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 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 11. ADMINISTRATION DEPARTMENT

SUBCHAPTER A. ADMINISTRATION

13 TAC §11.24

The Texas Historical Commission (Commission) proposes new rule §11.24, related to delegation of Commission authority to the executive director within Title 13, Part 2, Chapter 11 of the Texas Administrative Code.

Section 11.24 clarifies the executive director's authority to exercise the powers of the Commission and to perform the duties provided by Federal or State law.

FISCAL NOTE. Mark Wolfe, Executive Director, has determined that for each of the first five years the proposed new rule is in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering the new rule as proposed. Because the proposed new rule only clarifies the administration of duties already authorized under sections of the State Antiquities Code, Texas Government Code, Health and Safety Code, and Transportation Code, there will be no impact on state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Wolfe has also determined that for the first five-year period the proposed new rule is in effect, the public benefit will be a more clearly defined process for administrative procedures and exercise of authority.

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

COSTS TO REGULATED PERSONS. The proposed new section does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Wolfe has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing this new rule and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required. The proposed new rule does not affect small businesses, micro-businesses, or rural communities because the new rule only clarifies the administrative procedures with which to carry out existing statutes.

GOVERNMENT GROWTH IMPACT STATEMENT. During the first five years that the proposed new section would be in effect, the proposed new section: 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 proposed new rule would be in effect, the proposed new rule 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.

REQUEST FOR PUBLIC COMMENT. Comments on the proposed new section may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the Texas Register.

STATUTORY AUTHORITY AND STATEMENT ON AUTHORITY. This new rule is proposed under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of that chapter.

This proposed new rule is also authorized under Texas Government Code §442.0045 (included in HB 1422 from the 86th Legislative Session to be effective September 1, 2019), which allows the Commission to delegate its authority to the executive director by rule or order.

§11.24. Delegation of Authority to Executive Director:

(a) Delegation of Authority to Executive Director. In addition to any other powers and duties expressly provided by Federal or State law, the executive director is authorized to perform the duties or exercise the powers of the commission as described in this section. The executive director, or his or her designee, is authorized to undertake the following acts:

PROPOSED RULES August 16, 2019 44 TexReg 4265
(1) contract or otherwise provide for discovery operations and scientific investigations under the provisions of §191.053 of the State Antiquities Code;

(2) consider requests for, and issue or deny permits provided for in §§191.054, 191.095, 191.098, and 191.131 of the State Antiquities Code;

(3) contract with other state agencies or political subdivisions and qualified private institutions, corporations or individuals for curation and/or display of artifacts in the agency's custody pursuant to §191.058 of the State Antiquities Code;

(4) apply to any appropriate agency or officer of the United States for participation in any federal program pertaining to historic preservation pursuant to Government Code §442.005(g);

(5) certify to another state agency the worthiness of preservation of any historic district, site, structure, or object significant in Texas or American History, archaeology, archeology or culture pursuant to Government Code §442.005(h);

(6) conduct educational programs, seminars, and workshops throughout this state covering any phase of historic preservation pursuant to Government Code §442.005(i);

(7) make a report of the Commission's activities to the Governor and to the legislature at least biennially pursuant to Government Code §442.005(n);

(8) participate in the operation of an affiliated nonprofit organization whose purpose is to raise funds for or provide services or other benefits to the Commission pursuant to Government Code §442.005(p);

(9) review and approve or reject the final form or dimensions of, or text or illustrations on, any marker, monument or medallion pursuant to Government Code §442.006;

(10) enter into contracts or cooperative agreements with the federal government, other state agencies, state or private museums or educational institutions, or qualified persons, including for-profit corporations, for prehistoric or historic archeological investigations, surveys, excavations, or restorations pursuant to Government Code §442.007(c);

(11) approve construction plans and monitor work on the Governor's Mansion, its contents and grounds, and manage the contents of the Mansion including authority to contract with a nonprofit organization to assist in the preservation and maintenance of the Mansion and its contents and grounds, pursuant to Government Code §442.007;

(12) make the determinations and provide the notifications required pursuant to Government Code §442.008 relating to historic county courthouses;

(13) select businesses to receive the Texas Business Treasure Award pursuant to Government Code §442.020;

(14) lease grazing rights from other parties for proper livestock management pursuant to Government Code §442.104;

(15) review bids and qualifications and provide recommendations to the Texas Facilities Commission before a contract is awarded for the major repair or renovation of a state structure designated by the Texas Historical Commission as a Recorded Texas Historic Landmark pursuant to Government Code §2166.254;

(16) investigate a suspected but unverified cemetery with the consent of the land owner, under Health and Safety Code §711.010;

(17) evaluate a notice of an unverified cemetery, the evidence submitted with the notice, and the response of the land owner, if any, and determine whether there is sufficient evidence of the existence of a cemetery under Health and Safety Code §711.0111 and to provide such information and file such notice as is allowed thereunder;

(18) waive the 60-day waiting period provided in Government Code §442.006, or require an additional waiting period of not longer than 30 days;

(19) administer the County Historical commission program as described in Local Government Code Chapter 318;

(20) review surface mining permit applications and submit any necessary comments pursuant to Natural Resources Code §131.139;

(21) administer the Tax Credit for Certified Rehabilitation of Certified Historic Structures as found in Tax Code Chapter 171 Subchapter 5 including, but not limited to, the issuance of letters of determination and certificates of eligibility;

(22) certify when a historical name for a farm-to-market or ranch road has been in common usage for at least 50 years pursuant to Transportation Code §225.005;

(23) review and approve plans, programs and materials relating to historical interpretation of the State Cemetery pursuant to Government Code §2165.2561;

(24) contract with one or more nonprofit organizations to fulfill the Commission's duties to administer the Texas Heritage Trails Program pursuant to Government Code §442.0045;

(25) determine whether or not a governmental entity's landmark ordinance meets the requirements of the Certified Local Government program pursuant to Government Code Subtitle Z Chapter 3000;

(26) hire, terminate, assign duties of, evaluate performance of, reward, and set salaries of Texas Historical Commission staff other than the Executive Director;

(27) manage the agency's operating budget, including making adjustments not to exceed 20% of the appropriation for any agency strategy;

(28) request representation on behalf of the Texas Historical Commission from the Office of the Attorney General;

(29) request an opinion of the Attorney General pursuant to Texas Government Code §402.042 on legal issues;

(30) negotiate and contract for services relating to a commission project for a historic site and for construction, restoration, renovation or preservation of any building, structure or landscape related to historic sites under Government Code §402.101;

(31) execute documents necessary for the operation and administration of the agency or necessary to carry out the statutory authority of the agency including but not limited to personnel action forms, timesheets, performance evaluations, hotel/restaurant contracts, telecommuting agreements, contracts and contract revisions, Memorandums of Understanding, Memorandums of Agreement, and Inter-Agency Contracts;

(32) execute documents carrying out decisions of the Commission, including but not limited to grant contracts, Historic Texas Cemetery certifications, curatorial facility certifications, contracts and contract amendments, and notification letters; and

(33) request a letter ruling from the Attorney General under Texas Government Code §551.301 concerning the disclosure of infor-
mation upon the receipt of a request under the Texas Public Information Act.

(b) This rule does not limit the express powers and responsibilities granted to the executive director in the Texas Government Code or as otherwise set forth in the rules of the commission. The commission's delegation of authority to the executive director under this rule does not divest the commission of that delegated authority, and the commission retains the ability to exercise all powers delegated to it by law when the commission deems it necessary or appropriate to carry out the functions of the commission. This rule does not limit the commission's power to delegate authority to the executive director by order.

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 August 1, 2019.
TRD-201902458
Mark Wolfe
Executive Director
Texas Historical Commission
Earliest possible date of adoption: September 15, 2019
For further information, please call: (512) 463-6100

CHAPTER 13. TEXAS HISTORIC PRESERVATION TAX CREDIT PROGRAM

13 TAC §13.6

The Texas Historical Commission (Commission) proposes amendments to §13.6, relating to the Application Review Process, Title 13, Part 2, Chapter 13 of the Texas Administrative Code.

Section 13.6 describes the process by which the Commission staff will accept and review applications for tax credit projects.

The proposed amendment will allow staff to close inactive applications, which includes those applications that have had no activity for at least twenty-four months, are missing information, or have not paid review fees. Closure of an inactive application will disqualify that applicant from receiving tax credits. Closed applications may be reopened under certain circumstances or new applications may be filed, if other program requirements are still met. Applicants will be given written notice and opportunity to respond prior to closure of their applications.

FISCAL NOTE. Mark Wolfe, Executive Director, has determined that for each of the first five years the proposed amendments are in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering these amendments, as proposed. The proposed amendments allow the commission to close inactive applications for tax credit under defined circumstances. Because the closure of an application does not ultimately affect whether the applicant may obtain the tax credit, there will be no impact on state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Wolfe has also determined that for the first five-year period the amended rules are in effect, the public benefit will be a more clearly defined process for the handling of applications.

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 new section is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022 and 2001.024(a)(6).

COSTS TO REGULATED PERSONS. The proposed new section does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBINES, AND RURAL COMMUNITIES. Mr. Wolfe has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required. Because the proposed amendments only allow for the administrative closure of pending applications, the amendments do not affect any applicant’s ability to receive tax credits. Accordingly, there should be no impact to rural communities, small businesses, or micro-businesses.

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 amendments will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. THC 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 and action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

REQUEST FOR PUBLIC COMMENT. Comments on the proposed amendments may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the Texas Register.

STATUTORY AUTHORITY AND STATEMENT ON AUTHORITY. These amendments are proposed under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission and the Texas Tax Code §171.909, which requires the Commission to adopt rules for the implementation of the rehabilitation tax credit program. The Commission interprets Texas Tax Code §171.909 as an authorization to administer the rehabilitation tax credit program, which includes the administrative closure of applications that are inactive due to applicant inaction.

§13.6 Application Review Process.

(a) Application form. The Commission staff will develop the application and may modify it as needed over time. All required forms, including application Parts A, B, C, and amendment forms, are available from the Commission at no cost.
(b) Delivery. Applications will be accepted beginning on January 1, 2015 and continuously thereafter. Applications should be delivered to the Commission by mail, hand delivery, or courier service. Faxed or emailed applications will not be accepted.

(c) Application Part A - Evaluation of Significance. Part A of the application will be used by the Commission to confirm historic designation or to determine if the property is eligible for qualification as a certified historic structure.

(1) If a property is individually listed in the National Register of Historic Places or designated as a Recorded Texas Historic Landmark or State Antiquities Landmark, the property is qualified as a certified historic structure.

(2) The applicant will be responsible for providing sufficient information to the Commission with which the Commission staff may make a determination. If all requested information is not provided to make a determination that a building is eligible for designation as a certified historic structure, the staff may request additional information from the applicant. If the additional information requested is not provided in a timely manner, the application will be considered incomplete and review of the application will be placed on hold until sufficient information is received.

(3) The Commission staff review of Part A of a complete application, unless otherwise provided in §13.8 of this title, and shall notify the applicant in writing of any determination it makes upon completing the review of Part A of the application.

(4) There is no fee to review Part A of the application.

(d) Application Part B - Description of Rehabilitation. Part B of the application will be used by the Commission to review proposed projects for compliance with the Standards for Rehabilitation.

(1) The applicant will be responsible for providing sufficient information, including photographs taken prior to the project, to the Commission with which the Commission staff may make a determination. If all requested information is not provided to make a determination that a project is eligible as a certified rehabilitation, staff may request additional information from the applicant, usually required to be submitted within 30 days. If the additional information requested is not provided in a timely manner, the application will be considered incomplete and review of the application will be placed on hold until sufficient information is received.

(2) The Commission staff will review Part B of a complete application, unless otherwise provided in §13.8 of this title, and shall notify the applicant in writing of any determination it makes upon completing the review of Part B of the application. In reviewing Part B of the application, the Commission shall determine if Part B is approved or not as follows:

(A) Consistent with the Standards for Rehabilitation as determined by the Commission. If all aspects of the Part B of the application meet the standards for rehabilitation, no additional information is required, and no conditions are imposed on the work, Part B is approved.

(B) Consistent with the Standards for Rehabilitation with specific conditions of work required. The Commission may determine that the work described in the plan must be performed in a specific manner or with specific materials in order to fully comply with the standards for Rehabilitation. In such cases, the Part B may be approved with specific conditions required. For applications found to be consistent with the Standards for Rehabilitation with specific conditions required, the applicant shall provide written acceptance to the Commission of all specific conditions required. Otherwise the application will be determined to be not consistent with the Standards of Rehabilitation; applications found to be consistent with the Standards for Rehabilitation with specific conditions required may proceed with the work but will only be eligible for the credit if the conditions listed are met as part of the rehabilitation work. Failure to follow the conditions may result in a determination by the Commission that the project is not consistent with the Standards for Rehabilitation.

(C) Not consistent with the Standards for Rehabilitation. Applications found not to be consistent with the Standards for Rehabilitation will be considered to be ineligible applications; the Commission shall make recommendations to the applicant that might bring the project into conformance with the Standards for Rehabilitation, however no warranty is made that the recommendations will bring the project into compliance with the Standards for Rehabilitation; the applicant may reapply and it will be treated as a new application and will be subject to a new application fee.

(3) An application fee is required to be received by the Commission before Commission review of Part B of the application. The fee is based on the estimated amount of eligible costs and expenses listed by the applicant on Part B of the application.

(A) Applicants must submit the fee with their Part B application or the application or the application will be placed on hold until the fee is received. The fee is calculated according to a fee schedule approved by the Commission and included in the application.

(B) The fee is based on the estimated aggregate eligible costs and expenses indicated in the Part B application and is not refundable. Resubmission of a rejected application or under any other circumstances will require a new fee. Amendments to a pending application or approved project do not require additional fees.

(4) Amendment Sheet. Changes to the project not anticipated in the original application shall be submitted to the Commission on an amendment sheet and must be approved by the Commission as consistent with the Standards for Rehabilitation before they are included in the project. The Commission shall review the amendment sheet and issue a determination in writing regarding whether or not the proposed changes in the project is consistent with the Standards for Rehabilitation.

(5) Scope of Review. The review encompasses the building's site and environment as well as any buildings that were functionally related historically. Therefore, any new construction and site improvements occurring on the historic property are considered part of the project. Individual condominiums or commercial spaces within a larger historic building are not considered individual properties apart from the whole. The scope of review for a project is not limited to the work that qualifies as an eligible expense. Likewise, all work completed by the current owner twenty-four (24) months before the submission of the application is considered part of the project, as is the cumulative effect of any work in previously completed or future phases.

(A) An applicant may elect to apply to receive the credit on only the exterior portions of a larger project that includes other work, in which case the scope of review will be limited to the exterior work. For properties that are individually listed on the National Register of Historic Places, are designated as a Recorded Texas Historic Landmark or State Antiquities Landmark, or determined to be eligible for these designations, the scope of review must also include primary interior spaces.

(B) For these projects described in paragraph (5)(A) of this subsection above, all work completed by the current owner twenty-four (24) months before the submission of the application, and within the same scope of review (e.g. exterior and/or primary
interior) is considered part of the project, as is the cumulative effect of any work in previously completed or future phases within the same scope of review.

(e) Application Part C - Request for Certification of Completed Work. Part C of the application will be used by the Commission to review completed projects for compliance with the work approved under Part B.

(1) The applicant shall file Part C of the application after the building is placed in service.

(2) The applicant will be responsible for providing sufficient information, including photographs before and after the project, to the Commission by which the Commission staff may verify compliance with the approved Part B. If all requested information is not provided to make a determination that a project is eligible as a certified rehabilitation, the application is incomplete and review of the application will be placed on hold until sufficient information is received.

(3) The Commission staff will review Part C of a complete application, unless otherwise provided in §13.8 of this title, and shall notify the applicant in writing of any determination it makes upon completing the review of Part C of the application.

(A) If the completed project is found to be in compliance with the approved Part B and any required conditions; and consistent with the Standards for Rehabilitation,\(^2\) and the building is a certified historic structure at the time of the application, the Commission shall approve the project. The Commission then shall issue to the applicant a certificate of eligibility that confirms the property to which the eligible costs and expenses relate is a certified historic structure and the rehabilitation qualifies as a certified rehabilitation and specifies the date the certified historic structure was first placed in service after the rehabilitation.

(B) If the completed project is not consistent with the Standards for Rehabilitation, with the approved Part B, and/or the specific conditions required, and the project cannot, in the opinion of the Commission, be brought into compliance, or if the building is not a certified historic structure at the time of the application, then the Commission shall deny Part C of the application and no certificate of eligibility shall be issued.

(C) If the completed project is not consistent with the Standards for Rehabilitation, with the approved Part B, and/or the specific conditions required, and the project can, in the opinion of the Commission, be brought into compliance. The applicant shall complete the remedial work and file and amended Part C. If the remedial work, in the opinion of the Commission, brings the project into compliance, then the Commission shall issue a certificate of eligibility.

(4) An application fee is charged before Commission review of the Part C of the application based on the amount of eligible costs and expenses listed by applicant on Part C of the application.

(A) Applicants must submit the fee with their Part C application or the application will be placed on hold until the fee is received. The fee is calculated according to a fee schedule approved by the Commission and included in the application.

(B) The fee is based on the eligible costs and expenses as indicated in the audited cost report and is not refundable. Resubmission of a rejected application or under any other circumstances will require a new fee. Amendments do not require additional fees.

(f) Closure of Inactive Applications. The Commission staff may close applications that have been deemed inactive. Closed applications do not qualify as certified rehabilitations and are not eligible for the Texas Historic Preservation Tax Credit.

