finance Code Chapter 156, Subchapter G, Mortgage Grant Fund. This proposal is also made under the authority of, and to implement, Finance Code: §§13.016, 156.504, 156.555, 157.023, 157.024, and 157.031.

This proposal affects the statutes in Finance Code Chapter 156, Subchapters F and G.

§53.1. Purpose.

This chapter governs SML's administration of:

(1) Finance Code §13.016 and Chapter 156, Subchapter F, creating a recovery fund that allows for claims to compensate persons for actual, out-of-pocket damages incurred because of violations committed by an individual licensed by SML as a residential mortgage loan originator under Finance Code Chapter 157; and

(2) Finance Code §156.555, allowing for claims to be made against the Mortgage Grant Fund created under Finance Code Chapter 156, Subchapter G, to compensate persons for actual, out-of-pocket

damages incurred because of fraud committed by an individual who acted as a residential mortgage loan originator but did not hold a residential mortgage loan originator license under Finance Code Chapter 157.

§53.2. Definitions.

In this chapter, the following definitions apply, unless the context clearly indicates otherwise.

(1) "Application" means a request, in any form, for an offer (or a response to a solicitation of an offer) of residential mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, or the mortgage loan amount.

(2) "Claimant" means a mortgage applicant making or seeking to make a claim against the recovery fund in accordance with Finance Code §156.504 or against the Mortgage Grant Fund in accordance with Finance Code §156.555.

(3) "Commissioner" means the savings and mortgage lending commissioner appointed under Finance Code Chapter 13.

(4) "Consumer Responsiveness Unit" or "CRU" means the section or unit within SML that receives inquiries and complaints from consumers and investigates complaints.

(5) "Mortgage applicant" means an applicant for a residential mortgage loan or a person who is solicited (or contacts a residential mortgage loan originator in response to a solicitation) to obtain a residential mortgage loan, and includes a person who has not completed or started completing a formal loan application on the appropriate form (e.g., the Fannie Mae Form 1003 Uniform Residential Loan Application), but has submitted financial information constituting an application, as provided by paragraph (1) of this section.

(6) "Mortgage Grant Fund" means the fund the Commissioner administers in accordance with Finance Code Chapter 156, Subchapter G.

(7) "Recovery claim" or "claim" means a claim made against the recovery fund in accordance with Finance Code §156.504 or against the Mortgage Grant Fund in accordance with Finance Code §156.555.

(8) "Recovery fund" means the fund the Commissioner administers in accordance with Finance Code §13.016 and Chapter 156, Subchapter F.

(9) "Residential mortgage loan" has the meaning assigned by Finance Code §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a dwelling, but is used for a commercial purpose such as a professional office, salon, or other non-residential use, and is not used as residence.

(10) "Respondent" means an individual against whom a recovery claim is made.

(11) "SML" means the Department of Savings and Mortgage Lending.

§53.3. Submitting a Claim.

(a) Application Required. A claimant submits a claim by filing a written application using the current form prescribed by the Commissioner and posted on SML's website (sml.texas.gov). The application may be sent by mail (Attn: Consumer Responsiveness Unit, 2601

N. Lamar Blvd., Suite 201, Austin, Texas 78705) or by email (complaintsubmission@sml.texas.gov). If sent by email, the claimant must include a quality, scanned version of the completed application, and must maintain the original application throughout the claims process and send it to SML by mail on request.

(b) Incomplete Filings; Deemed Withdrawal. An application will only be accepted for filing if it is complete. If an application is incomplete, SML will send written notice to the claimant specifying the additional information required to render the application complete. The application may be deemed withdrawn if the claimant fails to provide the additional information within 30 days after the date written notice is sent to the claimant as provided by this subsection. Among other things, the application must:

- (1) be verified and sworn under oath before a notary;
- (2) identify a valid respondent; and

(3) identify actual, out-of-pocket damages meeting the requirements of §53.12 of this title (relating to Recoverable Damages).

§53.4. Investigating the Claim.

When a claim is accepted for filing, it will be assigned to an investigator within the CRU to conduct an investigation. Claims are generally investigated in the same manner as a complaint under §51.4 of this title (relating to Processing Inquiries and Complaints). If the claim relates to a pending complaint, the investigator may investigate the two simultaneously. If the claim relates to a closed complaint, the investigator may adopt the findings of that investigation instead of or in addition to investigating the claim.

§53.5. Resolution by Agreement.

The respondent and the claimant may resolve the claim by agreement at any time. If an agreement is reached, the parties must promptly send written notice to SML by mail (Attn: Legal Division, 2601 N. Lamar Blvd., Suite 201, Austin, Texas 78705) or by email (enforcement@sml.texas.gov). If an agreement is reached, SML may, in its sole discretion, consider the claim withdrawn or hold the claim in abatement pending satisfaction of the agreement. If held in abatement, the claim is deemed withdrawn upon satisfaction of the agreement.

§53.6. Preliminary Determination; Requests for Appeal.

(a) Preliminary Determination. After the claim is investigated, the claim will be referred to SML's legal and enforcement section to issue a preliminary determination.

(b) Requests for Appeal. The respondent or the claimant has 30 days to appeal the preliminary determination. An appeal must be in writing and received by SML within 30 days after the date the preliminary determination is issued. An appeal may be sent by mail (Attn: Legal Division, 2601 N. Lamar Blvd., Suite 201, Austin, Texas 78705) or by email (enforcement@sml.texas.gov).

(c) Effect of Not Appealing. A respondent or claimant who does not timely appeal the preliminary determination is deemed to have irrevocably waived any right they had to challenge the preliminary determination or request a hearing on the preliminary determination and is deemed not to have exhausted all administrative remedies for purposes of judicial review under Government Code §2001.171.

§53.7. Administrative Hearings.

(a) If an appeal is requested under §53.6 of this title (relating to Preliminary Determination; Requests for Appeal), SML will cause an administrative hearing to be set. The hearing is governed by §51.100 of this title (relating to Appeals, Hearings, and Informal Settlement Conferences). At the hearing, SML will present its preliminary determination issued under §53.6 of this title. The claimant will then have

the opportunity to present their claim, and the respondent will have the opportunity to contest or defend against the claim.

(b) The claimant has the burden of proving they are entitled to recovery. The burden of proof is by a preponderance of the evidence.

§53.8. Payment of an Approved Claim.

(a) Payment of an Approved Claim. Upon approval of a claim, the Commissioner will issue an order disbursing funds from the recovery fund or the Mortgage Grant Fund, as applicable. The funds will be disbursed after the date on which the order becomes final and is not appealable for purposes of:

(1) Finance Code §156.504(d), if a hearing is not required under §53.7 of this title (relating to Administrative Hearings); or

(2) Government Code Chapter 2001, if a hearing is required under §53.7 of this title.

(b) Cooperation by Claimant Required. The claimant must comply with SML's instructions for facilitating payment of an approved claim. Among other things, the claimant must complete forms required to cause the claimant to be a valid payee for purposes of the Texas Comptroller of Public Accounts.

§53.9. Consequences for the Respondent.

(a) Administrative Penalty. If the Commissioner approves a claim, the Commissioner may impose an administrative penalty against the respondent for the violations of law giving rise to the claim.

(b) Grounds for Denial. Failure by the respondent to pay the administrative penalty constitutes grounds for denial of an application for a residential mortgage loan originator license under Finance Code Chapter 157.

§53.10. Unpaid Claims.

(a) No Liability. The recovery fund, Mortgage Grant Fund, the Commissioner, and SML are not liable to a claimant for a claim approved by the Commissioner if the funds in the recovery fund or Mortgage Grant Fund are insufficient to pay the claim.

(b) Payment of Unpaid Claims. If the recovery fund or Mortgage Grant Fund contains insufficient funds to pay a claim, SML will:

(1) record the date the claim was approved; and

(2) pay approved but unpaid claims for which a recordation was made under paragraph (1) of this subsection as funds in the recovery fund or Mortgage Grant Fund become available, in the order of the recorded date of such claims.

§53.11. Claims for Unlicensed Activity: Eligibility.

(a) Purpose. Finance Code §156.555(b) adopts by reference the eligibility and procedural requirements for making a claim on the recovery fund in accordance with Finance Code Chapter 156, Subchapter F. This section clarifies how certain requirements apply to a claim made against the Mortgage Grant Fund in accordance with Finance Code §156.555.

(b) Actions by an Unlicensed Individual Acting as an Originator. For a claimant to recover damages from the Mortgage Grant Fund, the respondent must have been acting or attempting to act in the capacity of a residential mortgage loan originator - actions for which a license under Finance Code Chapter 157 is required as provided by Finance Code §157.012 and §55.100 of this title (relating to Licensing Requirements).