(1) Applications may be deemed inactive and closed under any of the following circumstances. Part B and Part C application fees have not been received within sixty (60) days of receipt of the application parts, written requests for information necessary to complete the application and provide sufficient documentation to fully review the application are not responded to within sixty (60) days, or approved application Parts have not progressed to subsequent Parts (for example: a Part B has not been submitted following approval of a Part A, etc.) and there has been no communication from the applicant to the Commission for a period of twenty-four (24) months or greater.

(2) Applications for projects that are simultaneously applying for federal historic tax credits, per §13.8 of this title, may also be closed upon closure of the federal application by the National Park Service.

(3) Applicants will be notified in writing of the potential closure and given sixty (60) days to respond, in writing, with a request for the application to remain open; missing or requested information; or an extension allowing additional time to compile missing or requested information. If no response is received, the application will be closed.

(4) Extensions will be granted, in writing, for a period of time agreed upon by the Commission and the applicant, based on the status of the project. If an extension is not met, further extensions may be granted if the applicant documents to the Commission that the project is progressing.

(5) Applications that have been closed may be reopened under the following conditions: the project applicant has not changed; the overall scope of work presented in the Part B application has not substantially changed; and the request to reopen the application is made in writing within twenty-four (24) months from the date the application was closed.

(6) If all conditions in paragraph 5 of this subsection are not met, a new application must be filed, including new Part B and Part C application fees.

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 August 1, 2019.

TRD-201902461

Mark Wolfe

Executive Director

Texas Historical Commission

Earliest possible date of adoption: September 15, 2019

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

13 TAC §13.9

The Texas Historical Commission (Commission) proposes new rule 13 TAC Code §13.9, concerning the appeal of denials of applications for rehabilitation tax credits.

New §13.9 describes the process by which an applicant may appeal the denial of tax credits based on a finding that proposed or completed work does not meet the Secretary of the Interior's Standards for Rehabilitation.

Applicants may appeal either Part B or Part C of the application, after Commission staff have completed the review of the application, submitting an appeals request and supporting documentation in writing. The Executive Director will review and decide all requests for appeals. After the Executive Director issues an
opinion, the applicant may make a final request for reconsideration.

FISCAL NOTE. Mark Wolfe, Executive Director, has determined that for each of the first five years the proposed new section is in effect, there will not be a fiscal impact on state or local government as a result of enacting or administering the proposed rule.

PUBLIC BENEFIT/COST NOTE. Mr. Wolfe has also determined that for the first five year period the new rule is in effect, the public benefit will be the opportunity to reverse denial of an application in order to receive the tax credits.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. Because the proposed rule only provides an appeal opportunity for denied tax credit applications, there are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code, §§2001.022 and 2001.024(a)(6).

COSTS TO REGULATED PERSONS. The proposed new section does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Wolfe has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing the new section and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. Commission staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking, as specific in Texas Government Code, §2006.0221. During the first five years that the new section would be in effect, the proposed new section: 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 new section would be in effect, the proposed new section 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.

REQUEST FOR PUBLIC COMMENT. Comments on the proposed new section may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the Texas Register.

STATUTORY AUTHORITY. The new section is proposed under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission and the Texas Tax Code §171.909, which requires the Commission to adopt rules for the implementation of the rehabilitation tax credit program.

CROSS REFERENCE TO STATUTE. The new section is proposed under the authority of Texas Tax Code §171.009, which requires the Commission to adopt rules for the implementation of the Tax Credit for Certified Rehabilitation of Certified Historic Structures. The proposed new section implements 13 TAC §§13.6. No other statutes, articles, or codes are affected by this new section.

§13.9 Appeals.

(a) An applicant or owner may appeal any determination on a Part B or Part C application that a rehabilitation does not meet the Secretary of the Interior's Standards for Rehabilitation under §13.6(d)(2)(C) or (e)(3)(B) of this chapter (relating to Application Review Process) and is therefore denied credits. A request for an appeal shall be made in writing to the Executive Director of the Texas Historical Commission, 1511 Colorado Street, Austin, Texas 78711, within 30 days of issuance of the decision that is the subject of the appeal.

(b) All information that the appellant wishes the Executive Director to consider shall be presented in writing. The Executive Director may request additional information from the appellant if the Executive Director determines such additional information is necessary to make a decision on the appeal.

(c) The Executive Director shall consider the appellant's previously submitted application materials, any further written submissions by the appellant, and other available information. The Executive Director may take into account new information not previously available or submitted, alleged errors in professional judgment, alleged prejudicial procedural errors, or other errors related to the previous determination on Part B or Part C of an application.

(d) The Executive Director's decision may reverse the appealed decision in whole or in part, affirm the appealed decision in whole or in part, or resubmit the matter to program staff for further consideration.

(e) A written decision on the appeal will be provided to the appellant no more than 60 days after the Executive Director receives an appeal under this rule; provided, however, that if the Executive Director requests additional information from the appellant then the written decision on the appeal will be provided within 60 days of the last materials provided in response to the Executive Director's request.

(f) The appellant may request that the Executive Director reconsider the Executive Director's decision on appeal. Such requests must be submitted to the address stated above no more than 30 days following issuance of the decision that is the subject of the request for reconsideration. The Executive Director may accept the request and reconsider the decision or deny the request. Appellants are not entitled to further review after the Executive Director's final decision upon a request for reconsideration.

(g) The appeals process established by this rule is not a contested case under Texas Government Code Chapter 2001 and does not grant any right to judicial review.

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

Filed with the Office of the Secretary of State on August 1, 2019.

TRD-201902459
CHAPTER 16. HISTORIC SITES

13 TAC §16.2

The Texas Historical Commission (hereafter referred to as the "Commission") proposes amendments to Rule 16.2 of Title 13, Part 2, Chapter 16 of the Texas Administrative Code, concerning historic sites. The purpose of this rule amendment is to add San Jacinto and the Port Isabel Lighthouse to the admission provisions of the rule.

The amendments will allow sites with similar operating agreements to adjust fees to meet their business objectives.

FISCAL NOTE. There will be no fiscal impact. The proposed revisions to the process of admission and use of the property will minimize the need for state resources and contain costs in serving the public's need in a more cost effective arrangement. Mark Wolfe, Executive Director, has determined that for the first five-year period the amended rules are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules as proposed.

PUBLIC BENEFIT/COST NOTE. The benefit to the public will be achieved by a more efficient management of the resource through local partnering organizations. This will minimize the needed support for state resources. Mr. Wolfe has also determined that for the first five-year period the amended rule will meet the agency's mission in providing a quality visitor experience.

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 the local economy for the first five years that the proposed amendments are in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022 and §2001.024(a)(6).

COSTS TO REGULATED PERSONS. The proposed amendments do not impose a cost on regulated persons or entities, therefore, they are not subject to Texas Government Code, §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. The proposed rule amendments provide an opportunity for the historic sites division to operate more strategically in assessing properties with a preliminary in-house first step to determine if further investment of state resources is required in any property assessment. There is no anticipated economic impact of these amendments to the rule. Mr. Wolfe has also determined that there will be no negative impact on rural communities, small or micro-businesses because of implementing these rules amendments and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required. There are no anticipated economic costs to the public in compliance with the amendments to these rules, as proposed.

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 appropriation; will not lead to an increase or decreased 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 amendments 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.

REQUEST FOR PUBLIC COMMENT. Comments on the proposal may be submitted to Joseph Bell, Deputy Executive Director of Historic Sites, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the Texas Register.

STATUTORY AUTHORITY. These amendments are proposed under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission; Texas Government Code §442.251 and §442.271 (included in HB 1422 in the 86th Session to be effective September 1, 2019) which transfer jurisdiction of the San Jacinto Battleground State Historic Site and Port Isabel State Lighthouse Historical Monument to the Commission; Texas Government Code §442.272 (also included in HB 1422), which authorizes the Commission to collect entrance fees for admission to the Port Isabel Lighthouse State Historical Monument; Texas Government Code §442.0057 and §442.00585, which allow the Commission to accept donations of land or sell or exchange land; and Texas Government Code §442.0053(a), which provides that the Commission by rule shall adopt the criteria to determine to the eligibility for the inclusion of real property into the state historic sites system.

CROSS REFERENCE TO STATUTE. Texas Government Code §442.0053(a) provides the Commission with the authority to adopt the criteria to determine to the eligibility for real property's inclusion into the state historic sites system and Texas Government Code §442.0056(a) provides the Commission with the authority to acquire historic sites. No other statutes, articles, or codes are affected by this new rule.

§16.2. Historic Sites Admission and Use.

(a) Admission Fees.

(1) An admission fee may be levied at the Commission's historic sites. The fee will grant entry and provide certain privileges for a specific date or part thereof.

(2) Reduced fees may be established for visitors in the following categories:

(A) Children under 6 years old;
(B) Youth 6 through 18 years of age;
(C) School children visiting as part of a school activity (field trip);
(D) Groups of 10 or more who have made advance reservations;

(E) Seniors 65 years or older;

(F) Family groups (adult and children combinations);

(G) Veterans of the United States Armed Forces;

(H) Active military member and family; and

(I) State Historic Sites Annual Pass.

(3) The Commission may enter into agreements with non-profit organizations, in particular friend's groups associated with the Commission's historic sites, to admit members of the organization without payment of an admission fee.

(4) An admission fee will be set by the Executive Director and advertised for each historic site, except the National Museum of the Pacific War, San Jacinto Monument, and Port Isabel Lighthouse. The fee will be based on the location, size, facilities and development of each individual historic site.

(5) The fee for admission to the National Museum of the Pacific War, San Jacinto Monument, and Port Isabel Lighthouse will be established by agreement between the Commission and the respective partner organization as noted in subsection (a)(3) of this section [Admiral Nimitz Foundation].

(6) The Executive Director may at his discretion waive any admission fees or conditions thereof established in this section at any historic site where circumstances adversely affect public enjoyment of the site. The Executive Director may designate other agency personnel to discount or waive admission fees.

(7) The Executive Director may discount or waive entrance or other use fees in order to enhance utilization, promote future visitation of historic sites or facilitate contribution of volunteer services. The Executive Director may designate other agency personnel to discount or waive admission fees.

(8) Upon finding a need for public safety or welfare or preservation of site resources the Executive Director or his/her designee may impose restrictions on public activity and conduct and may limit the use of any area or facility in any historic site or portion thereof. It is an offense for an unauthorized person to enter or remain in an area or participate in any activity so restricted by the Executive Director.

(9) Commission employees and emergency personnel are exempt from this chapter when this chapter conflicts with the discharge of their official duties to the extent of that conflict.

(10) The Executive Director may establish an annual admission fee for certain historic sites. The annual permit will admit its holder unlimited admission to specific property during the calendar year beginning at the date of purchase.

(11) The historic sites may accept cash, credit cards, or checks for payment fees depending on the capability of each site.

(12) The Executive Director will establish use fees for historic sites with overnight camping facilities, overnight room rental or additional recreational facilities, including but not limited to RV hookups, boat launches, and equipment rental.

(13) Hours and days of operation of each historic will be determined by the Executive Director or his/her designee and advertised in a prominent way for each historic site.

(b) Activity and Facility Use Fees.

(1) Use of the Commission's historic sites by groups for personal or organizational purposes, such as picnics, reunions, receptions, etc. is encouraged as a way to engage a wider audience for the historic sites and increase communities' enjoyment and understanding of the sites and their mission. A reasonable fee may be charged for such use to help offset the Commission's costs and to generate revenue to support a site's primary mission.

(2) Facility use may not conflict with the commission's primary mission to preserve and interpret a historic site including:

(A) The routine operation of a site for public enjoyment;

(B) The ability of visitors to have an enjoyable and educational experience;

(C) The safety of staff, visitors, and users; and

(D) The availability of site staff to coordinate and oversee these events.

(3) The Executive Director or his/her designee will establish guidelines governing circumstances when rentals are appropriate, the times and activities allowed, and special conditions related to preservation and use of a site. This chapter must be consistent with the mission stated in paragraph (2) of this subsection.

(4) The Executive Director may establish reasonable use fees for individual historic site activities or facilities. Fees may be established on an hourly, daily, overnight, weekly, monthly, seasonal or annual basis. The Executive Director or his/her designee may waive or reduce the fees where it is in the best interests of the historic site or program.

(c) Reservations.

(1) Reservations for historic site facilities may be accepted for sites with facilities available for public use. The Executive Director or his/her designee is authorized to prescribe such procedures and conditions for reservations, deposits and partial or full refunds as needed.

(2) A written reservation application must be signed and submitted by the requestor describing the purpose of the event or activity, the site or facilities requested, the number of people anticipated to participate, all activities that are part of the event, schedule of the activity, and duration of the event including time for set up and take-down.

(3) The Executive Director or his/her designee will establish site specific requirements and guidelines, in addition to the rules stated in this section for participants in facility use activities.

(d) Routine or Low Impact Events.

(1) Routine events including picnics, use of pavilions, shelters or designated areas for social gatherings involving fewer than 50 people and commercial still photography that involves only handheld equipment, no props and no more than 5 people, including the photographer, will be approved by the site manager where the following conditions are met:

(A) No significant staff time is needed to set up or take down the area;

(B) Applicant agrees to leave the premises in the condition it was found, free of trash and debris;

(C) No electrical or other utility hookups are required;

(D) The activity will not interfere with the normal operation of the site or access to the site by visitors during normal open hours; and
(E) No alcohol will be consumed.

(2) A fee will be charged based on site's approved facility use fee program.

(3) General liability insurance coverage by the applicant with Commission named as an additional insured may be required if deemed necessary by the Site Manager.

(4) The site manager will approve or deny a use application for routine/low impact events.

(e) Major or High Impact Events.

(1) A Facility Use will be considered a major event if it includes any of the following:

(A) Commercial photography involving 6 or more people including the photographer, large props, or any stationary equipment, or motion picture filming for sale or profit;

(B) Events involving more than 50 people;

(C) Use of site staff to set up or take down furniture, tents, equipment, etc.;

(D) Historic Site owned tents, furniture, equipment, or utility connections;

(E) Serving alcohol; or

(F) Interfering with the normal operation of the site or disrupting visitor services.

(2) Sponsors/applicants for use of a Commission historic site for a major event must sign a written agreement with the Commission to be approved by the Executive Director or his/her designee. The sponsor must be provided a copy of the site’s Facility Use Rules.

(3) The sponsor must provide general liability insurance coverage in an amount determined by the Executive Director or his/her designee naming the Commission as an additional insured. If alcohol will be served, the sponsor or caterer must provide liquor liability insurance with a minimum limit of $1 million per occurrence. A certificate of insurance coverage must be included in the written agreement for facility use.

(4) Alcohol (wine and beer only) may only be served at a private event. The site manager will determine if and how many security personnel are required for any event at which alcohol is served. Security personnel will be hired and paid by the program/activity sponsor.

(5) Minors may attend events where alcohol is served if the minor’s parent or guardian is present.

(6) A fee will be collected based on site’s approved facility use fee program. In addition, sponsors will pay the cost of all staff overtime required to properly set up, take down and supervise the event as determined by the Executive Director or his/her designee.

(f) Facility uses including the following activities are permitted at Commission historic sites only with the express permission of the Executive Director or his/her designee:

(1) Events that pose a risk of damage to the site or injury to persons attending the event.

(2) Fundraising events for other non-Commission affiliated non-profit organizations.

(3) Events involving firearms.

(g) The following activities are not permitted as part of a facility use activity at Commission Historic Sites:

(1) Events that are incompatible with or conflict with the public service, preservation and educational mission of the historic site;

(2) Events that may endanger natural or cultural resources of the site through physical impact, over use, or overcrowding;

(3) Events involving live ammunition or pyrotechnic displays;

(4) Political events or activities;

(5) Events involving unsupervised or inadequately supervised minor children;

(6) Events or activities that involve domestic animals without appropriate controls or supervision, or wild animals under any circumstances; or

(7) Commercial activities including selling, recruiting, soliciting or promoting products or services to visitors, in particular, activities that promote cigarette smoking, alcohol consumption, or behavior inappropriate at a State Historic Site.

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 August 1, 2019.

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Mark Wolfe
Executive Director
Texas Historical Commission

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For further information, please call: (512) 463-8801

13 TAC §16.13

The Texas Historical Commission (THC) proposes the addition of §16.13, concerning the management of historic object collections associated with historic sites overseen by the THC. The proposed rule adds language listing the statutes and internal policies that establish THC control over these collections. Additionally, the proposed rule outlines the requirements for final disposition of objects that have been removed from these collections following a formal deaccession process, including the sale of historic object collections. The need for this rule follows the passage of HB 1422 (2019), which amends Chapter 2175 of the Texas Government Code to include provisions related to the sale of deaccessioned historic object collections through the Texas Facilities Commission’s (TFC) State Surplus Property Program.

FISCAL NOTE. Mark Wolfe, Executive Director, has determined that for each year of the first five-year period the sale of deaccessioned historic collections managed by the THC could result in an increase of revenue to the state. This revenue would be deposited into a new dedicated account for the care and preservation of the THC’s qualifying collection. The amount of increased revenue cannot be estimated because THC has not previously engaged in the sale or transfer of deaccessioned items. Mr. Wolfe has determined that for each year of the first five years that the rule will be in effect: there will be no additional cost to the state or local governments in administering the rule because THC can administer the rule with current staff resources; there will be no estimated reductions in cost to the state or local governments; and administering the rule does not have unforeseeable implications relating to cost or revenues of the state or local gov-
ernments other than a relatively small increase in revenue to the state attributable to the sale of deaccessioned items.

PUBLIC BENEFIT/COST NOTE. Mr. Wolfe has also determined that for the first five years the rule is in effect the public benefit will be the implementation of a transparent process for the sale of deaccessioned items. There are no anticipated costs to persons who are required to comply with the rule because participation in the transfer of deaccessioned items is voluntary.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES. Mr. Wolfe has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of the proposed rule because the rule only concerns the deaccessioning and potential transfer of items within a state agency's qualifying collection. Accordingly, no regulatory flexibility analysis is required under Texas Government Code §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT. During the first five years that the proposed rule would be in effect, the rule: will not create or eliminate a government program; will not result in the addition or reduction of THC 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; creates a new regulation concerning the deaccessioning and transfer of items in an agency's qualifying collection; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to a rule. During the first five years that the rule would be in effect, the rule will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. THC has determined that no private real property interests are affected by the proposed rule 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.

REQUEST FOR PUBLIC COMMENT. Comments on the proposal may be submitted in writing to Joseph Bell, Deputy Executive Director, Historic Sites Division, P.O. Box 12276, Austin, Texas 78711, (512) 463-8801. Comments may also be submitted electronically to joseph.bell@thc.texas.gov or faxed to (512) 463-7002. Comments will be accepted for 30 days after publication in the Texas Register.

STATUTORY AUTHORITY. This rule is proposed under Texas Government Code, §§442.201-202 which allows the THC to establish rules for the conservation, preservation, and use of state property related to Historic Sites entrusted to the THC's care. This rule is further proposed under the Texas Natural Resources Code §191.051-.052 which establishes the THC's as legal custodian over historic and archeological objects recovered and retained by the State of Texas and permits the THC to establish rules to reasonably effect the appropriate management of the archeological and historical resources of Texas. The rule is further authorized under Texas Government Code §2175.909 (included in HB 1422 of the 86th Legislative Session to be effective September 1, 2019) which allows for the deaccessioning and transfer of items within an agency's qualifying collection.

No other statutes, articles or codes are affected by these new rules.

§16.13 Management of Collections.

(a) Ownership. The Commission is responsible for the management of archeological, archival, architectural, historic furnishing, and fine arts collections associated with historic sites overseen by the Commission. The Commission is granted authority over these collections by this section and §29.7 of this title (relating to State Associated Collections).

(b) Governance. Statutory and administrative authority over state-owned collections that are managed by the Commission is established in Texas Natural Resources Code §§191.051, 191.058, 191.091-092; Texas Government Code §§442.007, 442.075, 2175.909; and in Chapter 26 and 29 of the Texas Administrative Code. Operational and procedural requirements related to the care and management of state-owned collections overseen by the Commission are outlined in the Commission's Collections Management Policy (CMP).

(c) Deaccessioning. The Commission recognized the special responsibility associated with the receipt and maintenance of objects of cultural, historical, and scientific significance in the public trust. The decision to deaccession state-associated held-in-trust objects and collections is the responsibility of the Commission and is governed by this section and §26.5 of this title (relating to Antiquities Advisory Board).

(d) Final disposition of deaccessioned collections. Following confirmation that a collection object is not subject to any conditions established at the time of acquisition that may affect its disposition and that there is sufficient documentation to assure clear title to the object, a deaccessioned collection object will be disposed of in accordance with this section. All efforts will be made to contact the original donor to provide notification of pending collections disposition. In accordance with U.S. income tax policy, the Commission is not able to return deaccessioned objects to their original donors or donors' estates.

(1) Transfer or exchange. A deaccessioned collection object may be offered for transfer or exchange to another public institution within the State of Texas. Any such transfer or exchange will occur only on the written understanding that the object must remain within the public domain for a period of ten years. Recipient institutions will incur all transportation costs, unless otherwise agreed, and are expected to provide appropriate preservation and/or exhibit facilities.

(A) Qualified institution. Recipient institutions must have an established collections policy. The collection object(s) being transferred should fall within the recipient institution's scope of collections and the objects should be candidates for exhibition or study within the institution.

(B) Object title. Title to deaccessioned objects will be transferred along with the deaccessioned collection(s) to the recipient institution. In the event that the recipient institution is unwilling or unable to appropriately maintain the transferred collection(s) for the requisite ten years, title will revert back to the Commission and the Commission will assume responsibility for managing the objects' final disposition.

(2) Sale. If a deaccessioned collection object cannot be transferred or exchanged, it may be sold as a means of disposition, preferable by public auction, in consultation with the Texas Facilities Commission and following the provisions outlined by Texas Government Code §2175.909 (relating to Sale of Certain Historic Property Proceeds of Sale).

(A) Coordination with the Texas Facilities Commission (TFC). The Commission will work with the TFC to ensure that all sales of deaccessioned collection items will be most advantageous to the state under the circumstances. The Commission will also provide the TFC all documentation necessary for verification that the deaccession of the item is appropriate under the Commission's written policy gov-
erning the care and preservation of the collection. The Commission will report any sale to the TFC, including a description of the property disposed of, the reasons for disposal, the price paid for the property disposed of, and the recipient of the property disposed of.

(B) Vendor qualifications. When selecting a vendor to sell the deaccessioned collection(s) by competitive bid, auction, or direct sale to the public, the Commission must publish a Request for Qualifications (RFQ) to ensure that the sale is conducted by a qualified vendor. Selection of the vendor should be the most advantageous to the state under the circumstances.

(C) Appraisal. Object whose estimated fair market value could potentially exceed $500.00 must be appraised by a qualified, independent appraiser. Objects whose estimated fair market value could potentially exceed $25,000.00 must be appraised by two separate qualified, independent appraisers.

(D) Dedicated account. The Commission shall create a dedicated fund in the general revenue fund for the deposit of any money resulting from the sale of deaccessioned items. The Commission must ensure that money in the fund is appropriated only for the purposes prescribed by Texas Government Code §2175.909(1) including the care and preservation of the Commission’s qualifying collection.

(3) Assignment to other historic site operations. If a deaccessioned collection object cannot be transferred or exchanged, it may also be made available for other operational purposes within the Commission. The deaccessioned collection object may be used for interpretive programming, exhibition props, restoration of another collection item, or similar purposes.

(4) Destruction. Disposal of a collection object by destruction is the final recourse and is permitted under the following circumstances:

(A) all reasonable efforts were made to dispose of the object through other means;

(B) the object is environmentally hazardous and poses a danger to other collections or staff; and

(C) the object has no residual heritage, preservation, or market value to 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 August 1, 2019.

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Mark Wolfe
Executive Director
Texas Historical Commission

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For further information, please call: (512) 463-6094

CHAPTER 17.  STATE ARCHITECTURAL PROGRAMS

13 TAC §17.1

The Texas Historical Commission (Commission) proposes amendments to 13 Texas Administrative Code §17.1(g), relating to the Texas Preservation Trust Fund Advisory Board.

Section 17.1(g) describes the process by which the Commission will appoint Texas Preservation Trust Fund Advisory Board members, board member composition and term, outlines the duties of the board, and compensation restrictions. The proposed amendments will allow the Texas Historical Commission, after considering the recommendations of its Executive Committee, the authority to appoint advisory board members.

Mark Wolfe, Executive Director, has determined that for the first five-year period that this amendment is in effect there will be no fiscal implications for state or local governments as a result of this amendment.

Mr. Wolfe has also determined that for each year of the first five-year period that this amendment is in effect, the public benefit will be the clarification of how the board is appointed and their duties. The proposed amendment does not impose a cost on regulated persons or entities; therefore, it is not subject to Texas Government Code, §2001.0045.

Mr. Wolfe has determined that there will be no effect on rural communities, small businesses, or micro-businesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required. There is no anticipated economic cost to persons who are required to comply with the proposed amendment. The proposed amendments do not restrict or limit an owner’s right to his or her property, and therefore do not require a takings impact assessment under Texas Government Code §2007.043.

During the first five years that the rule would be amended, the proposed amendment: 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 expand, limit, or 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 rule would be amended, the proposed amendment will not positively or adversely affect the Texas economy.

Comments on the proposed amendments may be submitted to Bess Graham, Director, Architecture Division, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the Texas Register.

The amendment of these rules is proposed under Sections 442.005(q) of the Texas Government Code, which provides the Commission with the authority to promulgate rules for the effective administration of the Commission’s programs.

No other statutes, articles or codes are affected by the amendment.

§17.1  Texas Preservation Trust Fund.

(a) Definition. The Texas preservation trust fund (hereinafter referred to as trust fund or fund) is a fund in the state treasury, created by enactment of Senate Bill 294 by the 71st Texas Legislature (1989), which amended the Texas Government Code, Chapter 442, by adding §442.015. The trust fund shall consist of transfers made to the fund, including state and federal legislative appropriations, grants, donations, proceeds of sales, loan repayments, interest income earned by the fund, and any other monies received. Funds may be received from federal, state, or local government sources, organizations, charitable trusts and foundations, private individuals, business or corporate entities, estates, or any other source.
(b) Purpose. The purpose of the Texas preservation trust fund is to serve as a source of funding for the Texas Historical Commission (Commission) to provide financial assistance to qualified applicants for the acquisition, survey, restoration, preservation, or for planning and educational activities leading to the preservation, of historic properties and associated collections in the State of Texas.

(c) Types of assistance. Commission shall provide financial assistance in the form of grants or loans. Grant recipients shall be required to follow the terms and conditions of the Preservation Trust Fund Grants and other terms and conditions imposed by Commission at the time of the grant award. Loans shall have a term not to exceed five years at an interest rate at the prime interest rate at the time the loan is made.

(d) Allowable use of trust fund monies. In all cases when no specification is made, or the specified amount is less than $5,000, the proceeds and/or interest on such gifts or monies shall be unencumbered and shall accrue to the benefit of the entire fund. Money deposited to the fund for specific projects shall only be used for the projects specified provided that the specific project has received approval of the Commission, there is or will be a dedicated account within the Trust Fund for that project, and all other requirements herein are met. Money deposited to specified projects in amounts of $5,000 or greater shall retain all proceeds or interest earned for that specified project unless the donor stipulates that all proceeds or interest earned shall be unencumbered and accrue to the benefit of the entire fund.

(e) Organization. The Texas preservation trust fund shall be administered by the Commission through its Executive Committee. The trust fund advisory board, and commission staff shall provide support and input as needed.

(f) All actions of the Executive Committee are subject to ratification by the full Texas Historical Commission with the exception of emergency grants. Duties of the Executive Committee are:

   (1) to approve all policies and guidelines for the administration of the fund or any of its associated boards and committees;
   (2) to approve the acceptance of grants or other donations of money, property, and/or services from any source. Money received shall be deposited to the credit of the Texas preservation trust fund;
   (3) to provide final approval of all trust fund allocations based on advisory board and commission staff recommendations.

(g) The Commission, after considering the recommendations of its Executive Committee, shall appoint a Texas Preservation Trust Fund Advisory Board (hereinafter referred to as advisory board) composed of:

   (1) one representative of a bank or savings and loan association;
   (2) one attorney with a recognized background in historic preservation;
   (3) two architects with substantial experience in historic preservation;
   (4) two archeologists with substantial experience in Texas archeology;
   (5) one real estate professional with experience in historic preservation;
   (6) two persons with demonstrated commitment to historic preservation; and
   (7) two directors of nonprofit historic preservation organizations.

(h) Members of the advisory board shall serve a two-year term expiring on February 1 of each odd-numbered year. Advisory board members may be reappointed. Advisory board members will continue to serve until a new appointment is made or until reappointed. A member of the advisory board is not entitled to compensation for his service, but is entitled to reimbursement for reasonable expenses incurred while attending advisory board meetings subject to any limit provided by the General Appropriations Act. The advisory board shall meet annually in the fall of each year or at other times as determined by the commission or Executive Director. Duties of the advisory board are:

   (1) to make recommendations to the Commission through the Executive Committee on all trust fund project allocations with the exception of emergency grants;[1] as per the trust fund statute;
   (2) to consult with and advise the Executive Committee and Commission staff on matters relating to more efficient utilization or enhancement of the trust fund in order to further the cause of historic preservation throughout Texas; and
   (3) to provide advice and guidance in their respective area of expertise.

   (4) Code of conduct-The Commission Code of Conduct shall apply to members of the advisory board.

   (5) Vacancies-Any vacancy on the advisory board may be filled at any time in the same manner as the incumbent member was appointed.

   (i) [4] Texas preservation trust fund staff. The executive director of the Texas Historical Commission shall organize and supervise the staff for the Texas preservation trust fund.

   (j) [5] Eligible property or projects. To be considered eligible for grant assistance, a property or project must:

   (1) be included in the National Register of Historic Places; or
   (2) be designated as a Recorded Texas Historic Landmark; or
   (3) be designated as a State Archeological Landmark (also known as a State Antiquities Landmark); or
   (4) be determined by the commission to qualify as an eligible property under criteria for inclusion in the National Register of Historic Places or for designation as a Recorded Texas Historic Landmark or a State Archeological Landmark (also known as a State Antiquities Landmark);
   (5) be determined by the commission to qualify as a heritage education grant per subsection (o)(4) [(o)(4)] of this section; or
   (6) be determined by the commission to qualify as an eligible curation management project per subsection (o)(5) [(o)(5)] of this section; or

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[1] As per the trust fund statute.
(7) be determined by the commission to qualify as an emergency grant project per subsection (o)(6) of this section; or

(8) be determined by the commission to qualify as a planning grant project per subsection (o)(3) of this section.

(k) [44] Eligible Applicants: Any public or private entity that is the owner, manager, lessee, maintainer, potential purchaser of an eligible property, or any public or private entity whose purpose includes historic preservation is eligible for fund assistance. If applicant is not the owner of the eligible property, written approval must be submitted by the owner at time of application agreeing to follow all rules and conditions of the commission required for receipt of funds.

(l) [45] Submission of initial grant applications.

(1) Initial grant application schedules and deadlines will be set by the commission. Application forms are to be received by the commission at its offices by these deadlines.

(2) Applicants must complete the initial grant application form and include all required documentation as stated in the grant application instruction packet.

(3) Initial grant applications that are incomplete and/or received after the application deadline are ineligible for review.

(m) [46] Submission of project proposals.

(1) Once initial grant applications are selected to proceed to the project proposal stage, commission staff will confer with applicants to review the instruction manual for preparation of the project proposal.

(2) Project proposal schedule and deadlines will be set by the commission. Project proposals are to be received by the commission at its offices by these deadlines.

(3) To remain eligible for potential funding, project proposals must complete the application form and include all required attachments as stated in the instruction manual.

(4) Project proposals that are incomplete and/or received after the proposal deadline are ineligible for funding.

(5) Project proposals with budgets showing a high percentage of administrative costs will be considered to be less competitive than applications having little or no administrative costs.

(6) In kind match request: although not normally allowed, in exceptional cases an applicant may make a written request for up to one-half of the total required match to be provided in-kind by donated materials and labor. The in kind match form must be included with the project proposal for consideration by the commission.

(n) [47] Grant awards.

(1) Grants are awarded on a competitive basis to eligible properties or projects judged by the Commission to provide the best use of limited grant funds or on an emergency basis for properties or collections deemed highly significant and/or endangered by the Commission. The Executive Director, with the approval of the Executive Committee or Commission, will have the authority to award grants on an emergency basis in accordance with subsection (o)(6) of this section.

(2) Meeting the eligibility criteria and submissions of a grant application does not guarantee award of a grant in any amount.

(3) The commission may consider an appropriate distribution of funds across geographic area, discipline, or type of preservation grant when making awards.

(o) [48] Types of preservation grants. Preservation grants shall be awarded only for:

(1) architectural or archeological development ("preservation," "restoration," "rehabilitation," and "reconstruction," as defined by the Secretary of the Interior’s Standards for The Treatment of Historic Properties, latest edition or Secretary of the Interior’s Standards for Preservation Planning and Standards for Archeological Documentation, latest edition); the costs include professional fees to supervise actual construction, the costs of construction, and related expenses approved by the commission; or

(2) architectural or archeological acquisition of absolute ownership of an eligible property (that is what is defined in subsection (j) of this section) and related costs and professional fees approved by the commission; or

(3) planning costs necessary for the preparation of a historic structure reports, historic or cultural resource reports, preservation plans, maintenance studies, resource surveys, local and regional preservation plans or surveys, and/or feasibility studies as approved by the commission; or

(4) heritage education costs necessary for training individuals and organizations about historic resources and historic preservation techniques; or

(5) curation management costs necessary for a professional inventory and/or rehabilitation of state associated held-in-trust archeological collections (such as processing, cataloging and collections housing improvements). Held-in-trust collections refer to those State associated collections under the authority of the Texas Historical Commission that are placed in a curatorial facility for the care and management; or

(6) emergency costs necessary for the acquisition, evaluation, planning or repair of eligible property or projects as defined in subsection (j) of this section, to reduce or eliminate an immediate threat, resulting from a natural or man-made disaster. In consideration of the emergency nature, the commission may develop and adopt policy and procedures to implement this type of preservation grant with requirements separate from those in this rule.

(p) [49] Eligible match for grant assistance. Applicants eligible to receive grant assistance shall provide a minimum of one dollar in cash match to each state dollar for approved project costs. The commission or the Executive Director upon designation by the Commission, by written policy, may approve in-kind match for projects involving highly significant and endangered properties. In exceptional circumstances and upon recommendation by the Executive Director of the Commission, the Commission may also waive the one to one cash match requirement completely, and/or approve any combination of matching cash or in-kind contribution percentages that the Commission deems appropriate.

(q) [50] Grant allocations. Grants shall be allocated by vote of the Commission at large upon the recommendation of the Executive Committee at any duly noticed meeting of the commission. Reallocation of returned funds may be made by the Executive Committee of the commission upon the recommendation of the Executive Director of the commission.

(r) [51] Starting project work.

(1) The funding agreement must be executed prior to starting any project work.

(2) The project start date is typically the date of the executed funding agreement.
(3) Commencement of project work. Project work as approved shall commence within 90 days of the assigned start date unless otherwise approved in writing by the commission. Approved project work may not begin before the assigned project start date.

(4) If any expenses enumerated in the project proposal detailed budget do not qualify for grant funds, these expenses will be identified by the commission and should be either omitted from the scope of work or separated into a bid alternate for exclusion from the grant funded work.