(c) Fraudulent Acts. Recovery under Finance Code §156.555 is limited to acts of fraud committed by an individual who acted as a residential mortgage loan originator but did not hold the license required

by Finance Code Chapter 157. Finance Code §156.501(b), applicable to claims made on the recovery fund, provides that recovery is limited to acts by a licensed residential mortgage loan originator that constitute a violation of specific, enumerated provisions of Finance Code §§157.024(a) and 156.304(b). As a result, to recover under Finance Code §156.555, a claimant must establish that the acts of the unlicensed individual would have constituted fraudulent dealings for purposes of Finance Code §157.024(a)(3), had he or she been licensed as a residential mortgage loan originator at the time of such acts.

§53.12. Recoverable Damages.

(a) Recoverable Damages. A claimant may only recover out-of-pocket monetary damages that reimburse the claimant for money they have actually lost (money losses). To be recoverable, the damages must be direct damages (also known as general damages) that are caused by and directly related to the respondent's actions and therefore conclusively presumed to have been foreseeable by the respondent as a usual and necessary consequence of the respondent's actions.

(1) Recoverable damages can include the following expenses typically incurred by a mortgage applicant in connection with a residential mortgage loan, if they are paid by the claimant:

- (A) application fees;
- (B) appraisal fees;
- (C) rate lock fees;
- (D) origination fees;
- (E) loan processing fees; and

(F) other fees for settlement services collected from the borrower when a residential mortgage loan is closed.

(2) Recoverable damages can include the following expenses typically incurred by a mortgage applicant in a real estate transaction directly related to a residential mortgage loan, if they are paid by the claimant:

- (A) option fees;
- (B) earnest money;
- (C) home inspection fees; and
- (D) home warranty fees.

(b) Damages Not Recoverable. A claimant may not recover consequential damages (also known as special damages), future damages, or noneconomic damages.

(1) Noneconomic damages that are not recoverable include, but are not limited to:

- (A) compensation for physical pain and suffering;
- (B) mental or emotional pain and anguish;
- (C) loss of consortium;
- (D) disfigurement;
- (E) physical impairment;
- (F) loss of companionship and society;
- (G) inconvenience;
- (H) loss of enjoyment of life; and
- (I) injury to reputation.

(2) The following damages are expenses that may be incurred by a mortgage applicant in connection with a real estate sales

transaction related to a residential mortgage loan, but are deemed to be consequential damages that are not recoverable (list is not exhaustive):

(A) travel expenses paid in connection with the mortgage applicant shopping for real estate (e.g., fuel expenses, vehicle rental, airfare, and hotel fees);

(B) expenses related to terminating the mortgage applicant's preexisting housing arrangements (e.g., lease termination fees, cleaning fees, reletting fees, and lost security deposit);

(C) expenses paid in connection with the mortgage applicant relocating to their prospective housing arrangements (e.g., shipping fees, moving expenses, and storage fees);

(D) expenses paid in connection with securing replacement housing (e.g., rent, hotel fees, utility costs, and home furnishings); and

(E) daily living expenses (e.g., food, clothing, and personal care items).

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 April 27, 2025.

TRD-202501380

Iain A. Berry

General Counsel

Department of Savings and Mortgage Lending

Earliest possible date of adoption: June 8, 2025

For further information, please call: (512) 475-1535



TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 16. HISTORIC SITES

13 TAC §16.3

The Texas Historical Commission (hereinafter referred to as the "commission") proposes to amend §16.3, relating to Addition of Historic Sites to the Texas Historical Commission Historic Sites Program. This amendment is proposed to establish the process and criteria for acquiring land for existing state historic sites.

FISCAL NOTE. Joseph Bell, Executive Director, has determined that for the first five-year period the amended rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

PUBLIC BENEFIT. Mr. Bell has determined that for the first five-year period the amended rule is in effect, the public benefit will be the increased efficiency and effectiveness in the implementation of the Texas Historical Commission Historic Sites Program and the Commission's ability to add historic sites and other real property to this program.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Bell has determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing

these rules. Accordingly, no regulatory flexibility analysis, as specified in Texas Government Code § 2006.002, is required.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendments to these rules, as proposed. There is no effect on local economy for the first five years that the proposed section is in effect; therefore, no local employment impact statement is required under Texas Government Code §§ 2001.022 and 2001.024(a)(6).

GOVERNMENT GROWTH IMPACT STATEMENT. During the first five years that the amendments would be in effect, the proposed amendments: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed rules will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The Commission has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code § 2007.043.

PUBLIC COMMENT. Comments on the proposal may be submitted to Joseph Bell, Executive Director, at admin@thc.texas.gov, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711-2276. Comments will be accepted for 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY. The amendments are proposed under Texas Government Code §442.0053, which provides the Commission with the authority to promulgate rules and acquire real property by purchase, gift, or in any manner, for inclusion in the historic sites system.

CROSS REFERENCE TO OTHER LAW. No other statutes, articles or codes are affected by these amendments.

§16.3. Addition of Historic Sites or Real Property to the Texas Historical Commission Historic Sites Program.

(a) Criteria for the addition of new Historic Sites. The addition of new Historic Sites will follow the "State Historic Sites Historic Properties Collection Plan" in a three-step process as posted on the Texas Historical Commission's (Commission) website at thc.texas.gov detailing themes and subthemes in Texas history, site assessment, operational and managerial evaluations processes and the following criteria:

(1) The property must have recognized statewide or national significance based on the standards of the National Register of Historic Places.

(2) The property should be able to provide interpretation of a significant theme or event of Texas history that is not fully represented by the Commission's existing historic sites or other historic sites accessible to the public. The Commission will strive to maintain a geographic, cultural and thematic balance in its program.

(3) The property should have exceptional integrity of location (including surrounding environment), design, material, setting, feeling, and association.

(4) The property should have appropriate collections (objects, manuscript material, artifacts) associated with the historic site or necessary artifacts related to the site's history and period of significance should be identified and available.

(5) The property must be appropriate for use as an interpretive museum or historic site, have high potential to attract and accommodate diverse and new audiences, and be accessible to travelers as well as to the local community.

(6) The property must be available without restrictions that would limit the Commission's options for preservation and interpretation as a historic site (for example, a life estate retained by the grantor, restrictions against future sale or conveyance, or limits on alterations deemed appropriate by the Commission). The Commission encourages the use of easements or other restrictions to ensure the preservation of historic sites.

(7) Financial resources must be available or assured, including an endowment fund where appropriate, or sources of funding must be identified in a comprehensive funding plan to ensure the restoration, interpretation, development, long term operation and preservation of the site.

(8) The property must have the potential for strong supporting partnerships including community support.

(b) Evaluation Process. To evaluate the site against these criteria, the Commission will follow a three-step process as follows.

(1) In phase one, staff will determine if the property should be recommended to be added to the Commission's portfolio of State Historic Sites. The preliminary evaluation will briefly address the following issues:

(A) Where is the property located?

(B) What is the current condition of the property?

(C) What improvements would need to be made to meet THC standards for visitor access, experience, and safety?

(D) What is the importance of the property in Texas and/or American History?

(E) What is the estimation of the property's value, strategically, operationally and culturally?

(F) Are there resources such as artifact collections or endowment that accompany the property?

(G) Are there resources available to adequately interpret the property's themes and stories to the public?

(H) Are the necessary resources available to preserve and care for the property's physical infrastructure and collections?

(I) Does THC have the financial and FTE resources to operate the property?

(J) What is the property's potential for the generation of sustainable visitation and revenue?

(2) Phase 2. If the property is recommended for additional study, a staff committee will be assigned to conduct a preliminary review of the property with reference to criteria noted in subsection (a) of this section. The committee will make a recommendation to the Commission whether to proceed with the development of a historic site management plan in phase three of the evaluation process.

(3) Staff will obtain and use the following information in phase two:

(A) A description of the property, including land, structures and other features.

(B) A preliminary inventory of collections and equipment.

(C) A statement of significance or reference to its designation on the National Register of Historic Places/National Historic Landmark and an evaluation of the site's integrity.

(D) A statement from the current owner indicating a willingness to transfer the real and relevant personal property and the terms and conditions for such a transfer.

(E) Needed and available funding for development costs and continuing operational costs.

(F) Letters of support from interested parties, including an indication of willingness to create an appropriate support group.

(G) A statement identifying how the property would support the educational mission of the Historic Sites Program to serve a broad and diverse audience.