(5) Any changes in the scope of work or significant changes (greater than 10 percent) in the detailed budget must receive the written approval of the commission prior to implementation.

(6) Forfeiture of grant allocation. Failure to meet the deadline for starting the project work, or to perform any part of the project work as approved, or to receive permission from the commission before commencing additional work may result in forfeiture of the full grant amount.

(6) [46] Award of contract.

(1) Architectural development grant projects. Despite no specific procurement requirements, state, local, or other public entities are responsible for following appropriate procurement methods as required by the Texas Government Code or Local Government Code as applicable for the respective property owned. This may also apply to a non-profit organization that is funding construction on a publicly owned property.

(2) Architectural planning grant projects. The commission recommends that contract for work described in the project proposal be awarded subsequent to interview with at least three professional firms.

(1) [46] Grant reimbursement procedures.

(1) All payment of grant funds shall be strictly on a reimbursement basis with the exception of emergency grants in accordance with subsection (o)(5)(m)(5) of this section for which the Executive Committee or Commission may determine other payment methods. Reimbursement may be made after the competitive award of contract and submission of proof of all incurred allowable expenses in increments of at least $2,500 or at least 10% of the total project cost, whichever is lesser; or according to a schedule as determined by the Executive Director of the Commission; or at the completion of the project after an acceptable required completion report and/or planning documents have been received by the commission.

(2) Deadline for submission of requests for reimbursement. Allowable project expenses equal to two times the grant amount shall be incurred by the deadlines announced by the commission. Proof of those incurred expenses and corresponding payments shall be submitted to the commission by the deadlines announced by the commission.

(3) Forfeiture of grant. Failure to expend the full grant amount by the deadlines as announced by the commission or to submit to the commission all required material by the deadline as announced by the commission may result in forfeiture of the remaining grant amount unless otherwise approved in writing by the commission.

(4) [46] Deed restrictions/designations/conservation easements. Acquisition and development projects shall be encumbered, prior to reimbursement of any project expenses, with a protective designation, deed restriction, conservation easement (as defined in Title 8, Natural Resources Code, Chapter 183), or other appropriate covenants in favor of the state in a format acceptable to the commission. The deed restriction shall run with the land, be enforceable by the State of Texas, and its duration will be based upon the cumulative amount of grant assistance. The terms of the deed restrictions/designations/conservation easements shall be set by the commission.

(v) [46] Repayment penalty for resale of property within one year of acquisition. If a property acquired with a preservation grant is sold within one year of the purchase date, the project owner may be required to repay the State of Texas the amount of the grant allocation.

(w) [46] Completion reports. Projects assisted with acquisition or development grants will be required to submit a project completion report with copies as determined by the commission, consisting of photo documentation and project summary prepared by the supervising project professional, to the commission no later than deadlines announced by the commission. The commission may require completion reports with appropriate documentation for planning, heritage education, curation, or emergency grants. Final reimbursement, in the amount of 10% of the grant allocation may be retained until receipt of an acceptable completion report by the commission.

(x) [46] Professional standards.

(1) Project personnel for development, curation, and planning grants. Project proposal documents for development and planning grants shall be prepared by, and development work supervised by, appropriate personnel in compliance with the following criteria except as otherwise approved by the Executive Director:

(A) History. The minimum professional qualifications in history are a graduate degree in history or closely related field; or a bachelor's degree in history or closely related field plus one of the following:

(i) at least two years of full-time experience in research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historical organization or agency, museum, or other professional institution; or

(ii) substantial contribution through research and publication to the body of scholarly knowledge in the field of history.

(B) Archaeology. The minimum professional qualifications in archeology are a graduate degree in archeology, anthropology, or closely related field plus:

(i) at least one year of full-time professional experience or equivalent specialized training in archeological research, administration, or management of archeological collections;

(ii) at least four months of supervised field and analytic experience in general North American archeology; and

(iii) demonstrated ability to carry research to completion.

(iv) In addition to these minimum qualifications, a professional in prehistoric archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the prehistoric period. A professional in historic archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the historic period.

(C) Architectural history. The minimum professional qualifications in architectural history are a graduate degree in architectural history, art history, historic preservation, or closely related field plus one of the following:

(i) at least two years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or
(ii) substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

(D) Architecture. The minimum professional qualifications in architecture are a professional degree in architecture plus at least two years of full-time professional experience in architecture; or a state license to practice architecture.

(2) Project personnel for acquisition grants. The single appraisal required for acquisition grants shall be prepared by a professional appraiser.

(3) Project personnel for heritage education and emergency projects shall be approved by the Executive Director.

(y) Performance standards. All development and planning projects must be in conformance with the Secretary of the Interior’s Standards for the Treatment of Historic Properties, latest edition. All archeological projects must be in conformance with the Secretary of the Interior’s Standards for Preservation Planning and Standards for Archeological Documentation, latest edition.

(z) Compliance with requirements for accessibility to facilities by persons with disabilities. All projects must be in compliance with or in receipt of appropriate variance from the regulations issued by the Texas Department of Licensing and Regulation, under Texas Government Code Chapter 469, Elimination of Architectural Barriers.

(aa) Compliance with Uniform Grant and Contract Management Act. All projects by political subdivisions of the state must be in compliance with the Uniform Grant and Contract Management Act, Texas Government Code Chapter 783.

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 August 1, 2019.
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Mark Wolfe
Executive Director
Texas Historical Commission
Earliest possible date of adoption: September 15, 2019
For further information, please call: (512) 463-6094

CHAPTER 30. TEXAS HERITAGE TRAILS PROGRAM

13 TAC §§30.1 - 30.3

The Texas Historical Commission (THC) proposes amendments to §§30.1 - 30.3 relating to the Texas Heritage Trails Program (the "Program" or "THTP").

The THC’s Texas Heritage Trails Program was created under THC’s authority to promote heritage tourism in the state under Section 442.005 of the Texas Government Code. The 86th Texas Legislature passed HB 1422 that added Section 442.0088 to the Texas Government Code, effective September 1, 2019. The bill also directs the agency to adopt related administrative code rules no later than November 1, 2019.

The amendments to Chapter 30 are proposed under the Commission’s general authority for the THTP and the new Texas Government Code section to clarify the existing administration of the Program and to comply with the new section.

Proposed amendment §30.1(a) adds the new Texas Government Code section to the Commission’s authority for the Program.

Proposed amendments to §30.2 add definitions of heritage tourism and the principles of heritage tourism as directed by Section 442.0088(c).

Proposed amendments to §30.3 add requirements for contracts between the Commission and one or more of the Texas Heritage Trail Regions, as directed by Section 442.0088(c).

FISCAL NOTE. Mark Wolfe, Executive Director, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering these amendments as proposed. The THTP has been in existence for approximately 20 years and is already administered in a manner similar to the methods described in the amendment. The proposed amendments codify the practices and procedures for administering an existing program at the THC. While new Section 442.0088 includes requirements for contracts with nonprofit organizations, these requirements should have no fiscal impacts on state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Wolfe has determined for each year of the first five-year period the amendments are in effect the public benefit anticipated as a result of the amendments will be an increased clarity of the administration of the Texas Heritage Trails Program. The proposed amendments do not impose a cost on regulated persons or entities; therefore, they are not subject to Texas Government Code, §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Wolfe has determined that there will be no effect on rural communities, small business, or microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required. The proposed amendments will apply to nonprofit organizations that voluntarily participate in the Program. Currently, there are approximately 10 participating nonprofit organizations. The new amendments impose contracting requirements on participating nonprofits, but those requirements are not anticipated to impact the day-to-day activities of these entities or the activities of small and micro-businesses. The THC considers the Program to be an economic development initiative that promotes cultural resources in areas that include rural communities. The THC does not anticipate that the proposed amendments will impact visitation to rural communities that fall within the Program’s trails. There is no anticipated economic cost to persons who are required to comply with the proposed rules.

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. THC 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.

REQUEST FOR PUBLIC COMMENT. Comments on the proposed amendments may be submitted to Mark Wolfe, Executive Director, 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. Amendments to §§30.1 - 30.3 of Chapter 30 (Title 13, Part II of the Texas Administrative Code) relating to the Program are proposed under Section 442.005(q) of the Texas Government Code, which provides the THC with the authority to promulgate rules for the effective administration of its programs under the chapter; under Section 442.008(c) which provides for rules specific to the Program and under Section 442.005(s) and (t) of the Texas Government Code which provides THC with the authority to promote the appreciation of historic sites through a program designed to develop tourism in the state and to specifically promote heritage tourism.

CROSS REFERENCE TO STATUTE. The proposed amendments implement Sections 442.008(c), 442.005(s) and (t) of the Texas Government Code. No other statutes, articles, or codes are affected by these amendments.

§30.1. Object.

(a) The Texas Historical Commission, hereafter referred to as the Commission, is authorized pursuant to Section 442.0088, Section 442.005(s) and Section 442.005(t), Texas Government Code, to promote the appreciation of historic sites, structures, or objects in the state through a program designed to develop tourism in the state and shall promote heritage tourism by assisting persons, including local governments, organizations, and individuals, in the preservation, enhancement, and promotion of heritage and cultural attractions.

(b) The Program must include efforts to:

(1) raise the standards of heritage and cultural attractions around the state;

(2) foster heritage preservation and education;

(3) encourage regional cooperation and promotion of heritage and cultural attractions; and

(4) foster effective local tourism leadership and organizational skills.

(c) The Commission established the Texas Heritage Trails Program (THTP) to achieve these goals and the intent of these rules is to provide a system by which the Commission may approve, fund, and monitor nonprofit organizations, for the purpose of participating in the program.

§30.2. Definitions.

When used in this chapter, the following words or terms have the following meanings unless the context clearly indicates otherwise:

(a) Board of Directors--The governing body of the heritage trail region.

(b) Contract--Written agreement between the Commission and each of the regional organizations.

(c) Executive Director--Region personnel responsible to the board of directors to perform the services and deliver the work of the region to the Commission.

(d) Fiscal Agent--Entity other than the region responsible for administration and distribution of funds provided under the Contract.

(e) Funds--State funds appropriated for the THTP and authorized for distribution to the Region.

(f) Heritage Tourism--Travel directed towards experiencing the heritage of a city, region, state, or country that enables the tourist to learn about, and be surrounded by, local customs, traditions, history and culture.

(g) Principles of Heritage Tourism--Preserve and protect resources: focus on authenticity and quality; make places come alive with interpretation; find the fit between community and tourism; and collaborate for sustainability.

(h) Regional Organization [organization]--A Texas non-profit organization selected by the Commission to operate as the regional organization for one or more of the ten Texas Heritage Trail Regions.

(i) Texas Heritage Trail Regions--The ten regional trails established by the Commission: Texas Brazos Trail Region, Texas Forest Trail Region, Texas Forts Trail Region, Texas Hill Country Trail Region, Texas Independence Trail Region, Texas Lakes Trail Region, Texas Mountain Trail Region, Texas Pecos Trail Region, Texas Plains Trail Region, and Texas Tropical Trail Region.

(j) Staff--Program staff members of the Commission’s THTP and other employees of the Commission.

§30.3. Texas Heritage Trail Region Participation

(a) The Commission established the Texas Heritage Trails Program, and, with the Texas Department of Transportation’s cooperation, adopted the state’s ten Texas Travel Trails to divide Texas into ten Heritage Trail Regions (Texas Brazos Trail Region, Texas Forest Trail Region, Texas Forts Trail Region, Texas Hill Country Trail Region, Texas Independence Trail Region, Texas Lakes Trail Region, Texas Mountain Trail Region, Texas Pecos Trail Region, Texas Plains Trail Region, and Texas Tropical Trail Region).

(b) The THTP is a program of the Commission and permission to participate in the program is granted to regional organizations by action of the Commission and may be revoked by the Commission in its sole discretion at any time.

(c) The Commission may approve a regional organization to represent and operate under the name of their respective region as determined by the Commission. No more than one nonprofit entity shall be approved for any one region; however, the Commission may approve a nonprofit entity to represent more than one region. The entity must retain its Texas and Internal Revenue Service nonprofit status in good standing for the duration of program participation.

(d) The Commission shall establish and maintain heritage tourism principles, vision, mission, values, goals, and strategies for the purposes of this chapter that regional organizations participating in the program shall follow.

(e) The Commission may enter into a Contract with one or more participating regional organizations to provide financial assistance per §30.5(a) of this chapter (relating to Texas Heritage Trail Program Operations). Each contract must clearly establish:

(1) the role of the nonprofit organization in promoting heritage tourism;

(2) the nature of the relationship between the commission and the nonprofit organization;
(3) the performance expectations for the nonprofit organization;
(4) requirements and expectations regarding the nonprofit organization’s employees;
(5) the commission’s expectations regarding ownership of any literature, media, or other products developed or produced by the nonprofit organization to promote heritage tourism during the course of the contract;
(6) the commission’s long-term goals for the program and the nonprofit organization’s role in meeting those goals;
(7) a system for evaluating the nonprofit organization’s overall performance, including the organization’s effectiveness in meeting the performance expectations described by subsection (d) of this section; and
(8) the types of support, other than financial support, the commission will provide to the nonprofit organization to assist in the implementation and administration of the Texas Heritage Trails 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 August 1, 2019.
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Mark Wolfe
Executive Director
Texas Historical Commission
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For further information, please call: (512) 463-6100

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TITLE 16. ECONOMIC REGULATION
PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION
CHAPTER 85. VEHICLE STORAGE FACILITIES
16 TAC §85.722
The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 85, §85.722, regarding the Vehicle Storage Facilities Program. These proposed changes are referred to herein as "proposed rules."

EXPLANATION OF JUSTIFICATION FOR THE RULES
The rules under 16 TAC, Chapter 85 implement Texas Occupations Code, Chapter 2303, relating to Vehicle Storage Facilities.

The proposed rules implement House Bill (HB) 1140 of the 86th Legislature (2019 Regular Session), which amends Occupations Code, Chapter 2303, by: (1) allowing the Texas Commission of Licensing and Regulation (Commission) to biennially adjust daily storage fees and impoundment fees at vehicle storage facilities (VSF) based on changes in the Consumer Price Index for All Urban Consumers (CPI-U); and (2) removing the authority of the Commission to set fees that VSF operators may charge for environmental hazards. The proposed rules are necessary to create consistency with the amended statutory language and to implement the biennial adjustment of fees for 2019.

The proposed rules were presented to and discussed by the Towing and Storage Advisory Board at its meeting on July 30, 2019. The Advisory Board did not make any changes to the proposed rules. The Advisory Board voted and recommended that the proposed rules be published in the Texas Register for public comment.

SECTION-BY-SECTION SUMMARY
The proposed rules amend §85.722(d) by: (1) reflecting the amended statutory language setting the daily storage fee amount that VSF operators may charge; (2) adding new Subpart (d)(1) to include the daily storage fee amounts resulting from the 2019 biennial adjustment; and (3) renumbering the remaining subparts accordingly.

The proposed rules amend §85.722(e) by: (1) reflecting the amended statutory language setting the impoundment fee amount that VSF operators may charge; and (2) including the impoundment fee amount resulting from the 2019 biennial adjustment.

The proposed rules repeal §85.722(g) to remove the environmental hazard fee and renumber the remaining subsection accordingly.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT
Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT
Mr. Couvillon has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be the ability for VSFs to more easily cover their operating costs by charging fees which may be biennially adjusted by the Commission to keep pace with inflation.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for the first two years the proposed rules are in effect, there will be no additional costs to persons who are required to comply with the proposed rules—VSFs—because the biennial adjustment of fees for 2019 results in an increase of the daily storage fees and the impoundment fee that VSFs may charge. Since future biennial adjustments will be dependent on future changes to the CPI-U, it is unknown if there will be future decreases in fee amounts that will result in costs to VSFs in the third, fourth, or fifth years the rules are in effect.

There are no economic costs to persons required to comply with the proposed rules in relation to the repeal of the environmental...
fee because an environmental fee was never set by the Commission and never charged by the VSFs.

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

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules.

The authority to charge more for daily storage fees and the impoundment fee will result in a positive economic effect for VSFs which, are small and micro-businesses. The removal of the authority to charge an environmental fee will not have an adverse economic effect for VSFs because they do not currently charge an environmental fee.

Since the agency has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) The proposed rules do not create or eliminate a government program.

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

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

(4) The proposed rules do not require an increase or decrease in fees paid to the agency.

(5) The proposed rules do create a new regulation. The proposed rules implement HB 1140, which allows the Commission to biennially adjust the daily storage fees and impoundment fee that VSFs may charge. The proposed rules also set the increased amounts of those fees resulting from the 2019 adjustment.

(6) The proposed rules do expand, limit, or repeal an existing regulation. The proposed rules implement HB 1140 by repealing the environmental hazard fee. The proposed rules expand existing regulations by implementing HB 1140 to allow the Commission to biennially adjust the daily storage fees and impoundment fee that VSFs may charge, and the proposed rules set the increased amounts of those fees resulting from the 2019 adjustment.

(7) The proposed rules do not increase or decrease the number of individuals subject to the rule’s applicability.

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

Comments on the proposed rules may be submitted to Vanessa Vasquez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the Texas Register.

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and Chapter 2303, which authorize the Texas Commission of Licensing and Regulation, the Department’s governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and Chapter 2303. No other statutes, articles, or codes are affected by the proposed rules.

§85.722. Responsibilities of Licensee—Storage Fees and Other Charges

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

(d) Daily storage fee. A VSF may [not] charge [less than $5.00 or more than] $20 for each day or part of a day for storage of a vehicle that is 25 feet or less in length and may[. A VSF shall] charge [a fee of] $35 for each day or part of a day for storage of a vehicle that exceeds 25 feet in length, subject to a biennial adjustment as set forth in Texas Occupations Code §2303.1552(b)(1).

(1) Per the 2019 biennial adjustment, the maximum amount that a VSF may charge for a daily storage fee is as follows:

(A) Vehicle that is 25 feet or less in length: $20.64.

(B) Vehicle that exceeds 25 feet in length: $36.11.

(2) A daily storage fee may be charged for any part of the day, except that a daily storage fee may not be charged for more than one day if the vehicle remains at the VSF less than 12 hours. In this paragraph a day is considered to begin and end at midnight.

(3) A VSF that has accepted into storage a vehicle registered in this state shall not charge for more than five days of storage fees until a notice, as prescribed in §85.703 of these rules, is mailed or published.

(4) A VSF that has accepted into storage a vehicle not registered in Texas shall not charge for more than five days of storage before the date the request for owner information is sent to the appropriate governmental entity or to the private entity authorized by that governmental entity to obtain title, registration, and lienholder information using a single vehicle identification inquiry.
A VSF shall charge a daily storage fee after notice, as prescribed in §§85.703, is mailed or published for each day or portion of a day the vehicle is in storage until the vehicle is removed and all accrued charges are paid.

(e) Impoundment fee. A VSF may charge a vehicle owner or authorized representative an impoundment fee of [not to exceed] $20, subject to a biennial adjustment as set forth in Texas Occupations Code §2303.1552(b)(1). Per the 2019 biennial adjustment, the maximum amount that a VSF may charge for an impoundment fee is $20.64. If the VSF charges a fee for impoundment, the written bill for services must specify the exact services performed for that fee and the dates those services were performed.

(f) Governmental or law enforcement fees. A VSF may collect from a vehicle owner or authorized representative any fee that must be paid to a law enforcement agency, the agency’s authorized agent, or a governmental entity.

(g) Environmental hazard fee. A VSF may collect from a vehicle owner or authorized representative a fee in an amount set by the commission for the remediation, recovery, or capture of an environmental or biological hazard.

(h) Additional fees. A VSF may not charge additional fees related to the storage of a vehicle other than fees authorized by these rules or a nonconsent-towing fee authorized by Texas Occupations Code, §2308.2065.

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

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TRD-201902510
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-3671

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**TITLE 19. EDUCATION**

**PART 2. TEXAS EDUCATION AGENCY**

**CHAPTER 97. PLANNING AND ACCOUNTABILITY**

**SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING**

19 TAC §97.1005

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1005 is not included in the print version of the Texas Register. The figure is available in the online version of the August 16, 2019, issue of the Texas Register.)

The Texas Education Agency (TEA) proposes an amendment to §97.1005, concerning performance-based monitoring analysis system. The proposed amendment would adopt into rule the 2019 Results Driven Accountability (RDA) Manual, which would replace the 2018 Performance-Based Monitoring Analysis System (PBMAS) Manual; provide clarifications to existing statutory provisions; and reflect the recodification of Texas Education Code (TEC), Chapter 39A. The proposed amendment to 19 TAC §97.1005 would also change the section title to Results Driven Accountability.

**BACKGROUND INFORMATION AND JUSTIFICATION:** To meet the requirements of House Bill (HB) 3459, 78th Texas Legislature, 2003, limiting and redirecting monitoring, the TEA developed the PBMAS and adopted specific criteria and calculations for monitoring performance and program effectiveness in annual PBMAS manuals. Each year since 2005, the annual PBMAS Manual was adopted in rule and used in conjunction with other evaluation systems to monitor performance and program effectiveness of special programs in school districts and charter schools.

The proposed amendment to 19 TAC §97.1005 would remove from rule the 2018 PBMAS Manual and adopt into rule the new 2019 RDA Manual as Figure: 19 TAC §97.1005(b). The PBMAS Manual has been renamed the RDA Manual in order to align with the Office of Special Education Program (OSEP) framework. The 2019 RDA Manual includes several key changes from the PBMAS Manual used for the 2018 system. Many of these changes are marked in the manual as "New!" for easy reference. Detailed information about specific indicators is included in Section III of the proposed new RDA Manual.

General differences in the proposed new RDA Manual include changing reference from PBMAS to RDA and updating the current year from 2018 to 2019 throughout the manual. Following is a description of substantive changes made in each section of the manual.

**Section I: Introduction**

The Introduction section summarizes the substantive changes from the 2018 Introduction.

Guiding Principles of the PBMAS have been updated to align with the federal principles of RDA.

The section also describes the transition to RDA in 2019 from the 2018 PBMAS, as follows.

**Bilingual Education and English as a Second Language (BE/ESL)**

For 2019, the following language was added to the BE/ESL Indicators #1 (i-v), #2 (i-v), and #5 (i-v): English learners (ELs) in their first year in U.S. schools are excluded from these indicators unless they were administered STAAR® Alternate 2. This exclusion allows local education agencies (LEAs) at least one full year of instruction before the indicator will apply. BE/ESL Indicator 3 (i-v) is report-only. As a report-only indicator, it can be used for LEA information and planning purposes only. BE/ESL Indicator #4 (i-v) now includes ELs classified in Texas Student Data System (TSDS) Public Education Information Management System (PEIMS) in their first, second, third, and fourth year of monitoring as allowed by Every Student Succeeds Act (ESSA) (M1-M4 students). BE/ESL Indicator #8, and BE/ESL Indicator #9 are no longer report-only.

**Career and Technical Education (CTE)**

For the 2019 RDA Manual, CTE Indicator #7 (CTE Nontraditional Course Completion Rate - Males) and CTE Indicator #8 (Nontraditional Course Completion Rate - Females) have been removed because LEAs cannot control the gender of students taking elective courses. The following language was added to
CTE Indicator #2 (i-iv): English learners (ELs) in their first year in U.S. schools are excluded from these indicators, unless they were administered STAAR Alternate 2.

Every Student Succeeds Act (ESSA)

For the 2019 RDA Manual, ESSA Indicators #9-#20 have been added to collect data for students identified as Foster Care, Homeless, and Military. The new indicators are report-only for those populations of students on the STAAR® 3-8, STAAR® EOC, Annual Dropout, and Graduation performance. Therefore, no performance level will be assigned for ESSA Indicators #9-#20.

Special Education (SPED)

In 2019, the only new indicator is SPED Indicator #5: SPED STAAR® Alternate 2 Overall Participation Rate. Both SPED Indicator #4: SPED STAAR® Alternate Participation and SPED STAAR® Alternate 2 Overall will be report-only indicators. No performance level will be assigned for either indicator. Performance levels for significant disproportionality SPED Indicators #9-#16 will be assigned using significant disproportionality (SD) (Year 1), SD (Year 2), SD (Year 3), or SD (RP) for any racial/ethnic group if the racial/ethnic group's risk ratio exceeds 2.5. As required by federal regulations under 34 CFR Part 300, each LEA's indicator for SD will be based on disaggregated data by the following racial and ethnic groups: (1) Hispanic/Latino; (2) American Indian or Alaska Native; (3) Asian; (4) Black or African American; (5) Native Hawaiian or Other Pacific Islander; (6) White; and (7) Two or More Races. Reasonable Progress will also be applied to determine SD.

SPED Indicators have been moved from Section 1 to the introduction of the SPED Indicators in Section III.

Section II: Components of the 2019 RDA

The Components of the 2019 RDA section notes substantive changes from the "components for the 2018 PBMAS," as follows.

Changes related to the data sources, accountability subsets, rounding, masking, performance levels (PLs), changes to cut points, minimum size requirement (MSR), and special analysis (SA) were made to remove reference to PBMAS. In addition, the term "district" was changed to "LEA" and dates were updated.

The RDA PL Assignment and SA Determination Process flowchart reflects formatting changes. There are no substantive changes to the flowchart.

Changes to Required Improvements (RI), RI calculations, and the "Example of RI Using Indicator #8: Migrant Graduation" are also related to the image and formatting. The example is the same as in 2018.

Reasonable Progress (RP), RP Calculations, and the Proportionate Improvement Calculation have been added to comply with 34 CFR §300.647(d)(2).

The Monitoring Interventions section has been updated to show TEA organizational change from the Office of Academics to the Division of Review and Support. The section was also updated to direct LEAs to join the "To the Administrator Addressed" (TAA) correspondence list serv and to provide a link for LEAs to register for monitoring support.

Section III: Performance Indicators

Bilingual Education/English as a Second Language (BE/ESL)

Indicators #1, #2, and #5 have changed to report-only because the inclusion of English learners in the first year in a U.S. school may have an impact on the data reporting for LEAs. Therefore, the indicator will collect the data this year without assigning a performance level to any LEAs.

Indicator #3 is a report-only indicator because the student population is not receiving services for bilingual education or English as a Second Language due to parent denials.

Indicator #4 shows the change in language from limited English proficient to English learner and reflects updates to the criteria for the calculation for students in Texas Student Data System (TSDS) Public Education Information Management System (PEIMS). The data will not include special analysis and the years of analysis changes to one. However, there is no anticipated impact to LEAs, so the performance level assignments are the same.

No substantive changes are made to BE/ESL Indicator #6 or #7. Only updates to language and dates are noted in the changes.

Indicators #8 and #9 were new last year and will continue as a report-only indicator this year to increase the validity and reliability of the data before assigning a performance level to LEAs.

Career and Technical Education (CTE)

There are no new substantive changes to CTE Indicator #1, #3, #4, #5, or #6.

Indicator #2 has changed to report-only because the inclusion of English learners in the first year in a U.S. school may have an impact on the data reporting for LEAs. Therefore, the indicator will collect the data this year without assigning a performance level to any LEAs.

Indicators #7 and #8 have been deleted from this data collection because it is duplicative of data that is already collected to comply with the federal requirements for Perkins IV and Perkins V.

Every Student Succeeds Act (ESSA)

Indicator #1 will change to report-only because the inclusion of English learners in the first year in a U.S. school may have an impact on the data reporting for LEAs. Therefore, the indicator will collect the data this year without assigning a performance level to any LEAs.

No substantive changes are made for ESSA Indicators #2-#7. Indicator #8 now has performance levels assigned based on data collections that have been proven valid and reliable based on previous years of data collection.

Indicators #9-#20 have been added to comply with program requirements for special populations that include children who are experiencing homelessness (authorized by Title VII-B of the McKinney-Vento Homeless Assistance Act), children who are in foster care (as authorized by ESEA Section 1111(g)(1)(E) and Section 1112(c)(5)(B)), and military-connected students (TEC, §25.006(c)(1) and (2) and (d)(1) and(3)). Indicators to measure state assessment performance (Grades 3-8 and end-of-course), dropout, and graduation have been added for each vulnerable population of students: ESSA Indicator #9: Foster Care STAAR® 3-8 Passing Rate; ESSA Indicator #10: Foster Care STAAR® EOC Passing Rate; ESSA Indicator #11: Foster Care Annual Dropout Rate (Grades 7-12); ESSA Indicator #12: Foster Care Graduation Rate; ESSA Indicator #13: Homeless STAAR® 3-8 Passing Rate; ESSA Indicator #14: Homeless STAAR® EOC Passing Rate; ESSA Indicator #15:
Homeless Annual Dropout Rate; ESSA Indicator #16: Homeless Graduation Rate; ESSA Indicator #17: Military STAAR® 3-8 Passing Rate; ESSA Indicator #18: Military STAAR® EOC Passing Rate; ESSA Indicator #19: Military Annual Dropout Rate; ESSA Indicator #20: Military Graduation Rate.

Special Education (SPED)
Indicator #4 has changed both the calculation and assignment of a performance level to the indicator. The calculation changed the denominator from students served in special education to all students in Grades 3-9 to collect the federally required data for reporting the overall participation of students with disabilities in alternate testing. The assignment of performance levels in 2018 have also been removed and the TEA does not intend to assign performance levels related to this indicator.

Indicator #8 is a report-only indicator because a new instructional setting was added to the calculation. Therefore, the indicator will be report-only to collect new baseline data for 2019.

Indicator #10 will also change to a report-only due to the addition of an instructional setting code in the calculation that may impact LEA determinations. Therefore, the performance level will remain a report-only indicator for this year, but 34 CFR Part 300 requires that Significant Disproportionality will still apply for this year.

Indicators 9-17 have all been updated to show that reasonable progress will apply and that a rating of Significant Disproportionality for a third year may apply (Year 3) or SD(RP).

Indicator #16 added performance level assignments based on valid and reliable data collected in the previous PBMAS.

No substantive changes are made for SPED Indicators #1-3 and #5-#7.

Section IV: Appendices
No substantive changes are made to this section. All information has been updated with current contact information.

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

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create new regulations as required by federal law, limit some regulations by making some indicators be report-only, and repeal some regulations.

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

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Montano has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that rule language is based on current law and provide school districts with clarifications regarding the use of accountability results to identify areas where performance can be improved. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

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

PUBLIC COMMENTS: The public comment period on the proposal begins August 16, 2019, and ends September 16, 2019. Public hearings to solicit testimony and input on the proposal will be held at 1:00 p.m. on August 28, 2019, and on September 4, 2019, in Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Anyone wishing to testify at one of the hearings must sign in between 12:30 p.m. and 1:00 p.m. on the day of the respective hearing. Each hearing will conclude either once all who have signed in have been given the opportunity to comment or at 3:30 p.m., whichever comes first. Questions about the hearing should be directed to Review and Support at (512) 463-9414. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Com-missioner_Rules_(TAC)/Proposed_Commissioner_of_Educa-tion_Rules/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY: The amendment is proposed under Texas Education Code (TEC), §7.021(b)(1), which authorizes the TEA to administer and monitor compliance with education programs required by federal or state law, including federal funding and state funding for those programs; TEC, §7.028, which authorizes the TEA to monitor as necessary to ensure school district and charter school compliance with federal law and regulations, financial integrity, and data integrity. Section 7.028(a) also authorizes the TEA to monitor special education programs for compliance with state and federal laws. Section 7.028 also authorizes the agency to monitor school district and charter schools through its investigative process; TEC, §12.056, which requires that a campus or program for which a charter is granted under the TEC, Chapter 12, Subchapter C, is subject to any prohibition relating to the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with the TEC, Chapter 12, Subchapter C, as determined by the commissioner; high school graduation under the TEC, §28.025; spe-
cial education programs under the TEC, Chapter 29, Subchapter A; bilingual education under the TEC, Chapter 29, Subchapter B; and public school accountability under the TEC, Chapter 39, Subchapters B, C, D, F, and J, and Chapter 39A; TEC, §12.104, which states that a charter granted under the TEC, Chapter 12, Subchapter D, is subject to a prohibition, restriction, or requirement, as applicable, imposed by the TEC, Title 2, or a rule adopted under the TEC, Title 2, relating to the PEIMS to the extent necessary to monitor compliance with the TEC, Chapter 12, Subchapter D, as determined by the commissioner; high school graduation requirements under the TEC, §28.025; special education programs under the TEC, Chapter 29, Subchapter A; bilingual education under the TEC, Chapter 29, Subchapter B; discipline management practices or behavior management techniques under the TEC, §37.0021; public school accountability under the TEC, Chapter 39, Subchapters B, C, D, F, G, and J, and Chapter 39A; and intensive programs of instruction under the TEC, §28.0213; TEC, §29.001, which authorizes the TEA to effectively monitor all local educational agencies (LEAs) to ensure that rules relating to the delivery of services to children with disabilities are applied in a consistent and uniform manner, to ensure that LEAs are consistent with those rules, and to ensure that specific reports filed by LEAs are accurate and complete; TEC, §29.0011(b), which authorizes the TEA to meet the requirements under (1) 20 U.S.C. Section 1411(d) and its implementing regulations to collect and examine data to determine whether significant disproportionality based on race or ethnicity is occurring in the state and in the school districts and open-enrollment charter schools in the state with respect to the: (A) Identification of children as children with disabilities, including the identification of children as children with particular impairments; (B) Placement of children with disabilities in particular educational settings; and (C) Incidence, duration, and type of disciplinary actions taken against children with disabilities including suspensions or expulsions; or (2) 20 U.S.C. Section 1411(a)(3)(C) and its implementing regulations to address in the statewide plan the percentage of schools with disproportionate representation of racial and ethnic groups in special education and related services and in specific disability categories that result from inappropriate identification; TEC, §29.010(a), which authorizes the TEA to adopt and implement a comprehensive system for monitoring LEA compliance with federal and state laws relating to special education, including ongoing analysis of LEA special education data; TEC, §29.062, which authorizes the TEA to evaluate and monitor the effectiveness of LEA programs and apply sanctions concerning students with limited English proficiency; TEC, §29.066, which authorizes PEIMS reporting requirements for school districts that are required to offer bilingual education or special language programs to include the following information in the district’s PEIMS report: (1) demographic information, as determined by the commissioner, on students enrolled in district bilingual education or special language programs; (2) the number and percentage of students enrolled in each instructional model of a bilingual education or special language program offered by the district; and (3) the number and percentage of students identified as students of limited English proficiency who do not receive specialized instruction; TEC, §29.182, which authorizes the State Plan for Career and Technology Education to ensure the state complies with requirements for supplemental federal career and technology funding; TEC, §39.051 and §39.052, which authorize the commissioner to determine criteria for accreditation statuses and to determine the accreditation status of each school district and open-enrollment charter school; TEC, §39.053, which authorizes the commissioner to adopt a set of indicators of the quality of learning and achievement and requires the commissioner to periodically review the indicators for consideration of appropriate revisions; TEC, §39.054(b-1), which authorizes the TEA to consider the effectiveness of district programs for special populations, including career and technical education programs, when determining accreditation statuses; TEC, §39.0541, which authorizes the commissioner to adopt indicators and standards under the TEC, Chapter 39, Subchapter C, at any time during a school year before the evaluation of a school district or campus; TEC, §§39.056, 39.057, and 39.058, which authorize the commissioner to adopt procedures relating to monitoring reviews and special accreditation investigations; TEC, §39A.001, which authorizes the commissioner to take any of the actions authorized by the TEC, Chapter 39A, to the extent the commissioner determines necessary if a school does not satisfy the academic performance standards under the TEC, §39.053 or §39.054, or based upon a special accreditation investigation; TEC, §39A.002, which authorizes the commissioner to take certain actions if a school district becomes subject to commissioner action under the TEC, §39A.001; TEC, §39A.004, which authorizes the commissioner to appoint a board of managers to exercise the powers and duties of the school district’s board of trustees if the district is subject to commissioner action under the TEC, §39A.001, and has a current accreditation status of accredited-warned or accredited-probation; or fails to satisfy any standard under the TEC, §39.054(e); or fails to satisfy any financial accountability standard; TEC, §39A.005, which authorizes the commissioner to revoke school accreditation if the district is subject to the TEC, §39A.001, and, for two consecutive school years has received an accreditation status of accredited-warned or accredited-probation, failed to satisfy any standard under the TEC, §39.054(e), or has failed to satisfy a financial performance standard; TEC, §39A.007, which authorizes the commissioner to impose a sanction designed to improve high school completion rates if the district has failed to satisfy any standard under the TEC, §39.054(e), due to high school completion rates; TEC, §39A.051, which authorizes the commissioner to take action based on campus performance that is below any standard under the TEC, §39.054(e); and TEC, §39A.063, which authorizes the commissioner to accept substantially similar intervention measures as required by federal accountability measures in compliance with the TEC, Chapter 39A.