(H) A preliminary estimate of the visitation and costs for development and operation of the site.

(4) Phase 3. Upon positive action by the Commission on the recommendation noted in paragraph (2) of this subsection, the staff will prepare or have prepared a management plan in phase three for the site's evaluation including:

(A) Evaluation of the site, including but not limited to buildings, support facilities, infrastructure (including roads, trails, utility service/water and sewer systems), landscape features, and collections.

(B) Required staffing and services for operation of the site, including ongoing costs of preservation, operation, maintenance and marketing.

(C) Preservation and facility development needs.

(D) Costs and timeline for making the property available to the public.

(E) Required staffing and consultant services for development of the site.

(F) Projected audience/annual visitation, sources of funding to support programming including community partnerships, potential earned revenue, philanthropic and endowment.

(5) The management plan will be reviewed by a panel of experts including an independent Texas historian, museum professional, and expert in heritage tourism and their recommendation will be taken into consideration by the Commission to determine whether the property should be accepted.

(6) The decision to accept a site is within the sole discretion of the Commission, including determining whether acceptance of a property that meets all technical criteria is in the best interest of the State.

(c) Criteria for the addition of real property. The Commission finds there are many factors that affect the suitability of real property for use as a historic site or inclusion in the Texas Historical Commission Historic Sites Program and objectively quantifying the relative value of one tract of land over another can be difficult if not impossible. However, all potential acquisitions (including donations) of real property will be evaluated for their attributes with respect to the categories delineated in this subsection. The relative importance of each parameter within the categories will vary from proposal to proposal,

depending on the specific needs and goals of the Commission at the time of consideration. Real property [A property] that meets the criteria in this subsection [is adjacent to an existing THC State Historic Site that will enhance the preservation, protection or interpretation of the existing site, or a property that is needed to support the operations of the state historic site as a program support facility,] may be acquired by purchase or donation by action of the Commission on recommendation of the Executive Director, without the evaluation process described in subsection (b) of this section.

(1) Historical or Interpretive Value. The real property being acquired:

(A) offers or provides significant archaeological, cultural, historical, or interpretive value consistent with the commission's mission of preserving and protecting the historical resources of the State;

(B) qualifies as a Traditional Cultural Property (TCP);

(C) may enhance the visitor experience or understanding of an existing state historic site; or

(D) restores a historic site's original cultural landscape.

(2) Contiguity with Existing State Historic Sites. The real property being acquired:

(A) is near or adjacent to an existing state historic site;

(B) will enhance the preservation, protection, or interpretation of an existing state historic site;

(C) will provide or enhance access to an existing state historic site;

(D) is needed to support the operations of the state historic site as a program support facility;

(E) will provide buffers for existing state historic sites from development or other incompatible land uses; or

(F) will protect viewsheds, landscapes, or the historic character of an existing state historic site.

(3) Other characteristics of significance. The real property being acquired may:

(A) have been historically associated with an existing state historic site;

(B) yield information important in prehistory or history;

(C) accommodate critical non-historic construction, utilities, or uses that would otherwise compromise the historic nature and character of an existing state historic site; or

(D) fill a gap in the inventory of historical or cultural resources offered by existing state historic sites.

(4) The decision to add real property to the Texas Historical Commission Historic Sites Program is within the sole discretion of the Commission, including determining whether the acceptance or purchase of a particular tract of real property is in the best interest of the State. When considering whether to purchase real property to add to the Texas Historical Commission Historic Sites Program, the Commission in its sole discretion may determine the appropriate price to pay for the real property, even if that price exceeds the fair market appraised value, based on the criteria in subsection (c) and the historical significance of the real property to the State.

(d) A right of way or easement required to allow for installation or connection of necessary utilities at a THC State Historic Site between regular meetings of the Commission may be approved by the

Executive Director with the approval of the Chairman. This action will be ratified at the next meeting of the Commission.

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

Filed with the Office of the Secretary of State on April 28, 2025.

TRD-202501401

Joseph Bell

Executive Director

Texas Historical Commission

Earliest possible date of adoption: June 8, 2025

For further information, please call: (512) 463-6100



TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

34 TAC §41.12

The Board of Trustees of the Teacher Retirement System of Texas (TRS) proposes to amend §41.12 (relating to Eligibility for the Alternative Plan for Medicare-Eligible Participants) under Subchapter A (relating to Retiree Health Care Benefits (TRS-CARE)) of Chapter 41 in Part 3 of Title 34 of the Texas Administrative Code.

BACKGROUND AND PURPOSE

The TRS-Care Alternative Plan offered under §1575.158(d) and administered under Chapter 1575 of the Insurance Code no longer offers value to our retirees and their eligible dependents due to different factors.

Under §1575.158(d) of the Insurance Code, the trustee has the discretion to create an alternative plan in addition to the Medicare Advantage plan with a Medicare prescription drug plan (TRS-Care MA) under § 1575.158(c), if the trustee deems the TRS-Care MA to not be appropriate for the program. Exercising this authority, TRS established the TRS-Care Alternative Plan in 2018, as outlined in 34 TAC §41.12.

In 2018, the TRS-Care MA had a limited network of providers in rural areas, and the TRS-Care Alternative Plan addressed the members who did not have adequate access to providers. Since then, TRS carriers have continued to build out and expand the TRS-Care MA network significantly, and there have been no members participating in the TRS-Care Alternative plan due to lack of provider access for several years.

Additionally, when TRS initially created the TRS-Care Alternative Plan, it aimed to offset the financial burdens imposed on Medicare-eligible TRS members by certain federal laws. Participation in TRS-Care Medicare Advantage has always required maintaining Part B coverage, with the exception of those enrolled in the Alternative Plan. The TRS-Care Alternative Plan was designed to protect members who found enrolling in Medicare Part

B cost-prohibitive, allowing them to participate in the TRS-Care Alternative Plan. However, with the repeal of the federal laws that originally spurred the creation of the plan, the TRS-Care Alternative Plan has lost its practical purpose.

To the contrary, forgoing Medicare Part B coverage may now be more disadvantageous for our members. Members who do not elect Part B coverage when they first become eligible face increasingly higher premiums over time. By phasing out the TRS-Care Alternative Plan, TRS aims to encourage new enrollees to TRS-Care to secure Part B coverage promptly. This approach not only benefits TRS members by helping them avoid escalating premiums, but also helps mitigate unnecessary risks to the TRS-Care trust fund.

TRS proposes to amend §41.12 to close new enrollment to the TRS-Care Alternative Plan beginning January 1, 2026. All TRS-Care Alternative Plan members who enrolled in the plan before that date may remain in the plan. However, from that date forward, Medicare-eligible members who desire to participate in the TRS-Care Program must enroll and maintain Medicare Part B coverage to join the TRS-Care MA. The proposed amendments to §41.12 outline these enrollment requirements and ensure compliance for Medicare-eligible members.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed amendments to §41.12 will be in effect, there will be no foreseeable negative fiscal implications for state governments and no foreseeable fiscal implications for local governments as a result of administering proposed amended §41.12. Phasing out the TRS-Care Alternative Plan for new enrollees will enhance the financial stability of the TRS-Care trust fund for the over 214,000 participants in the plan. The TRS-Care Alternative Plan is significantly more costly than the TRS-Care MA, which is the primary health benefit program TRS offers to Medicare-eligible individuals.

PUBLIC COST/BENEFIT

For each of the first five years proposed amended §41.12 is in effect, Mr. Green anticipates a significant public benefit. The change will encourage Medicare-eligible individuals to enroll in Part B coverage when they first become eligible, potentially saving them from burdensome cost that increase over time if enrollment is delayed. Mr. Green has also determined that entities required to comply with the proposed amended rule will not incur any economic cost. Mr. Green has determined participants will incur a cost related to Part B and/or TRS-Care MA premiums if they choose to enroll in these programs. Amending §41.12 will be a public benefit because it will enhance the stability of the TRS-Care trust fund.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that proposed amended §41.12 will not have any adverse economic effect on small businesses, micro-businesses, or rural communities. As a result, the requirements for an economic impact statement or a regulatory flexibility analysis under Government Code §2006.002 do not apply in this case.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed amended rule. Therefore, no local employment impact statement is required under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years proposed amended §41.12 is in effect, proposed amended §41.12 will not create or eliminate any TRS programs; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not eliminate any fees currently paid to TRS; will amend existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy. Amending §41.12 will place limits on access to TRS-Care that were not previously stated in the rule.

This proposal amends an existing regulation. The proposed changes to §41.12 modify the rule through which TRS, as trustee of the Texas Public School Retired Employees Group Benefits Act created under Chapter 1575 of the Insurance Code, will phase out the current TRS-Care Alternative Plan. Specifically, the amended rule will close the plan to new members starting on January 1, 2026. The amendment will also add the requirement that members who desire to participate in the TRS-Care Program must enroll and maintain Medicare Part B coverage to join the TRS-Care MA plan.

TAKINGS IMPACT ASSESSMENT

TRS has determined that there are no private real property interests affected by the proposed amended rule; therefore, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed amended rule because it does not impose a cost on regulated persons.

COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, P.O. Box 149676, Austin, Texas 78714-0185. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

STATUTORY AUTHORITY

The proposed amended rule is authorized under Chapter 1575 of the Insurance Code, which establishes the Texas Public School Retired Employees Group Benefits Act (TRS-CARE). Specifically, §1575.052 grants the trustee the authority to adopt rules, plans, procedures, and orders reasonably necessary to implement Chapter 1575, including those related to enrollment periods coverage selection, and procedures for enrolling and exercising options within the group program. Additionally, the proposed amended rule is supported by Chapter 825 of the Government Code, which governs the TRS administration, and §825.102 of the Government Code, which authorizes the Board to adopt rules for the transaction of the business of the Board.

CROSS-REFERENCE TO STATUTE

The proposed amended rule implements the Insurance Code § 1575.052, related to Authority to Adopt Rules and Procedures; Other Authority, which authorizes the trustee to adopt rules, plans, procedures, and orders reasonably necessary to implement Chapter 1575, including periods of enrollment and coverage selection and outlines the procedures for enrolling and exercising options under the group program.

§41.12. Relating to [Eligibility for] the Alternative Plan for [Medicare]-Eligible Participants and Medicare Part B Requirement.

(a) Enrollment in the Alternative Plan. Up to and including December 31, 2025, an ~~[An]~~ individual is eligible to enroll in the Alternative Plan offered under TRS-Care if:

- (1) the individual is eligible to enroll in TRS-Care; and
- (2) the individual is eligible for Medicare and either:

(A) does not have reasonable access to a particular provider, as determined by TRS; or

(B) as of January 1, 2018, does not have Medicare Part B coverage and the individual's ability to obtain Medicare Part B coverage is cost prohibitive, as determined by TRS.

(b) Closing Enrollment in the Alternative Plan. Effective January 1, 2026, new enrollees under TRS-Care will no longer be eligible for the Alternative Plan described under subsection (a) of this section.

(c) Medicare Part B Requirement. Effective January 1, 2026, retirees, dependents, surviving spouses, and surviving dependent children who are eligible to enroll in Medicare and desire to enroll in or stay in a TRS-Care plan must have and maintain Medicare Part B coverage.

(1) High Deductible Health Plan Transition. Effective January 1, 2026, retirees, dependents, surviving spouses, and surviving dependent children enrolled in the high deductible health plan offered under TRS-Care who turn age 65 and are eligible to enroll in Medicare must have and maintain Medicare Part B coverage to transition into the Medicare Advantage plan and the Medicare prescription drug plan offered under TRS-Care. These enrollees have until the end of their Medicare Initial Enrollment Eligibility Period (IEP) to secure Medicare Part B coverage in order to transition into the Medicare Advantage plan and the Medicare prescription drug plan offered under TRS-Care. Enrollees that fail to secure Medicare Part B coverage within this period shall be terminated from the TRS-Care program.

(2) Continued Enrollment in the TRS-Care Medicare Advantage Plan. Effective January 1, 2026, retirees, dependents, surviving spouses, and surviving dependent children enrolled in the Medicare Advantage Plan offered under TRS-Care who terminate or lose their Medicare Part B coverage no longer meet TRS-Care eligibility criteria and shall be terminated from the TRS-Care program as soon as TRS is notified of the Part B coverage loss by CMS.

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 April 28, 2025.

TRD-202501399

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Earliest possible date of adoption: June 8, 2025

For further information, please call: (512) 584-4773



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.51

The Texas Board of Criminal Justice (board) proposes amendments to §151.51, concerning Custodial Officer Certification and Hazardous Duty Pay Eligibility Guidelines. The proposed amendments revise "offender" to "inmate" where appropriate and "rule" to "section" throughout; revise the definition for "Routine Direct Inmate Contact"; add sociologists and interviewers to employees eligible under Hazardous Duty Code 3; replace the deputy executive director with the chief operations officer as the authority to approve adding positions to Hazardous Duty Code 3; add the chief operations officer, chief programs officer, other division directors, and no more than 25 administrative duty officers to employees eligible under Hazardous Duty Code 4 and remove language stating any other positions approved by the deputy executive director; add laboratory technicians assigned to parole offices to employees eligible under Hazardous Duty Code 8; and make grammatical updates.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice (TDCJ), has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments merely clarify existing procedures.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed amendments merely clarify existing procedures. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the proposed amendments, will be to enhance clarity and public understanding. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register*.

The amendments are proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; §508.001, which defines terms for general provisions regarding parole and mandatory supervision; §615.006, which outlines requirements for the designation of custodial personnel; §811.001, which defines terms for general provisions regarding Employees Retirement System of Texas; §813.506; which establishes guidelines for custodial officer service eligibility; §815.505, which establishes guidelines for the certification of names of law enforcement and custodial officers; and §659.301-.308, which establishes guidelines for hazardous duty pay compensation for state officers and employees.

Cross Reference to Statutes: None.

§151.51. Custodial Officer Certification and Hazardous Duty Pay Eligibility Guidelines.

(a) Purpose. The purpose of this section [rule] is to establish eligibility criteria for authorizing custodial officer certification and hazardous duty pay to employees of the Texas Department of Criminal Justice (TDCJ) under the authority of Texas Government Code §§508.001, 615.006, 811.001, 813.506, and 815.505; and the *General Appropriations Act*.

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

(1) Custodial Officer Certification is service certification to the Employees Retirement System of Texas (ERS) for employees the TDCJ has determined are eligible for custodial officer service credit, which provides an additional retirement incentive when such employees have 20 or more years of service credit.

(2) Custodial Officer Service Credit is credit in the ERS for service performed by employees in a position that has been classified as a Hazardous Duty Code 1, 2, 3, 4, 6, 7, or 9 in accordance with this section [rule].

(3) Direct Inmate [Offender] Contact is interacting with, and in the close proximity to, inmates [offenders] without the protection of bars, doors, security screens, or similar devices while performing job duties. Such contact normally involves supervision or the potential for supervision of inmates [offenders] in inmate [offender] housing areas, educational or recreational facilities, industrial shops, kitchens, laundries, medical areas, maintenance departments, agricultural shops or fields, or in any other areas on or away from TDCJ property.

(4) Move is a change in position that may consist of a lateral transfer, promotion, voluntary demotion, or involuntary demotion.

(5) Inmate [Offender], for the purpose of custodial officer certification and hazardous duty pay, is an individual confined in a TDCJ facility.

(6) Releasee is an individual who has been released on parole or to mandatory supervision.

(7) Routine Direct Inmate [Offender] Contact is regularly planned or scheduled direct inmate [offender] contact while conducting TDCJ business. Routine direct inmate [offender] contact does not include travel time, unless the employees are responsible for the transportation and custody of inmates [offenders] and does not include casual contact.

(c) Procedures.

(1) Custodial Officer Certification. Employees in one of the following positions are eligible for custodial officer certification:

(A) Hazardous Duty Code 1. These positions are classified as correctional officer I through warden II.

(B) Hazardous Duty Code 2. These positions include all positions assigned to a unit, other than Hazardous Duty Code 1 positions, with job duties that require routine direct inmate [offender] contact. Examples include[:] agriculture specialists, maintenance supervisors, food service managers, laundry managers, classification case managers, and commissary managers.

(C) Hazardous Duty Code 3. These positions are assigned to administrative employees whose job duties require routine direct inmate [offender] contact at least 50% of the time. Examples

include[:] investigators, compliance monitors, [and] accountants routinely required to audit unit operations, sociologists, and interviewers.

(i) A request to include a position in this category shall be submitted to the chief operations officer [~~deputy executive director~~] for approval.

(ii) Employees in such positions and supervisors of such employees shall complete and submit a Hazardous Duty Log in accordance with TDCJ procedures to justify custodial officer certification.

(D) Hazardous Duty Code 4. These positions include administrative employees who routinely respond to emergency situations involving inmates [~~offenders~~]. Examples include[:] the executive director, chief operations officer, chief programs officer [~~deputy executive director~~], Correctional Institutions Division director, other division directors, and no more than 25 administrative duty officers [~~and any other positions approved by the deputy executive director~~].