Legislation from the 86th Texas Legislature, 2019, did not impact authority for this rulemaking.


§97.1005. Results Driven Accountability [Performance-Based Monitoring Analysis System].

(a) In accordance with Texas Education Code, §7.028(a), the purpose of the Results Driven Accountability (RDA) [Performance-Based Monitoring Analysis System (PBMAS)] is to report annually on the performance of school districts and charter schools in selected program areas: bilingual education/English as a Second Language, career and technical education, special education, and certain Title programs under federal law. The performance of a school district or charter school is reported through indicators of student performance and program effectiveness and corresponding performance levels established by the commissioner of education.
(b) The assignment of performance levels for school districts and charter schools in the 2019 RDA report [2018 PBMAS] is based on specific criteria and calculations, which are described in the 2019 RDA [2018 PBMAS] Manual provided in this subsection.

Figure: 19 TAC §97.1005(b) [Figure: 19 TAC §97.1005(b)]

(c) The specific criteria and calculations used in the RDA framework will be [PBMAS xxx] established annually by the commissioner of education and communicated to all school districts and charter schools.

(d) The specific criteria and calculations used in the annual RDA [PBMAS] manual adopted for prior school years will remain in effect for all purposes, including accountability and performance monitoring, data standards, and audits, with respect to those school years.

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 August 5, 2019.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

CHAPTER 151. COMMISSIONER'S RULES CONCERNING PASSING STANDARDS FOR EDUCATOR CERTIFICATION EXAMINATIONS

19 TAC §151.1001

The Texas Education Agency (TEA) proposes an amendment to §151.1001, concerning passing standards for educator certification examinations. The proposed amendment would implement the requirements of the Texas Education Code (TEC), §21.048(a), for the commissioner to determine the satisfactory level of performance required for each certification examination by adding passing standards for additional pedagogical examinations and new passing standards for content certification examinations.

BACKGROUND INFORMATION AND JUSTIFICATION: TEC, §21.048(a), requires the commissioner of education to establish the satisfactory levels of performance required on educator certification examinations and require a satisfactory level of performance on each core subject covered by an examination.

Section 151.1001 specifies the passing standards for all pedagogical and content certification examinations as approved by the commissioner. The proposed passing standards for the edTPA assessments in proposed subsection (b)(14) are successful completion to align with the assessment pilot period. The proposed passing standards for the content certification examinations in proposed new subsection (b)(15) were established by subject-matter expert stakeholder committee groups and include a new set of examinations.

The average passing standard is expressed as an average raw cut score of all active forms of a test or the minimum proficiency level. It is critical to note that the actual raw cut scores may vary slightly from form to form to balance the overall difficulty of the test yet maintain consistency in scoring.

FISCAL IMPACT: Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Franklin has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be providing clarity to educators and others regarding the required passing standards for Texas certification examinations. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

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

PUBLIC COMMENTS: The public comment period on the proposal begins August 16, 2019, and ends September 16, 2019. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the Texas Register on August 16, 2019. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.
STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code, §21.048(a), which requires the commissioner to determine the level of performance considered to be satisfactory on educator certification examinations and further authorizes the commissioner to require a satisfactory level of performance on each core subject covered by an examination.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §21.048(a).

§151.1001. Passing Standards.

(a) As required by the Texas Education Code, §21.048(a), the commissioner of education shall determine the satisfactory level of performance for each educator certification examination and require a satisfactory level of performance on each core subject covered by an examination. The figures in this section identify the passing standards established by the commissioner for educator certification examinations.

(b) The figures in this subsection identify the passing standards established by the commissioner for classroom teacher examinations.

(1) The figure in this paragraph identifies the passing standards for early childhood through Grade 6 examinations.

Figure: 19 TAC §151.1001(b)(1) (No change.)

(2) The figure in this paragraph identifies the passing standards for Grades 4-8 examinations.

Figure: 19 TAC §151.1001(b)(2) (No change.)

(3) The figure in this paragraph identifies the passing standards for secondary mathematics and science examinations.

Figure: 19 TAC §151.1001(b)(3) (No change.)

(4) The figure in this paragraph identifies the passing standards for secondary English language arts and social studies examinations.

Figure: 19 TAC §151.1001(b)(4) (No change.)

(5) The figure in this paragraph identifies the passing standards for speech and journalism examinations.

Figure: 19 TAC §151.1001(b)(5) (No change.)

(6) The figure in this paragraph identifies the passing standards for fine arts examinations.

Figure: 19 TAC §151.1001(b)(6) (No change.)

(7) The figure in this paragraph identifies the passing standards for health and physical education examinations.

Figure: 19 TAC §151.1001(b)(7) (No change.)

(8) The figure in this paragraph identifies the passing standards for computer science and technology applications examinations.

Figure: 19 TAC §151.1001(b)(8) (No change.)

(9) The figure in this paragraph identifies the passing standards for career and technical education examinations.

Figure: 19 TAC §151.1001(b)(9) (No change.)

(10) The figure in this paragraph identifies the passing standards for bilingual examinations.

Figure: 19 TAC §151.1001(b)(10) (No change.)

(11) The figure in this paragraph identifies the passing standards for languages other than English (LOTE) examinations.

Figure: 19 TAC §151.1001(b)(11) (No change.)

(12) The figure in this paragraph identifies the passing standards for special education examinations.

Figure: 19 TAC §151.1001(b)(12) (No change.)

(13) The figure in this paragraph identifies the passing standards for supplemental examinations.

Figure: 19 TAC §151.1001(b)(13) (No change.)

(14) The figure in this paragraph identifies the passing standards for pedagogy and professional responsibilities examinations.

Figure: 19 TAC §151.1001(b)(14)
[Figure: 19 TAC §151.1001(b)(14)]

(15) The figure in this paragraph identifies the passing standards for content certification examinations.

Figure: 19 TAC §151.1001(b)(15) (No change.)

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

Filed with the Office of the Secretary of State on August 5, 2019.
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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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Title 22. Examining Boards

PART 24. Texas Board of Veterinary Medical Examiners

CHAPTER 573. Rules of Professional Conduct

SUBCHAPTER G. Other Provisions

22 TAC §573.68

The Texas Board of Veterinary Medical Examiners (Board) proposes new rule §573.68, concerning Telemedicine.

Overview

The purpose of the proposed new rule is to compile current regulations concerning telemedicine for the ease and convenience of the regulated population. The new rule merely re-states existing law and does not add or modify existing regulations in any manner.

Fiscal Note

John Hellenberg, Executive Director, has determined that for each year of the first five years that the rule is in effect, there are no anticipated increases or reductions in costs to the state and local governments as a result of enforcing or administering the rule.

Mr. Hellenberg has also determined that for each year of the first five years that the rule is in effect, there is no anticipated impact in revenue to state government as a result of enforcing or administering the rule.
Public Benefit and Cost Note

Mr. Helenberg has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be that the regulated population has access to information regarding current veterinary telemedicine regulations in one rule. There are no anticipated economic costs to persons required to comply with the rule.

Local Employment Impact Statement

Mr. Helenberg has determined that the rule will have no impact on local employment or a local economy. Thus, the board is not required to prepare a local employment impact statement pursuant to §2001.022, Government Code.

Economic Impact Statement and Regulatory Flexibility Analysis

Mr. Helenberg has determined that there are no anticipated adverse economic effects on small business or micro-businesses as a result of the proposed repeal. Thus, the Board is not required to prepare an economic impact statement or a regulatory flexibility analysis pursuant to §2006.002, Government Code.

Takings Impact Assessment

Mr. Helenberg has determined that there are no private real property interests affected by the rule. Thus, the board is not required to prepare a takings impact assessment pursuant to §2007.043, Government Code.

Government Growth Impact Statement

For the first five years that the rule would be in effect, it is estimated that; the proposed rule would not create or eliminate a government program; implementation of the proposed rule would not require the creation of new employee positions or the elimination of existing employee positions; implementation of the proposed rule would not require an increase or decrease in future legislative appropriations to the agency; the proposed rule would not require an increase in the fees paid to the agency; the proposed rule would not create a new regulation; the proposed rule would not expand, limit, or repeal an existing regulation; the proposed rule would not increase or decrease the number of individuals subject to the rule’s applicability; and the proposed rule would not positively or adversely affect the state’s economy.

Request for Public Comments

The Texas Board of Veterinary Medical Examiners invites comments on the proposed new rule from any interested persons, including any member of the public. A written statement should be mailed or delivered to Elaine Crease, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvm.state.tx.us. Comments will be accepted for 30 days following publication in the Texas Register. Comments must be received within 30 days after publication of this proposal in order to be considered.

Statutory Authority

The rule is proposed under the authority of §801.151(a), Occupations Code, which states that the Board may adopt rules necessary to administer the chapter.

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

§573.68. Telemedicine.

(a) "Telemedicine" means veterinary medicine offered or provided by a person to a patient at a different physical location than the person using telecommunications or information technology.

(b) Pursuant to §801.251, Texas Occupations Code, a person may not practice, or offer or attempt to practice, veterinary telemedicine unless the person holds a license to practice veterinary medicine issued by the Board.

(c) Pursuant to §801.351(a), Texas Occupations Code, a person may not practice veterinary telemedicine unless a veterinarian-client-patient relationship exists. Pursuant to §801.351(c), Texas Occupations Code, a veterinarian-client-patient relationship may not be established solely by telephone or electronic means.

(d) A person providing veterinary telemedicine is subject to the professional standard of care that would apply to the provision of the same services in an in-person setting.

Thus, 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 August 5, 2019. TRD-201902513 John Helenberg Executive Director Texas Board of Veterinary Medical Examiners Earliest possible date of adoption: September 15, 2019 For further information, please call: (512) 305-7573

CHAPTER 575. PRACTICE AND PROCEDURE

22 TAC §575.25

The Texas Board of Veterinary Medical Examiners (Board) proposes the repeal of §575.25, concerning Recommended Schedule of Sanctions. This repeal is necessary because the Board is simultaneously proposing a new section for adoption. The proposed new §575.25 is being published elsewhere in this issue of the Texas Register.

Fiscal Note

John Helenberg, Executive Director, has determined that for each year of the first five years that the proposed repeal is in effect, there are no anticipated increases or reductions in costs to the state and local governments as a result of the proposed repeal.

Mr. Helenberg has also determined that for each year of the first five years that the proposed repeal is in effect, there is no anticipated impact in revenue to state government as a result of the proposed repeal.

Public Benefit and Cost Note

Mr. Helenberg has also determined that for each year of the first five years the proposed repeal is in effect, the anticipated public benefit will be a schedule of sanctions that complies with §801.411, Occupations Code. There are no anticipated economic costs to persons required to comply with the proposed repeal.

Local Employment Impact Statement

Mr. Helenberg has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the board is not required to prepare a local employment impact statement pursuant to §2001.022, Government Code.
Economic Impact Statement and Regulatory Flexibility Analysis

Mr. Helenberg has determined that there are no anticipated adverse economic effects on small business or micro-businesses as a result of the proposed repeal. Thus, the Board is not required to prepare an economic impact statement or a regulatory flexibility analysis pursuant to §2006.002, Government Code.

Taking Impact Assessment

Mr. Helenberg has determined that there are no private real property interests affected by the proposed repeal. Thus, the board is not required to prepare a takings impact assessment pursuant to §2007.043, Government Code.

Government Growth Impact Statement

For the first five years that the repeal of the rule would be in effect, it is estimated that; the proposed repeal would not create or eliminate a government program; implementation of the proposed repeal would not require the creation of new employee positions or the elimination of existing employee positions; implementation of the proposed repeal would not require an increase or decrease in future legislative appropriations to the agency; the proposed repeal would not require an increase in the fees paid to the agency; the proposed repeal would not create a new regulation; the proposed repeal would not expand or limit an existing regulation; the proposed repeal would not increase or decrease the number of individuals subject to the rule's applicability; and the proposed repeal would not positively or adversely affect the state's economy.

Request for Public Comments

The Texas Board of Veterinary Medical Examiners invites comments on the proposed repeal of the rule from any interested persons, including any member of the public. A written statement should be mailed or delivered to Valerie Mitchell, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to Valerie.mitchell@veterinary.texas.gov. Comments will be accepted for 30 days following publication in the Texas Register. Comments must be received within 30 days after publication of this proposal in order to be considered.

Statutory Authority

The repeal is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter, and the authority of §801.411, Occupations Code, which states in part that the Board by rule shall adopt a schedule of penalties, disciplinary actions, and other sanctions that the Board may impose.

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

§575.25. Recommended Schedule of Sanctions.

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 August 5, 2019.

TRD-201902511
John Helenberg
Executive Director
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: September 15, 2019
For further information, please call: (512) 305-7573

22 TAC §575.25

The Texas Board of Veterinary Medical Examiners (Board) proposes new §575.25, concerning Schedule of Sanctions, simultaneously with the proposed repeal of current §575.25. The proposed repeal of current §575.25 is being published elsewhere in this issue of the Texas Register.

Overview

The purpose of the proposed new rule is to comply with the requirements of §801.411, Occupations Code. The proposed new rule is a schedule of sanctions that will be used by the Board, Board staff, and the State Office of Administrative Hearings to assess the appropriate sanction to be imposed upon a licensee that is subject to disciplinary action.

Section 801.411, Occupations Code, was enacted following the 2016-2017 Texas Sunset Commission review, which identified several concerns with the Board's current recommended schedule of sanctions. In particular, the Commission concluded that the current rule could not ensure fair treatment of all licensees and complainants, and does not account for commonly used discipline such as formal and informal reprimands.

The proposed new rule would promote consistency in disciplinary actions by providing elements to distinguish Class A, B, and C violations. The proposed new rule also provides distinct penalty ranges for each class of violation, which would ensure that disciplinary actions relate appropriately to the nature and seriousness of the offense. To determine which penalty is appropriate within the penalty range, the proposed new rule would require consideration of all the factors set out in statute, along with other aggravating and mitigating factors.

Fiscal Note

John Helenberg, Executive Director, has determined that for each year of the first five years that the rule is in effect, there are no anticipated increases or reductions in costs to the state and local governments as a result of enforcing or administering the rule.

Mr. Helenberg has also determined that for each year of the first five years that the rule is in effect, there is no anticipated impact in revenue to state government as a result of enforcing or administering the rule.

Public Benefit and Cost Note

Mr. Helenberg has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be a schedule of sanctions that complies with §801.411, Occupations Code. There are no anticipated economic costs to persons required to comply with the rule.

Local Employment Impact Statement

Mr. Helenberg has determined that the rule will have no impact on local employment or a local economy. Thus, the board is not required to prepare a local employment impact statement pursuant to §2001.022, Government Code.

Economic Impact Statement and Regulatory Flexibility Analysis

Mr. Helenberg has determined that there are no anticipated adverse economic effects on small business or micro-businesses as a result of the proposed repeal. Thus, the Board is not required to prepare an economic impact statement or a regulatory flexibility analysis pursuant to §2006.002, Government Code.
Mr. Helenberg has determined that there are no private real property interests affected by the rule. Thus, the board is not required to prepare a takings impact assessment pursuant to §2007.043, Government Code.

Government Growth Impact Statement

For the first five years that the rule would be in effect, it is estimated that; the proposed rule would not create or eliminate a government program; implementation of the proposed rule would not require the creation of new employee positions or the elimination of existing employee positions; implementation of the proposed rule would not require an increase or decrease in future legislative appropriations to the agency; the proposed rule would not require an increase in the fees paid to the agency; the proposed rule would not create a new regulation; the proposed rule would not expand, limit, or repeal an existing regulation; the proposed rule would not increase or decrease the number of individuals subject to the rule's applicability; and the proposed rule would not positively or adversely affect the state's economy.

Request for Public Comments

The Texas Board of Veterinary Medical Examiners invites comments on the proposed new rule from any interested persons, including any member of the public. A written statement should be mailed or delivered to Elaine Crease, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the Texas Register. Comments must be received within 30 days after publication of this proposal in order to be considered.

Statutory Authority

The rule is proposed under the authority of §801.151(a), Occupations Code, which states that the Board may adopt rules necessary to administer the chapter, and the authority of §801.411, Occupations Code, which states in part that the Board by rule shall adopt a schedule of penalties, disciplinary actions, and other sanctions that the Board may impose.

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

§575.25. Schedule of Sanctions.

This Schedule of Sanctions shall be used to assess the appropriate sanction to be imposed upon a licensee that is subject to disciplinary action.

Figure: 22 TAC §575.25

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

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John Helenberg
Executive Director
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7573

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 553. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

SUBCHAPTER C. STANDARDS FOR LICENSURE

26 TAC §553.44

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §553.44, concerning Emergency Preparedness and Response in Chapter 553, governing Licensing Standards for Assisted Living Facilities, in Subchapter C, Standards for Licensure, which was administratively transferred from Title 40, Part 1, Chapter 92, effective May 1, 2018.

BACKGROUND AND PURPOSE

The purpose of the proposal is to provide greater detail and specificity to the current requirement in §553.62(d) for assisted living facilities to have a written emergency preparedness and response plan that addresses a minimum of eight specified core functions. Proposed new §553.44 describes components of the eight core functions in more detail and provides additional guidance for developing and implementing a written plan to ensure adequate emergency preparedness and response. The proposed new rule includes requirements for facilities to perform a risk assessment, enhance staff training, plan and map out potential evacuation routes, and develop systems for communication and coordination with state and local resources.

SECTION-BY-SECTION SUMMARY

Subsection (a) of proposed new §553.44 provides definitions for this section related to emergency preparedness and response.

Subsection (b) of proposed new §553.44 requires an assisted living facility (facility) to perform a risk assessment of potential internal and external emergencies or disasters relevant to the facility's operations and location that pose the highest risk to the facility.

Subsection (c) of proposed new §553.44 requires a facility to develop and maintain a written emergency preparedness and response plan, based on its risk assessment, that addresses the eight core functions of emergency management. It requires a facility to prepare for an emergency based on its plan and to follow the plan in the event of an emergency.

Subsection (d) of proposed new §553.44 requires a facility to maintain a current printed copy of its plan in a central location; update the plan as relevant information in the plan or in the lists required by the plan changes, or when updates are needed to address identified shortcomings; review the plan at least annually; provide plan information to residents and the residents' legally authorized representative; and register, and notify residents or applicable representatives how to register, with the Texas Information and Referral Network.

Subsection (e) of proposed new §553.44 requires a facility's plan to designate an emergency preparedness coordinator (EPC) and alternate EPC with authority to direct, control, and manage the facility's emergency response, and assign responsibilities to staff under the plan.
Subsection (f) of proposed new §533.44 requires a facility's plan to ensure necessary notifications, to and by the facility, and to ensure monitoring of available information concerning the disaster or emergency.

Subsection (g) of proposed new §533.44 requires a facility's plan to identify primary and secondary modes of emergency communication; to assemble specific emergency contact information in advance and make it accessible in a location identified in the plan; and to provide planned procedures for communication and information dissemination during an emergency response.

Subsection (h) of proposed new §533.44 requires a facility's plan to describe procedures for making and implementing a decision to remain in the facility that assign staff responsibilities to meet resident needs and provide for notification of the facility's decision to designated HHSC staff.

Subsection (i) of proposed new §533.44 requires a facility to evacuate when mandated by an evacuation order; to plan and pre-arrange, and identify in its plan, evacuation destinations and routes, with contingency procedures; and to include in its plan, procedures and staff responsibilities in relation to making and implementing a decision to evacuate; notifying HHSC and the local emergency management coordinator of the evacuation and return to the facility; ensuring that residents' needs are met during an evacuation, and for the duration of the evacuation; accounting for all residents during an evacuation; and return residents to the facility when the facility has determined that it is safe to do so.

Subsection (j) of proposed new §533.44 requires the facility's plan to identify arrangements for access to a sufficient number of vehicles to safely evacuate all residents; and to plan for safe transportation of residents and necessary supplies, and for maintaining communication in the event of evacuation.

Subsection (k) of proposed new §533.44 requires the facility's plan to include procedures for notifying other providers that deliver services to facility residents, and to identify special services that residents use and procedures for enabling residents who receive them to continue to receive those services notwithstanding an emergency.

Subsection (l) of proposed new §533.44 requires the facility's plan to prepare for, and identify staff responsible for, meeting supply needs of residents and staff during an emergency, and to describe procedures for safeguarding resident records and medications.

Subsection (m) of proposed new §533.44 describes conditions for a facility to act as a receiving facility, as defined in §533.44(a)(7), including having plan procedures to accommodate residents from another assisted living facility, remaining within the receiving facility's licensed capacity or approved excess, and taking certain steps to ensure that the facility can safely act as a receiving facility without adversely affecting the health, safety, or service needs of the receiving facility's or evacuated facility's residents or others.

Subsection (n) of proposed new §533.44 requires a facility to provide staff training on the plan and on staff responsibilities under the plan, and to offer training to residents, their legally authorized representatives, and emergency contacts. The subsection also requires a facility to conduct at least one unannounced annual drill with facility staff for severe weather or another emergency.

Subsection (o) of proposed new §533.44 requires a facility to self-report to HHSC and investigate a death or serious injury of a resident or threat to a resident's health or safety, resulting from an emergency or disaster.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there may be an adverse economic effect on small businesses, micro-businesses, or rural communities from the rule as proposed.

The proposed rule requires a facility to perform a risk assessment, develop a written plan in accordance with the rule, plan and map out potential evacuation routes, develop systems for communication and coordination with state and local resources, and enhance staff and resident training. HHSC assumes that some providers may already perform these tasks but lacks sufficient information on providers that may incur additional costs for increased staff time and effort. HHSC does not have sufficient information to determine economic impact.

HHSC determined that alternative methods to achieve the purpose of the proposed rule for small businesses, micro-businesses or rural communities would not be consistent with ensuring the health and safety of residents of assisted living facilities.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas, including residents of assisted living facilities.

PUBLIC BENEFIT AND COSTS
David Kostroun, Deputy Executive Commissioner, Regulatory Services Division, has determined that for each year of the first five years the rule is in effect, the public benefit will be more comprehensive emergency and disaster preparedness, planning, and response by assisted living facilities, which will ensure the protection of resident health, safety, and welfare during and after a disaster or emergency.

Trey Wood has also determined that for the first five years the rule is in effect, persons who are required to comply with the proposed rule may incur economic costs due to additional requirements, such as performing a risk assessment, developing and maintaining a written plan, planning and mapping out evacuation routes, developing systems for communication and coordination with state and local resources, and enhancing staff and resident training. HHSC assumes that some providers may already perform these tasks but lacks sufficient information on providers that may incur additional costs for increased staff time and effort. For this reason, costs to persons required to comply cannot be determined.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to HHSRulesCoordinationOffice@hhsc.state.tx.us.

To ensure consideration in the rulemaking, comments must be submitted no later than 31 days after the date of this issue of the Texas Register. Comments must be: (1) postmarked or shipped on or before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments, to be accepted, must be postmarked, shipped, or e-mailed before midnight, or hand-delivered before 5:00 p.m., on the following business day. When e-mailing comments, please indicate "Comments on Proposed Rule 19R006" in the subject line.

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation of and provision of services by the health and human services agencies, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Health and Safety Code, Chapter 247, relating to Assisted Living Facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.


§553.44. Emergency Preparedness and Response.

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

(1) Designated emergency contact--A person that a resident, or a resident's legally authorized representative, identifies in writing for the facility to contact in the event of an emergency.

(2) Disaster or emergency--An impending, emerging, or current situation that:

(A) interferes with normal activities of a facility and its residents;

(B) may:

(i) cause injury or death to a resident or staff member of the facility; or

(ii) cause damage to facility property;

(C) requires the facility to respond immediately to mitigate or avoid the injury, death, damage, or interference; and

(D) except as it relates to an epidemic or pandemic, or to the extent it is incident to another emergency, does not include a situation that arises from the medical condition of a resident, such as cardiac arrest, obstructed airway, or cerebrovascular accident.

(3) Emergency Management Coordinator (EMC)--The person who is appointed by the local mayor or county judge to plan, coordinate, and implement public health emergency preparedness planning and response within the local jurisdiction.

(4) Emergency Preparedness Coordinator (EPC)--The facility staff person with the responsibility and authority to direct, control, and manage the facility's response to an emergency.

(5) Evacuation Summary--A current summary of the facility's emergency preparedness and response plan that includes:

(A) the name, address, and contact information for each receiving facility or pre-arranged evacuation destination identified by the facility under subsection (g)(3)(B) of this section;

(B) the procedure for safely transporting residents and any other individuals evacuating a facility;

(C) the name or title, and contact information, of the facility staff member to contact for evacuation information;

(D) the facility's primary mode of communication to be used during an emergency and the facility's supplemental or alternate mode of communication;

(E) the facility's procedure for notifying persons referred to in subsection (g)(5) of this section as soon as practicable about facility actions affecting residents during an emergency, including an impending or actual evacuation, and for maintaining ongoing communication with them for the duration of the emergency or evacuation;

(F) a statement about training that is available to a resident, the resident's legally authorized representative, and each designated emergency contact for the resident, on procedures under the facility's plan that involve or impact each of them, respectively; and

(G) the facility's procedures for when a resident evacuates with a person other than a facility staff member.

(6) Plan--A facility's emergency preparedness and response plan.

(7) Receiving facility--A separate licensed assisted living facility:
(A) from which a facility has documented acknowledgegment, from an identified authorized representative, as described in subsection (i)(2)(C) of this section; and

(B) to which the facility has arranged in advance of a disaster or emergency to evacuate some or all of a facility's residents, on a temporary basis due to a disaster or emergency, if, at the time of evacuation:

(i) the receiving facility can safely receive and accommodate the residents; and

(ii) the receiving facility has any necessary licensure or emergency authorization required to do so.

8 Risk assessment—The process of evaluating, documenting, and examining potential disasters or emergencies that pose the highest risk to a facility, and their foreseeable impacts, based on the facility's geographical location, structural conditions, resident needs and characteristics, and other influencing factors, in order to develop an effective emergency preparedness and response plan.

(b) A facility must conduct and document a risk assessment that meets the definition in subsection (a)(8) of this section for potential internal and external emergencies or disasters relevant to the facility's operations and location, and that pose the highest risk to a facility, such as:

(1) a fire or explosion;

(2) a power, telecommunication, or water outage; contamination of a water source; or significant interruption in the normal supply of any essential, such as food or water;

(3) a wildfire;

(4) a hazardous materials accident;

(5) an active or threatened terrorist or shooter, a detonated bomb or bomb threat, or a suspicious object or substance;

(6) a flood or a mudslide;

(7) a hurricane or other severe weather conditions;

(8) an epidemic or pandemic;

(9) a cyber-attack; and

(10) a loss of all or a portion of the facility.

(c) A facility must develop and maintain a written emergency preparedness and response plan based on its risk assessment under subsection (b) of this section and that is adequate to protect facility residents and staff in an emergency.

(1) The plan must address the eight core functions of emergency management, which are:

   (A) Direction and Control;

   (B) Warning;

   (C) Communication;

   (D) Sheltering arrangements;

   (E) Evacuation;

   (F) Transportation;

   (G) Health and medical needs; and

   (H) Resource management.

(2) The facility must prepare for an emergency based on its plan and follow each plan procedure and requirement, including contingency procedures, at the time it is called for in the event of an emergency. In addition to meeting the other requirements of this section, the emergency preparedness plan must:

   (A) document the contact information for the EMC for the area, as identified by the office of the local mayor or county judge;

   (B) include a process that ensures communication with the EMC, both as a preparedness measure and in anticipation of and during a developing and occurring emergency; and

   (C) include the location of a current list of the facility's resident population, which must be maintained as required under subsection (g)(3) of this section, that identifies:

      (i) residents with Alzheimer's disease or related disorders;

      (ii) residents who have an evacuation waiver approved under §553.41(f)(2) of this subchapter; and

      (iii) residents with mobility limitations or other special needs who may need specialized assistance, either at the facility or in case of evacuation.

(3) A facility must notify the EMC of the facility's emergency preparedness and response plan, take actions to coordinate its planning and emergency response with the EMC, and document communications with the EMC regarding plan coordination.

(d) A facility must:

(1) maintain a current printed copy of the plan in a central location that is accessible to all staff, residents, and residents' legally authorized representatives at all times;

(2) at least annually and after an event described in subparagraphs (A)-(D) of this paragraph, review the plan, its evacuation summary, if any, and the contact lists described in subsection (g)(3) of this section, and update each:

   (A) to reflect changes in information, including when an evacuation waiver is approved under §553.41(f)(2) of this subchapter;

   (B) within 30 days or as soon as practicable following a disaster or emergency;

   (C) within 30 days after a drill, if, based on the drill, a shortcoming in the plan is identified; and

   (D) within 30 days after a change in a facility policy or HHSC rule that would impact the plan;

(3) document reviews and updates conducted under paragraph (2) of this subsection, including the date of each review and dated documentation of changes made to the plan based on a review;

(4) provide residents and the residents' legally authorized representative with a written copy of the plan or an evacuation summary, as defined in subsection (a)(5) of this section, upon admission, on request, and when the facility makes a significant change to a copy of the plan or evacuation summary it has provided to a resident or a resident's legally authorized representative;

(5) provide the information described in subsection (a)(5)(A) of this section to a resident or legally authorized agent who does not receive an evacuation summary under paragraph (4) of this subsection and requests that information;

(6) notify each resident, next of kin, or legally authorized representative, in writing, how to register for evacuation assistance with the Texas Information and Referral Network (2-1-1 Texas); and
(7) register as a provider with 2-1-1 Texas to assist the state in identifying persons who may need assistance in an emergency. In doing so, the facility is not required to identify or register individual residents for evacuation assistance.

(e) Core Function One: Direction and Control. A facility's plan must contain a section for direction and control that:

(1) designates the EPC, who is the facility staff person with the responsibility and authority to direct, control, and manage the facility's response to an emergency;

(2) designates an alternate EPC, who is the facility staff person with the responsibility and authority to act as the EPC if the EPC is unable to serve in that capacity; and

(3) assigns responsibilities to staff members by designated function or position and describes the facility's system for ensuring that each staff member clearly understands the staff member's own role and how to execute it, in the event of an emergency.

(f) Core Function Two: Warning. A facility's plan must contain a section for warning that:

(1) describes applicable procedures, methods, and responsibility for the facility and for the EMC and other outside organizations, based on facility coordination with them, to notify the EPC or alternate EPC, as applicable, of an emergency;

(2) identifies whom, including during off hours, weekends, and holidays, the EPC or alternate EPC, as applicable, will notify of an emergency, and the methods and procedures for notification;

(3) describes a procedure for keeping all persons present in the facility informed of the facility's present plan for responding to a potential or current emergency that is impacting or threatening the area where the facility is located; and

(4) addresses applicable procedures, methods, and responsibility for monitoring local news and weather reports regarding a disaster or potential disaster or emergency, taking into consideration factors such as:

(A) location-specific natural disasters;

(B) whether a disaster is likely to be addressed or forecast in the reports; and

(C) the conditions, natural or otherwise, under which designated staff become responsible for monitoring news and weather reports for a disaster or emergency.

(g) Core Function Three: Communication. A facility's plan must contain a section for communication that:

(1) identifies the facility's primary mode of communication to be used during an emergency and the facility's supplemental or alternate mode of communication, and procedures for communication if telecommunication is affected by a disaster or emergency;

(2) includes instructions on when to call 911;

(3) includes the location of a list of each of the following, with current contact information for each, where it is easily accessible to staff at all times:

(A) the legally authorized representative and designated emergency contacts for each resident;

(B) each primary and alternate receiving facility or pre-arranged evacuation destination; the list for which must be kept with the written acknowledgement for each, as described and required in subsection (i)(2)(C) of this section;

(C) home and community support services agencies and independent health care professionals that deliver health care services to residents in the facility;

(D) personal contact information for facility staff; and

(E) the facility's resident population, which must identify residents who may need specialized assistance at the facility or in case of evacuation, as described in subsection (c)(2)(C)(iii) of this section;

(4) provides a method for the facility to communicate information to the public about its status during an emergency; and

(5) describes the facility's procedure for notifying at least the following persons, as applicable, and as soon as practicable, about facility actions affecting residents during an emergency, including an impending or actual evacuation, and for maintaining ongoing communication for the duration of the emergency or evacuation:

(A) all facility staff members, including off-duty staff;

(B) each facility resident;

(C) any legally authorized representative of a resident;

(D) each resident's designated emergency contacts;

(E) each home and community support services agency or independent health care professional that delivers health care services to a facility resident;

(F) each receiving facility or evacuation destination to be utilized, if there is an impending or actual evacuation, which must be utilized in accordance with the pre-arranged acknowledged procedures described in subsection (i)(2)(C) of this section, where applicable, and with which the facility must verify, prior to evacuating, that the applicable destination is available and legally authorized at the time to receive the evacuated residents, and can safely do so;

(G) the driver of a vehicle transporting residents or staff, medication, records, food, water, equipment, or supplies during an evacuation, and the employer of a driver who is not a facility staff person; and

(H) the EMC.

(b) Core Function Four: Sheltering Arrangements. A facility's plan must contain a section for sheltering arrangements that:

(1) describes the procedure for making and implementing a decision to remain in the facility during a disaster or emergency, that includes:

(A) the arrangements, staff responsibilities, and procedures for accessing and obtaining medication, records, equipment and supplies, water and food, including food to accommodate an individual who has a medical need for a special diet;

(B) facility arrangements and procedures for providing power and safe ambient temperatures in areas used by residents during a disaster or emergency; and

(C) if necessary, arrangements for sheltering facility staff or emergency staff involved in responding to an emergency and, as necessary and appropriate, their family members; and

(2) includes a procedure for notifying the HHSC Regulatory Services regional office for the area in which the facility is located and, in accordance with subsection (g)(5)(H) of this section, the EMC, immediately after the EPC or alternate EPC, as applicable, makes a decision to remain in the facility during a disaster or emergency.