(E) Hazardous Duty Code 6. These positions are filled by employees whose custodial officer certifications are grandfathered. When employees move from Hazardous Duty Code 6 positions, the positions will be automatically converted to longevity pay. Grandfathered custodial officer certifications are based on the following criteria:

(i) On August 31, 1995, the employees were assigned to Hazardous Duty Code 3 positions; and

(ii) The employees continue to have some routine direct inmate [~~offender~~] contact although it is less than 50% routine direct inmate [~~offender~~] contact.

(iii) Employees in such positions and supervisors of such employees shall complete and submit a Hazardous Duty Log in accordance with TDCJ procedures to justify custodial officer certification.

(F) Hazardous Duty Code 7. These positions include:

(i) Parole officers; and

(ii) Other positions within the Parole Division or assigned to the Board of Pardons and Paroles which have a majority of assigned duties that include assessment of risks and needs, investigation, case management, and supervision of releasees to ensure that releasees comply with the conditions of parole or mandatory supervision. Positions also include those who directly supervise or are in a direct line of supervision over these employees.

(G) Hazardous Duty Code 9. These positions are filled by employees whose custodial officer certifications are grandfathered. Custodial officer certifications shall remain grandfathered as long as the employees remain in Hazardous Duty Code 9 positions. When the employees move from Hazardous Duty Code 9 positions, the positions shall be automatically converted to longevity pay. Grandfathered custodial officer certifications are based on the following criteria:

(i) On August 31, 1995, the employees were assigned to positions authorized for custodial officer certification and hazardous duty pay; and

(ii) The employees have been designated as members of an Emergency Response Team that may respond to emergency situations involving inmates [~~offenders~~].

(iii) Employees in such positions and the supervisors of such employees shall complete and submit an Emergency Response Log in accordance with TDCJ procedures to justify custodial officer certification.

(2) Hazardous Duty Pay Authorized Positions. In addition to the employees described in subsection (c)(1) of this section ~~rule~~, employees in the following positions may receive hazardous duty pay:

(A) Employees in positions authorized for custodial officer certification;

(B) Employees in Hazardous Duty Code 8. These positions are assigned to the Parole Division or the Board of Pardons and Paroles and do not meet the criteria for Hazardous Duty Code 7. Employees in these positions have routine direct contact with inmates [~~offenders~~] in a penal or correctional facility or with releasees [~~administratively released offenders~~] subject to the jurisdiction or supervision of the Parole Division. Examples include[:] clerks, [~~and~~] administrative assistants, and laboratory technicians assigned to parole field offices.

(3) Each month, the TDCJ shall certify to the ERS the names of the employees and any other information determined and prescribed by the ERS as necessary for the crediting of custodial officer service and financing of benefits.

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 April 25, 2025.

TRD-202501346

Stephanie Greger

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: June 8, 2025

For further information, please call: (936) 437-6700



CHAPTER 152. CORRECTIONAL INSTITUTIONS DIVISION

SUBCHAPTER B. CORRECTIONAL CAPACITY

37 TAC §152.25

The Texas Board of Criminal Justice (board) proposes amendments to §152.25, concerning Maximum Rated Capacity of Individual Units. The proposed amendments update the maximum rated capacity of individual units.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice (TDCJ), has determined that for each year of the first five years the proposed amendments will be in effect, the proposed amendments will increase costs related to state government.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the proposed amendments, will be to accurately reflect the maximum rated capacity of existing units within the TDCJ. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on local employment; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or

decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will have an impact on government growth, will create positions and will increase future legislative appropriation requests. The increased capacities of existing units will be utilized to house additional incarcerated individuals as reflected in population projections.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register*.

The amendments are proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; §494.001, which establishes the mission of the institutional division; and §499.102-.110, which establishes procedures for determining unit and system capacity.

Cross Reference to Statutes: None.

§152.25. Maximum Rated Capacity of Individual Units.

The Texas Board of Criminal Justice establishes the following maximum rated capacities for existing units.

Figure: 37 TAC §152.25

[Figure: 37 TAC §152.25]

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 April 25, 2025.

TRD-202501348

Stephanie Greger

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: June 8, 2025

For further information, please call: (936) 437-6700



PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

CHAPTER 217. ENROLLMENT, LICENSING, APPOINTMENT, AND SEPARATION

37 TAC §217.7

The Texas Commission on Law Enforcement (Commission) proposes amended 37 Texas Administrative Code §217.7, Reporting Appointment and Separation of a Licensee. This proposed amended rule conforms with the recommendations made by an advisory committee and approved by the Commission in the Hiring Procedures Model Policy. The proposed amended rule would require all applicants and licensees to be fingerprinted and subjected to a fingerprint-based criminal background check before being appointed by a law enforcement agency. This will be implemented to replace the requirement that licensees and appointing agencies submit the Criminal Charges Notification (E-1) form to the Commission when a licensee is arrested or charged with a crime. This should result in fewer appointments of ineligible individuals.

Mr. John P. Beauchamp, General Counsel, has determined that for each year of the first five years this proposed amended rule

will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be a positive benefit to the public by conforming with the Hiring Procedures Model Policy. There will be minimal anticipated economic costs to persons required to comply with the proposed amendment due to increases in the number of times an individual may be fingerprinted.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no adverse economic effects to small businesses, microbusinesses, or rural communities as a result of implementing the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no effects to a local economy as a result of implementing the proposed amendment.

Mr. Beauchamp has determined the following:

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

The Commission will accept comments regarding the proposed amended rule. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments may be submitted electronically to or in writing to Mr. John P. Beauchamp, General Counsel, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amended rule is proposed pursuant to Texas Occupations Code §1701.151, General Powers of the Commission; Rule-making Authority, §1701.303, License Application; Duties of Appointing Entity, and §1701.451, Preemployment Procedure. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701. Texas Occupations Code §1701.303 requires an agency to have a licensee's criminal history record information and to have a licensee fingerprinted to disclose any criminal record if there has been a 180 break in service. Texas Occupations Code §1701.451 requires an agency to obtain and review criminal history record information before appointing a licensee.

The amended rule as proposed affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.303, License Application; Duties of Appointing Entity, and §1701.451, Preemployment Procedure. No other code, article, or statute is affected by this proposal.

§217.7. Reporting Appointment and Separation of a Licensee.

(a) Before a law enforcement agency may appoint a person licensed or seeking a license as a peace officer, county jailer, or telecommunicator the agency head or designee must:

- (1) obtain the person's written consent for the agency to view the person's employment records;
- (2) obtain a copy of the Personal Status Report (PSR) maintained by the commission;
- (3) obtain a completed, signed, and notarized Personal History Statement (PHS);
- (4) obtain a Computerized Criminal History (CCH) from TCIC and NCIC;
- (5) obtain proof of eligibility after separation from the military, if applicable;
- (6) conduct and document a background investigation;
- (7) for peace officers, obtain proof of weapons qualification within the 12 months preceding appointment;
- (8) for current licensees, electronically request and obtain the F-5 Return (F5R) from the commission, contact each of the person's previous law enforcement employers, and document the contact on the F5 return; **[and]**
- (9) have the person fingerprinted and subjected to a search of local, state, and U.S. national records and fingerprint files to disclose any criminal record;

(10) ~~[(9)]~~ in addition to the requirements listed in this section:

(A) For a licensee with more than 180 days since their last appointment:

- (i) obtain a new declaration of psychological and emotional health (L3 Form); **and**
- (ii) obtain a new declaration of the lack of any drug dependency or illegal drug use (L2 Form); **and**
- ~~[(iii) obtain new proof that the licensee has been fingerprinted and subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record.]~~

(B) For a person's initial appointment:

- (i) obtain proof of meeting educational requirements;
- (ii) obtain proof of meeting U.S. citizenship requirements;
- ~~[(iii) obtain new proof that the person has been fingerprinted and subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record.]~~
- (iii) ~~[(iv)]~~ obtain a new declaration of psychological and emotional health (L3 Form), if more than 180 days from the graduation of the basic licensing course;
- (iv) ~~[(v)]~~ obtain a new declaration of medical eligibility and lack of any drug dependency or illegal drug use (L2 Form), if

more than 180 days from the graduation of the basic licensing course; and

~~[(v)]~~ ~~[(vi)]~~ submit an appointment application (L1 Form) and receive an approval of the application before the person discharges any duties related to the license sought; **and** ~~[-]~~

(11) ~~[(10)]~~ For current licensees, submit **an** ~~[a Statement of Appointment Application~~ (L1 Form) within 7 days of the appointment.

(b) When a person licensed by the commission separates from an agency, the agency shall, within 7 business days:

- (1) submit a Separation report (Form F5) to the commission; **and**
- (2) provide a copy to the licensee in a manner prescribed by Texas Occupations Code section 1701.452.

(c) A law enforcement agency that is given a signed consent form shall make the person's employment records available to a hiring law enforcement agency as authorized by Texas Occupations Code section 1701.451.

(d) An agency must retain records kept under this section while the person is appointed and for a minimum of five years after the licensee's separation date with that agency. The records must be maintained under the control of the agency head or designee in a format readily accessible to the commission.

(e) The effective date of this section is August 1, 2025 ~~[February 1, 2020]~~.

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

Filed with the Office of the Secretary of State on April 24, 2025.

TRD-202501338

Gregory Stevens

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: June 8, 2025

For further information, please call: (512) 936-7700



PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

SUBCHAPTER A. ACCREDITATION

37 TAC §651.5

The Texas Forensic Science Commission (Commission) proposes amendments to 37 Texas Administrative Code Section 651.5, Forensic Disciplines Subject to Commission Accreditation, to distinguish Rapid DNA analysis as its own forensic discipline for accreditation purposes consistent with actions taken by the ANSI National Accreditation Board (ANAB) and the American Association for Laboratory Accreditation (A2LA), the two accrediting bodies currently recognized by the Commission under 37 Texas Administrative Code Section 651.4(a). Rapid DNA analysis is the fully automated (hands-free) process of developing a CODIS acceptable STR profile from a casework reference or forensic sample. The "swab in- profile out" process

consists of automated extraction, amplification, separation, detection and allele calling without human intervention.

Background and Justification. The Commission proposes these amendments in response to an announcement by the Federal Bureau of Investigation (FBI) of a change to its Quality Assurance Standards (QAS) that authorizes crime scene samples processed utilizing Rapid DNA technology to be uploaded and searched in the Combined DNA Index System (CODIS) as long as certain requirements are met. The FBI adopted new rules (effective July 2025) to allow law enforcement to utilize Rapid DNA technology within the umbrella of the existing accreditation of a crime laboratory. This FBI rule change in turn sparked changes in the way the accrediting bodies recognized by the Commission categorize Rapid DNA analysis. Whereas previously, Rapid DNA technology was classified within the general category of forensic biology/DNA analysis, it now has its own distinct category. The proposed amendments make this same change to the Commission's administrative rules. The goal is to ensure consistency and clarity between the FBI's rules, the approach taken by recognized accrediting bodies, and the Commission's administrative rules.

Fiscal Impact on State and Local Government. Leigh M. Tomlin, Associate General Counsel of the Commission, has determined that for each year of the first five years the new rule is in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal, because there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the proposed rule amendments.

Local Employment Impact Statement. The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Probable Economic Costs to Persons Required to Comply with Proposal. 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.

Public Benefit. Ms. Tomlin has also determined that for each year of the first five years the new rule is in effect, the anticipated public benefit is increased clarity and consistency regarding the implementation of Rapid DNA technology in Texas under the rules established by the FBI's QAS, national accrediting body requirements, and the administrative rules of the Commission.

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 Assessment. Ms. Tomlin has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Government Growth Impact Statement. Ms. Tomlin has determined that for the first five-year period, implementation of the proposed amendments will have minimal government growth im-

pact. Pursuant to the analysis required by Government Code Section 2001.221(b): (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rule does not increase or decrease future legislative appropriations to the agency; (4) the proposed rule changes do not require any fees; (5) the proposed rule does not create a new regulation; (6) the proposed rule expands current accreditation requirements to cover Rapid DNA analysis and comparisons to ensure the integrity and reliability of these types of analysis for use in the State's criminal justice system; (7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and (8) the proposed rule has no effect on the state's economy.

Environmental Rule Analysis. The Commission has determined that the proposed rule is not brought with specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Commission asserts that the proposed rule is not a "major environmental rule," as defined in Government Code §2001.0225. As a result, the Commission asserts the preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

Request for Public Comment. The Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by June 9, 2025, to be considered by the Commission.

Statutory Authority. The rule amendments are proposed under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings provided in Code of Criminal Procedure, Article 38.01 § 4-d and Article 38.35(a)(4)(D).

Cross reference to statute. The proposal affects Tex. Code Crim. Proc. art. 38.01.

§651.5. Forensic Disciplines Subject to Commission Accreditation.

(a) Forensic analysis/recognized accreditation. This section describes a forensic discipline or category of analysis that involves forensic analysis for use in a criminal proceeding and for which accreditation is available from a recognized accrediting body.

(b) By discipline. A crime laboratory may apply for Commission accreditation for one or more of the following disciplines:

(1) Seized Drugs. Categories of analysis may include one or more of the following: qualitative determination, quantitative measurement, weight measurement, and volume measurement;

(2) Toxicology. Categories of analysis may include one or more of the following: qualitative determination and quantitative measurement;

(3) Forensic Biology. Categories of analysis may include one or more of the following: DNA-STR, DNA-YSTR, DNA-Mitochondrial, DNA-massively parallel sequencing, body fluid identification, relationship testing, microbiology, individual characteristic database, and nucleic acids other than human DNA;

(4) Rapid DNA. Rapid DNA analysis is the fully automated (hands-free) process of developing a CODIS acceptable STR profile from a casework reference or forensic sample. The "swab in- profile

out" process consists of automated extraction, amplification, separation, detection and allele calling without human intervention.

(5) [(4)] Firearms/Toolmarks. Categories of analysis may include one or more of the following: physical comparison, determination of functionality, length measurement, trigger pull force measurement, qualitative chemical determination, distance determination, ejection pattern determination, product (make/model) determination;

(6) [(5)] Materials (Trace). Categories of analysis may include one or more of the following: physical determination, chemical determination, physical/chemical comparison, product (make/model) determination, gunshot residue analysis, footwear and tire tread analysis, and fire debris and explosives analysis (qualitative determination); or

(7) [(6)] Other discipline and its related categories of analysis if accredited by a recognized accrediting body and approved by the Commission.

(c) Cross-disciplines and categories of analysis. A laboratory may choose to assign a particular discipline or category of analysis to a different administrative section or unit in the laboratory than the designation set forth in this subchapter.

(d) If an accreditation for a category of analysis is accompanied by the term 'only' or a similar notation, the Commission will deem the accreditation to exclude other categories of analysis in that discipline.

(e) Accreditation of a confirmation test procedure does not carry automatic accreditation of an associated field, spot, screening, or other presumptive test.

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 April 22, 2025.

TRD-202501297

Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

Earliest possible date of adoption: June 8, 2025

For further information, please call: (512) 936-0770



SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

37 TAC §651.207

The Forensic Science Commission (Commission) proposes amendments to 37 Texas Administrative Code §651.207, Forensic Analyst and Forensic Technician Licensing Requirements, Including Initial License Term and Fee, Minimum Education and Coursework, General Forensic Examination, Proficiency Monitoring and Mandatory Legal and Professional Responsibility Training. This rule proposal changes the requirement for minimum coursework for Commission-licensed forensic biology/DNA analysts to mirror the Federal Bureau of Investigation's Quality Assurance Standards (FBI QAS) coursework requirements in place at the time of the analyst's application for licensure with the Commission. Coursework requirements are academic classes officially recognized and taught through an accredited college or university program in which the participating student (applicant) successfully completed and received one

or more credit hours for the class. Under current Commission rules, analysts must comply with coursework requirements from a soon-to-be outdated version of the FBI QAS to qualify for licensure by the Commission. The FBI recently announced an update of its Quality Assurance Standards for coursework expected of forensic biology/DNA analysts who work for DNA testing laboratories (effective July 2025). The revisions include removal of specifically required course names which have, in the past, barred otherwise qualified candidates from working as forensic DNA analysts in forensic testing laboratories and replaced the specific course names with a general requirement for 9 credit hours in coursework in biology- or chemistry-related areas that provide an understanding of the foundations of DNA analysis. The rule changes proposed herein follow the same path, expanding the eligibility requirements for forensic biology/DNA applicants for licensure in the State of Texas.

Background and Justification. The proposed amendments require licensed forensic biology/DNA analysts to meet current, national FBI QAS minimum coursework requirements for employment at an accredited crime laboratory. The amendments subject forensic biology/DNA analysts to these current requirements at the time of application for licensure to the Commission and remove the requirement for compliance with the 2011 version of the QAS expressed in the Commission's current licensing rules.

Fiscal Impact on State and Local Government. Leigh M. Tomlin, Associate General Counsel of the Commission, has determined that for each year of the first five years the new rule is in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the proposed rule amendments.

Local Employment Impact Statement. The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Probable Economic Costs to Persons Required to Comply with Proposal. 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.

Public Benefit. Ms. Tomlin has also determined that for each year of the first five years the new rule is in effect, the anticipated public benefit is compliance with national coursework standards for forensic biology/DNA analysts in the State further ensuring the integrity and reliability of forensic science in the State.

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 Assessment. Ms. Tomlin has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Government Growth Impact Statement. Ms. Tomlin has determined that for the first five-year period, implementation of the proposed amendments will have no government growth impact. Pursuant to the analysis required by Government Code 2001.221(b): (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rule does not increase or decrease future legislative appropriations to the agency; (4) the proposed rule changes do not require any fees; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand, limit, or repeal an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and (8) the proposed rule has no effect on the state's economy.

Environmental Rule Analysis. The Commission has determined that the proposed rules are not brought with specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Commission asserts that the proposed rules are not a "major environmental rule," as defined in Government Code §2001.0225. As a result, the Commission asserts the preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

Request for Public Comment. The Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by June 9, 2025, to be considered by the Commission.

Statutory Authority. The rule amendments are proposed under the general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 §3-a and its authority to license forensic analysts under §4-a(b).

Cross reference to statute. The proposal affects Tex. Code Crim. Proc. art. 38.01.

§651.207. Forensic Analyst and Forensic Technician Licensing Requirements, Including Initial License Term and Fee, Minimum Education and Coursework, General Forensic Examination, Proficiency Monitoring, and Mandatory Legal and Professional Responsibility Training.

(a) **Issuance.** The Commission may issue an individual's Forensic Analyst or Forensic Technician License under this section.

(b) **License Term.** A Forensic Analyst or Forensic Technician license holder must renew the license holder's license after the initial date of issuance, every two years on the day before the issuance of the initial license with the exception of §651.208(b) of this subchapter (relating to Renewal Term).

(c) **Application.** Before being issued a Forensic Analyst or Forensic Technician License, an applicant must:

(1) demonstrate that he or she meets the definition of Forensic Analyst or Forensic Technician set forth in this subchapter;

(2) complete and submit to the Commission a current Forensic Analyst or Forensic Technician License Application form;

(3) pay the required fee(s) as applicable:

(A) Initial Application fee of \$220 for Analysts and \$150 for Technicians/Screeners;

(B) Biennial renewal fee of \$200 for Analyst and \$130 for Technicians/Screeners;

(C) **Pro-rated Fees for Certain License Renewals.** This subsection applies to licensees initially licensed before January 1, 2024 who are renewing on or before December 31, 2026. Application fee of \$220 for Analysts and \$150 for Technicians for the twenty-four months of the Initial License Term. If the Analyst or Technician's renewed license term under §651.208(b) of this subchapter exceeds twenty-four months, the Analyst or Technician shall pay an additional prorated amount of \$8.33 per month (for Analysts) and \$5.42 per month (for Technicians) for each month exceeding two years. If the Analyst or Technician's Initial License Term under §651.208(b) of this subchapter is less than twenty-four months, the Analyst or Technician shall pay a prorated amount of \$8.33 per month (for Analysts) and \$5.42 per month (for Technicians) for each month in the Initial License Term;

(D) Temporary License fee of \$100;

(E) Provisional License fee of \$110 for Analysts and \$75 for Technicians; An applicant who is granted a provisional license and has paid the required fee will not be required to pay an additional initial application fee if the provisional status is removed within one year of the date the provisional license is granted;

(F) License Reinstatement fee of \$220;

(G) *De Minimis* License fee of \$200 per ten (10) licenses;

(H) Uncommon Forensic Analysis License fee of \$200 per ten (10) licenses; and/or

(I) Special Exam Fee of \$50 for General Forensic Analyst Licensing Exam, required only if testing beyond the three initial attempts or voluntarily taking the exam under the Unaccredited Forensic Discipline Exception described in subsection (g)(5)(C) of this section;

(4) provide accurate and current address and employment information to the Commission and update the Commission within five (5) business days of any change in address or change of employment. Licensees are required to provide a home address, email address, and employer name and address on an application for a license. If a forensic analyst or forensic technician departs employment, experiences a gap in employment, is no longer actively performing casework, or temporarily assumes non-forensic analysis, administrative duties from an accredited laboratory, or has ninety (90) days or less to reinstate an expired license pursuant to §651.209(a) of this subchapter (relating to Forensic Analyst and Forensic Technician License Expiration), the licensee's status is deemed inactive and will be designated as inactive in the Commission's online database of licensees, until such time that the licensee notifies the Commission of their employment by an accredited laboratory as a forensic analyst or forensic technician, or has a change in job duties requiring the licensee to resume active casework; and

(5) provide documentation that he or she has satisfied all applicable requirements set forth under this section.

(d) **Minimum Education Requirements.**

(1) **Seized Drugs Analyst.** An applicant for a Forensic Analyst License in seized drugs must have a baccalaureate or advanced degree in chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(2) **Seized Drugs Technician.** An applicant for a Forensic Analyst License limited to the seized drug technician category must have a minimum of an associate's degree or equivalent.

(3) **Toxicology (Toxicology Analyst (Alcohol Only, Non-interpretive), Toxicology Analyst (General, Non-interpretive), Toxi-**

cologist (Interpretive)). An applicant for a Forensic Analyst License in toxicology must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(4) Toxicology Technician. An applicant for a Forensic Analyst License limited to the toxicology technician category must have a minimum of an associate's degree or equivalent.

(5) Forensic Biology (DNA Analyst, Forensic Biology Screener, Nucleic Acids other than Human DNA Analyst, Forensic Biology Technician). An applicant for any category of forensic biology license must have a baccalaureate or advanced degree in a chemical, physical, biological science or forensic science from an accredited university.

(6) Firearm/Toolmark Analyst. An applicant for a Forensic Analyst License in firearm/toolmark analysis must have a baccalaureate or advanced degree in a chemical, physical, biological science, engineering or forensic science from an accredited university.

(7) Firearm/Toolmark Technician. An applicant for a Forensic Analyst License limited to firearm/toolmark technician must have a minimum of a high school diploma or equivalent degree.

(8) Materials (Trace) Analyst. An applicant for a Forensic Analyst License in materials (trace) must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university. A Materials (Trace) Analyst performing only impression evidence analyses must have a minimum of a high school diploma or equivalent degree.

(9) Materials (Trace) Technician. An applicant for a Forensic Analyst License limited to materials (trace) technician must have a minimum of a high school diploma or equivalent degree.

(10) Foreign/Non-U.S. degrees. The Commission shall recognize equivalent foreign, non-U.S. baccalaureate or advanced degrees. The Commission reserves the right to charge licensees a reasonable fee for credential evaluation services to assess how a particular foreign degree compares to a similar degree in the United States. The Commission may accept a previously obtained credential evaluation report from an applicant or licensee in fulfillment of the degree comparison assessment.

(11) If an applicant does not meet the minimum education qualifications outlined in this section, the procedure in subsection (f) or (j) of this section applies.

(e) Specific Coursework Requirements.

(1) Seized Drugs Analyst. An applicant for a Forensic Analyst License in seized drugs must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to the chemistry coursework, an applicant must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(2) Toxicology. An applicant for a Forensic Analyst License in toxicology must fulfill required courses as appropriate to the analyst's role and training program as described in the categories below:

(A) Toxicology Analyst (Alcohol Only, Non-interpretive). A toxicology analyst who conducts, directs or reviews the alcohol analysis of forensic toxicology samples, evaluates data, reaches conclusions and may sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human

performance must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university.

(B) Toxicology Analyst (General, Non-interpretive). A toxicology analyst who conducts, directs or reviews the analysis of forensic toxicology samples, evaluates data, reaches conclusions and may sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human performance, must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework that includes organic chemistry and two three-semester credit hour (or equivalent) college-level courses in analytical chemistry and/or interpretive science courses that may include Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science, Spectroscopic Analysis, Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology.

(C) Toxicologist (Interpretive). A toxicologist who provides interpretive opinions regarding human performance related to the results of toxicological tests (alcohol and general) for court or investigative purposes must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework that includes organic chemistry, one three-semester credit hour (or equivalent) course in college-level analytical chemistry (Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science or Spectroscopic Analysis) and one three-semester credit hour (or equivalent) college-level courses in interpretive science. (Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology).

(D) An applicant for a toxicology license for any of the categories outlined in subparagraphs (A) - (C) of this paragraph must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(3) DNA Analyst. An applicant for a Forensic Analyst License in DNA analysis must demonstrate he/she has fulfilled the specific coursework requirements of the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing Laboratories effective at the time of the individual's application [September 1, 2014]. An applicant must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(4) Firearm/Toolmark Analyst. An applicant must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. No other specific college-level coursework is required.

(5) Materials (Trace) Analyst. An applicant for a Forensic Analyst License in materials (trace) for one or more of the chemical analysis categories of analysis (chemical determination, physical/chemical comparison, gunshot residue analysis, and fire debris and explosives analysis) must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to chemistry coursework for the chemical analysis categories, all materials (trace) license applicants must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. An applicant for a Forensic Analyst License in materials (trace) limited to impression evidence is not required to fulfill any specific college-level coursework requirements other than the statistics requirement.

(6) Exemptions from specific coursework requirements. The following categories of licenses are exempted from coursework requirements:

(A) An applicant for the technician license category of any forensic discipline set forth in this subchapter is not required to fulfill any specific college-level coursework requirements.

(B) An applicant for a Forensic Analyst License limited to forensic biology screening, nucleic acids other than human DNA and/or Forensic Biology Technician is not required to fulfill the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing or any other specific college-level coursework requirements.

(f) Requirements Specific to Forensic Science Degree Programs. For a forensic science degree to meet the Minimum Education Requirements set forth in this section, the forensic science degree program must be either accredited by the Forensic Science Education Programs Accreditation Commission (FEPAC) or if not accredited by FEPAC, it must meet the minimum curriculum requirements pertaining to natural science core courses and specialized science courses set forth in the FEPAC Accreditation Standards.

(g) Waiver of Specific Coursework Requirements and/or Minimum Education Requirements for Lateral Hires, Promoting Analysts and Current Employees. Specific coursework requirements and minimum education requirements are considered an integral part of the licensing process; all applicants are expected to meet the requirements of the forensic discipline(s) for which they are applying or to offer sufficient evidence of their qualifications as described below in the absence of specific coursework requirements or minimum education requirements. The Commission Director or Designee may waive one or more of the specific coursework requirements or minimum education requirements outlined in this section for an applicant who:

(1) has five or more years of credible experience in an accredited laboratory in the forensic discipline for which he or she seeks licensure; or

(2) is certified by one or more of the following nationally recognized certification bodies in the forensic discipline for which he or she seeks licensure;

- (A) The American Board of Forensic Toxicology;
- (B) The American Board of Clinical Chemistry;
- (C) The American Board of Criminalistics;
- (D) The International Association for Identification; or
- (E) The Association of Firearm and Toolmark Examiners; and

(3) provides written documentation of laboratory-sponsored training in the subject matter areas addressed by the specific coursework requirements.

(4) An applicant must request a waiver of specific coursework requirements and/or minimum education requirements at the time the application is filed.

(5) An applicant requesting a waiver from specific coursework requirements and/or minimum education requirements shall file any additional information needed to substantiate the eligibility for the waiver with the application. The Commission Director or Designee shall review all elements of the application to evaluate waiver request(s) and shall grant a waiver(s) to qualified applicants.

(h) General Forensic Analyst Licensing Exam Requirement.

(1) Exam Requirement. An applicant for a Forensic Analyst License must pass the General Forensic Analyst Licensing Exam administered by the Commission.

(A) An applicant is required to take and pass the General Forensic Analyst Licensing Exam one time.

(B) An applicant may take the General Forensic Analyst Licensing Exam no more than three times. If an applicant fails the General Forensic Analyst Licensing Exam or the Modified General Forensic Analyst Licensing Exam three times, the applicant has thirty (30) days from the date the applicant receives notice of the failure to request special dispensation from the Commission as described in subparagraph (C) of this paragraph. Where special dispensation is granted, the applicant has 90 days from the date he or she receives notice the request for exam is granted to successfully complete the exam requirement. However, for good cause shown, the Commission or its Designee at its discretion may waive this limitation.

(C) Requests for Exam. If an applicant fails the General Forensic Analyst Licensing Exam or Modified General Forensic Analyst Licensing Exam three times, the applicant must request in writing special dispensation from the Commission to take the exam more than three times. Applicants may submit a letter of support from their laboratory director or licensing representative and any other supporting documentation supplemental to the written request.

(D) If an applicant sits for the General Forensic Analyst Licensing Exam or the Modified General Forensic Analyst Licensing Exam more than three times, the applicant must pay a \$50 exam fee each additional time the applicant sits for the exam beyond the three initial attempts.

(E) Expiration of Provisional License if Special Dispensation Exam Unsuccessful. If the 90-day period during which special dispensation is granted expires before the applicant successfully completes the exam requirement, the applicant's provisional license expires.

(2) Modified General Forensic Analyst Licensing Exam. Technicians in any discipline set forth in this subchapter may fulfill the General Forensic Analyst Licensing Exam requirement by taking a modified exam administered by the Commission.

(3) Examination Requirements for Promoting Technicians. If a technician passes the modified General Forensic Analyst Licensing Exam and later seeks a full Forensic Analyst License, the applicant must complete the portions of the General Forensic Analyst Exam that were not tested on the modified exam.

(4) Credit for Pilot Exam. If an individual passes the Pilot General Forensic Analyst Licensing Exam, regardless of his or her eligibility status for a Forensic Analyst License at the time the exam is taken, the candidate has fulfilled the General Forensic Analyst Licensing Exam Requirement of this section should he or she later become subject to the licensing requirements and eligible for a Forensic Analyst License.

(5) Eligibility for General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam.

(A) Candidates for the General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam must be employees of a crime laboratory accredited under Texas law or employed by an agency rendering them eligible for a voluntary license under §651.222 (*Voluntary Forensic Analyst Licensing Requirements Including Eligibility, License Term, Fee, and Procedure for Denial of Initial Application or Renewal Application and Reconsideration*) of this subchapter to be eligible to take the exam.

(B) Student Examinee Exception. A student is eligible for the General Forensic Analyst Licensing Exam one time if the student:

(i) is currently enrolled in an accredited university as defined in §651.202 of this subchapter (relating to Definitions);

(ii) has completed sufficient coursework to be within 24 semester hours of completing the requirements for graduation at the accredited university at which the student is enrolled; and

(iii) designates an official university representative who will proctor and administer the exam at the university for the student.

(C) Crime Laboratory Management and Unaccredited Forensic Discipline Exception. An Employee of a crime laboratory accredited under Texas law who is either part of the crime laboratory's administration or management team or authorized for independent casework in a forensic discipline listed below is eligible for the General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam:

(i) forensic anthropology;

(ii) the location, identification, collection or preservation of physical evidence at a crime scene;

(iii) crime scene reconstruction;

(iv) latent print processing or examination;

(v) digital evidence (including computer forensics, audio, or imaging);

(vi) breath specimen testing under Transportation Code, Chapter 724, limited to analysts who perform breath alcohol calibrations; and

(vii) document examination, including document authentication, physical comparison, and product determination.

(i) Proficiency Monitoring Requirement.

(1) An applicant must demonstrate participation in the employing laboratory's process for intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory's accrediting body's proficiency monitoring

requirements as applicable to the Forensic Analyst or Forensic Technician's specific forensic discipline and job duties.

(2) A signed certification by the laboratory's authorized representative that the applicant has satisfied the applicable proficiency monitoring requirements, including any intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements of the laboratory's accrediting body as of the date of the analyst's application, must be provided on the Proficiency Monitoring Certification form provided by the Commission. The licensee's authorized representative must designate the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework or is currently authorized to perform supervised or independent casework by the laboratory or employing entity.

(j) Mandatory Legal and Professional Responsibility Course:

(1) All Forensic Analyst and Forensic Technician License applicants must complete the current Commission-sponsored mandatory legal and professional responsibility update at the time of their application or demonstrate that they have taken the training within the 12-month period preceding the date of their application.

(2) Mandatory legal and professional responsibility training topics may include training on current and past criminal forensic legal issues, professional responsibility and human factors, courtroom testimony, disclosure and discovery requirements under state and federal law, and other relevant topics as designated by the Commission.

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

Filed with the Office of the Secretary of State on April 22, 2025.

TRD-202501299

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Earliest possible date of adoption: June 8, 2025

For further information, please call: (512) 936-0770

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