(i) Core Function Five: Evacuation.
(1) A facility has the discretion to determine when an evacuation is necessary for the health and safety of residents and staff. However, a facility must evacuate if a mandatory evacuation order is given by the county judge of the county in which the facility is located or the mayor of the municipality in which the facility is located, independently or concurrently with the governor.

(2) A facility's plan must contain a section for evacuation that:

(A) identifies evacuation destinations and routes, including at least each pre-arranged evacuation destination and receiving facility described in subparagraph (C) of this paragraph, and includes a map that shows each identified destination and route;

(B) describes the procedure for making and implementing a decision to evacuate some or all residents to one or more receiving facilities or pre-arranged evacuation destinations, with contingency procedures and a plan for any pets or service animals that reside in the facility;

(C) includes the location of a current documented acknowledgment with an identified authorized representative of at least one receiving facility or pre-arranged evacuation destination, and at least one alternate. The documented acknowledgment must include acknowledgement by the receiving facility or pre-arranged evacuation destination of:

(i) arrangements for the receiving facility or pre-arranged destination to receive an evacuating facility's residents; and

(ii) the process for the facility to notify each applicable receiving facility or pre-arranged destination of the facility's plan to evacuate and to verify with the applicable destination that it is available, and not legally restricted at the time from receiving the evacuated residents, and can do so safely;

(D) includes the procedure and the staff responsible for:

(i) notifying the HHSC Regulatory Services regional office for the area in which the facility is located and, in accordance with subsection (g)(5)(H) of this section, the EMC, immediately after the EPC or alternate EPC, as applicable, makes a decision to evacuate, or as soon as feasible thereafter, if it is not safe to do so at the time of decision;

(ii) ensuring that sufficient facility staff with qualifications necessary to meet resident needs accompany evacuating residents to the receiving facility, pre-arranged evacuation destination, or other destination to which the facility evacuates, and remain with the residents to provide any necessary care for the duration of the residents' stay in the receiving facility, or other destination to which the facility evacuates;

(iii) ensuring that residents and facility staff present in the building have been evacuated;

(iv) accounting for and tracking the location of residents, facility staff, and transport vehicles involved in the facility evacuation, both during and after the facility evacuation, through the time the residents and facility staff return to the evacuated facility;

(v) accounting for residents absent from the facility at the time of the evacuation and residents who evacuate on their own or with a third party, and notifying them that the facility has been evacuated;

(vi) overseeing the release of resident information to authorized persons in an emergency to promote continuity of a resident's care;

(vii) contacting the EMC to find out if it is safe to return to the geographical area after an evacuation;

(viii) making or obtaining, as appropriate, a comprehensive determination of when it is safe to re-enter and occupy the facility after an evacuation;

(ix) returning evacuated residents to the facility and notifying persons listed in subsection (g)(5) of this section who were not involved in the return of the residents; and

(x) notifying the HHSC Regulatory Services regional office for the area in which the facility is located, immediately after each instance when some or all residents have returned to the facility after an evacuation.

(j) Core Function Six: Transportation. A facility's plan must contain a section for transportation that:

(1) identifies current arrangements for access to a sufficient number of vehicles to safely evacuate all residents;

(2) identifies facility staff designated during an evacuation to drive a vehicle owned, leased, or rented by the facility; notification procedures to ensure designated staff's availability at the time of an evacuation; and methods for maintaining communication with vehicles, staff, and drivers transporting facility residents or staff during evacuation, in accordance with subsection (g)(5)(A) and (G) of this section;

(3) includes procedures for safely transporting residents, facility staff, and any other individuals evacuating a facility; and

(4) includes procedures for the safe and secure transport of, and staff's timely access to, the following resident items needed during an evacuation: oxygen, medications, records, food, water, equipment, and supplies.

(k) Core Function Seven: Health and Medical Needs. A facility's plan must contain a section for health and medical needs that:

(1) identifies special services that residents use, such as dialysis, oxygen, or hospice services;

(2) identifies procedures to enable each resident, notwithstanding an emergency, to continue to receive the services identified under paragraph (1) of this subsection from the appropriate provider; and

(3) identifies procedures for the facility to notify home and community support services agencies, and independent health care professionals that deliver services to residents in the facility, of an evacuation in accordance with subsection (g)(5)(E) of this section.

(I) Core Function Eight: Resource Management. A facility's plan must contain a section for resource management that:

(1) identifies a plan for identifying, obtaining, transporting, and storing medications, records, food, water, equipment, and supplies needed for both residents and evacuating staff during an emergency;

(2) identifies facility staff, by position or function, who are assigned to access or obtain the items under paragraph (1) of this subsection and other necessary resources, and to ensure their delivery to the facility or their transport, as needed, in the event of an evacuation;

(3) describes the procedure to ensure medications are secure and maintained at the proper temperature throughout an emergency; and

(4) describes procedures and safeguards to protect the confidentiality, security, and integrity of resident records throughout an emergency and any evacuation of residents.
(m) Receiving Facility. To act as a receiving facility, as defined in paragraph (a)(7) of this section, a facility's plan must include procedures for accommodating a temporary emergency placement of one or more residents from another assisted living facility, only in an emergency and only if:

(1) the facility does not exceed its licensed capacity, unless the excess, which may not exceed 10 percent of the facility's licensed capacity, is pre-approved in writing by HHSC, and the facility complies with §553.18(h) of this chapter;

(2) the facility ensures that the temporary emergency placement of one or more residents evacuated from another assisted living facility does not compromise the health or safety of any evacuated or facility resident, facility staff, or any other individual;

(3) the facility is able to meet the needs of all evacuated residents and any other persons it receives on a temporary emergency basis, while continuing to meet the needs of its own residents, and of any of its own staff or other individuals it is sheltering at the facility during an emergency, in accordance with its plan under subsection (h) of this section;

(4) the facility maintains a log of each additional individual being housed in the facility that includes the individual's name, address, and the date of arrival and departure; and

(5) the receiving facility ensures that each temporarily placed resident has at arrival, or as soon after arrival as practicable and no later than necessary to protect the health of the resident, each of the following necessary to the resident's continuity of care:
   
   (A) necessary physician orders for care;
   
   (B) medications;
   
   (C) a service plan;
   
   (D) existing advance directives; and
   
   (E) contact information for each legally authorized representative and designated emergency contact of an evacuated resident, and a record of any notifications that have already occurred.

(n) Emergency Preparedness and Response Plan Training. The facility must:

(1) provide staff training on the emergency preparedness plan at least annually;

(2) train a facility staff member on the staff member's responsibilities under the plan:
   
   (A) prior to the staff member assuming job responsibilities; and
   
   (B) when a staff member's responsibilities under the plan change;

(3) conduct at least one unannounced annual drill with facility staff for severe weather, or another emergency identified by the facility as likely to occur, based on the results of the risk assessment required by subsection (b) of this section;

(4) offer training, and document, for each, the provision or refusal of such training, to each resident, legally authorized representative, if any, and each designated emergency contact, on procedures under the facility's plan that involve or impact each of them, respectively; and

(5) document the facility's compliance with each paragraph of this subsection at the time it is completed.

(o) Self-Reported Incidents Related to a Disaster or Emergency. Without limiting any other applicable requirement under this chapter to report or investigate, a facility must report to HHSC a death or serious injury of a resident, or threat to resident health or safety, resulting from an emergency or disaster as follows:

(1) by calling 1-800-458-9858 immediately after the death, serious injury, or threat, or, if the emergency or disaster is of extended duration, as soon as practicable after the serious injury, death or threat to the resident; and

(2) by conducting an investigation of the emergency and resulting resident injury, death, or threat, and filing a written report using the most current version of the HHSC form titled "SNF, NF, ICF/IID, ALF, DAHS and PPECC Provider Investigation Report with Cover Sheet" available on the HHSC website. The facility must file the written report within five working days after making the telephone report required by paragraph (1) of this subsection.

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

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TRD-201902509
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: September 15, 2019
For further information, please call: (512) 438-3161

TITLE 34. PUBLIC FINANCE
PART 1. COMPTROLLER OF PUBLIC ACCOUNTS
CHAPTER 9. PROPERTY TAX ADMINISTRATION
SUBCHAPTER K. ARBITRATION OF APPRAISAL REVIEW BOARD DETERMINATIONS
The Comptroller of Public Accounts proposes amendments to §§9.4252, 9.4253, 9.4254, 9.4255, 9.4261, 9.4264 and 9.4266 concerning arbitration of appraisal review board determinations. The comptroller proposes these amendments to simplify the language, remove certain conditions, and clarify the ability to cure minor defects in requests. The proposed amendments implement House Bill 1802, 86th Legislature, 2019, and should enhance the administration of the arbitration request process.
In §9.4252, concerning the request for arbitration, the proposed amendments to subsection (b) simplify the language and reference the statutory requirements in Tax Code, §411A.03 (Request for Arbitration).

The proposed amendments to subsections (d) and (f)(7) clarify the form requirements and remove the manual signature requirement for the Appointment of Agent(s) for Binding Arbitration (Form 50-791) and for the Request for Binding Arbitration (Form AP-219).
The proposed amendments to subsection (g) remove conditions for tracts of land to qualify as contiguous tracts of land.

The proposed amendments to §9.4253, concerning agent representation in arbitration, remove the wet signature requirement in subsection (c). The proposal also amends subsection (d) and removes subsection (e) to standardize the actions an agent may take on a property owner’s behalf. The remaining subsections are re-lettered accordingly.

The proposed amendments to re-lettered subsection (e) allow an alternate agent with the same organization as the primary agent to act without providing evidence the first agent is unavailable.

The proposed amendments to re-lettered subsection (f) describe the requirements for completing Form 50-791 when the property owner is not an individual, including the requirement that an authorized individual may be asked to show their authority to sign on behalf of the legal entity that owns the property.

In §9.4254, concerning appraisal district responsibility for request, the comptroller proposes amendments to subsections (a)(1), (3),(4) and (b) to clarify that a sufficient deposit amount is acceptable, to prevent rejections when a property owner pays more than the required deposit. The proposed amendment to subsection (a)(3) clarifies the appraisal district's role in the process. The proposed amendments to subsection (a)(4) require the appraisal district to submit supporting documentation to the comptroller with the arbitration request, if applicable.

In §9.4255, concerning comptroller processing of request, online arbitration system, and 45 calendar-day settlement period, the proposed amendments to subsection (a) require notification to an owner or agent and appraisal district of a defect in a request prior to rejecting a request.

The proposed amendments to subsection (b) clarify the requirements to complete Form AP-219 and provides for a fifteen (15) day period to cure a defect, after delivery of the notification added in subsection (a).

The proposed amendments to subsection (c) clarify the series of events during the 45 calendar-day settlement period.

The proposed removal of subsection (e) removes the wet ink signature requirement for all documents.

The proposed amendments to §9.4261, concerning provision of arbitration services, amend paragraph (m)(4) to reference the statutory requirements in Tax Code, §41A.03 (Request for Arbitration).

The proposed amendments to §9.4264, concerning payment of arbitrator fee, refund of property owner deposit, and correction of appraisal roll, makes conforming changes to subsection (e), and clarify the series of events during the 45 calendar-day settlement period as they relate to the treatment of the deposit in subsection (g).

In §9.4266, concerning forms, the comptroller proposes to adopt by reference amended versions of the Request for Binding Arbitration (Form AP-219) and the Appointment of Agent(s) for Binding Arbitration (Form 50-791) to make updates and clarifications related to the proposed rule amendments. The proposed amended forms may be viewed at comptroller.texas.gov/taxes/property-tax/rules/. The rule text is not being updated, so the rule will not be published in this issue of the Texas Register.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposals are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Currah also has determined that the proposed amendments would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amendments would benefit the public by improving the administration of local property valuation and taxation. There would be no anticipated significant economic cost to the public. The proposed amendments would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Korry Castillo, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: ptad.rulescomments@cpa.texas.gov. The comptroller will receive your comments no later than 30 days from the date of publication of the proposal in the Texas Register.

These amendments are proposed under Tax Code, §41A.13 (Rules), which authorizes the comptroller to adopt rules necessary to implement and administer Tax Code, Chapter 41A, governing the appeal of appraisal review board orders through binding arbitration.

These rules implement Tax Code, §§41A.03 (Request for Arbitration), 41A.04 (Contents of Request Form), 41A.05 (Processing of Registration Request), 41A.07 (Appointment of Arbitrator), and 41A.09 (Award; Payment of Arbitrator's Fee).


(a) An owner or agent may initiate an appeal of an ARB order determining a protest of property value through binding arbitration, using either the traditional paper-based arbitration system or the comptroller's online arbitration system, whichever is available and subject to §9.4255 of this title (relating to Comptroller Processing of Request, Online Arbitration System, and 45 Calendar-Day Settlement Period), under the terms and conditions of this section.

(b) The request for binding arbitration, [signed pursuant to §9.4255(c) of this title] a copy of the ARB order being appealed, and a deposit [in the appropriate amount under subsection (b) of this section] must be filed with the appraisal district or through the online arbitration system in compliance with Tax Code, §41A.03 [not later thanтhe 45th calendar day after the date the owner receives the ARB order determining the protest, as evidenced by the certified mail receipt showing delivery to the owner]. Property owners and agents using the online arbitration system to make a request for binding arbitration are referred to as filers and are required to pay the arbitration deposit online at the time the request is made. As a property owner or agent filing a paper request or an online filer may be provided any refund of the arbitration deposit, one of the following identification numbers associated with the payment of the deposit is required to be provided to process any refund: Social Security Number (SSN), Texas Identification Number (TIN) issued by the comptroller's office, Federal Employer Identification Number (FEIN), or Individual Taxpayer Identification Number (ITIN) issued by the Internal Revenue Service to individuals not eligible to obtain an SSN. If the filer is an agent and wishes to submit an FEIN, only FEINs for sole proprietorships will be accepted. The request, ARB order being appealed, and deposit shall be submitted to.
the appraisal district by hand delivery, by certified first-class mail, or as provided by Tax Code, §1.08 or §1.085, or through the U.S. Postal Service or a private third-party service such as FedEx or United Parcel Service (UPS) so long as proof of delivery is provided, or by submission through use of the comptroller's online arbitration system if available.

(c) The request for arbitration must be completed on the comptroller's prescribed Request for Binding Arbitration (Form AP-219) or through the online arbitration system. The ARB shall provide a copy of Form AP-219 as well as a notice of the owner's right to binding arbitration when it sends to the owner the ARB's order determining a protest filed pursuant to Tax Code, §41.41(a)(1) or (2) if the value of the property determined by the order is $5 million or less or the property qualifies as the owner's residence homestead under Tax Code, §11.13.

(d) If an agent has been appointed to represent the owner, and the agent signs the Request for Binding Arbitration (Form AP-219) or initiates the request through the online arbitration system on behalf of the owner, [the comptroller shall deny the request unless] the Appointment of Agent(s) for Binding Arbitration (Form 50-791), [manually] signed by the owner or authorized individual as required by §9.4253(c) of this title (relating to Agent Representation in Arbitration), must be [as] properly completed and either scanned and uploaded to the online arbitration system or submitted with the request, Form AP-219.

(e) The property owner or agent must submit a copy of the ARB order being appealed by including it with the request for binding arbitration or by scanning and uploading it to the online arbitration system when filing the request.

(f) A request for binding arbitration on property that meets the following terms and conditions qualifies for binding arbitration under Tax Code, Chapter 41A:

1. The request concerns the appraised or market value of $5 million or less for the property as determined by the ARB order, or the property qualifies as the owner's residence homestead under Tax Code, §11.13.

2. The request does not involve any matter in dispute other than the determination of the appraised or market value of the property pursuant to a protest filed under Tax Code, §41.41(a)(1) for the appraised or market value or §41.41(a)(2) for unequal appraisal. Issues not subject to binding arbitration include a protest regarding the owner's motion for correction of an appraisal roll, a protest concerning the qualification of property for a tax exemption or special appraisal, or any other issue outside the scope of Tax Code, §41.41(a)(1) or (2).

3. A deposit in the correct amount set forth under subsection (h) of this section, in the form of a check issued and guaranteed by a banking institution (such as a cashier's or teller's check) or by a money order, payable to the Comptroller of Public Accounts, is included with the request. If the online arbitration system is used to file the request, additional forms of acceptable payment are by credit card (with entry of the filer's credit card number and security code) with an additional processing fee or by electronic check (with entry of the filer's bank account number and bank routing number) with an additional processing fee. Personal checks, cash, or other forms of payment shall not be accepted.

4. Taxes are not delinquent on the property at issue. For any prior year, all property taxes due have been paid. For the year at issue, the undisputed tax amount was paid before the delinquency date set by Tax Code, Chapter 31, as applicable.

5. No lawsuit has been filed in district court regarding the property for the tax year at issue.

6. The request for binding arbitration is timely filed pursuant to subsection (b) of this section.

7. The request is made on the comptroller's paper Request for Binding Arbitration (Form AP-219) or through the online arbitration system, and is signed by the property owner or by the owner's agent, if authorized,[ as required by §9.4255(e) of this title].

8. In all cases in which an agent is initiating the request for binding arbitration, an original or paper copy of the Appointment of Agent(s) for Binding Arbitration (Form 50-791) that meets the requirements of §9.4253 of this title must be submitted with request Form AP-219 or scanned and uploaded to the online arbitration system when initiating the request for arbitration. The Form 50-791 must demonstrate that the property owner or authorized individual granted the agent initiating the request for binding arbitration the authority to do so on the owner's behalf.

9. A copy of the ARB order being appealed was submitted with request Form AP-219 or scanned and uploaded to the online arbitration system when initiating the request for arbitration as required by subsection (e) of this section.

(g) If the request involves contiguous tracts of land pursuant to Tax Code, §41A.03(a-1), each tract of land and ARB order must separately meet the requirements of subsection (f) of this section, except that a single arbitration deposit in an amount under subsection (h) of this section that corresponds to the tract with the highest appraised or market value of all the contiguous tracts as reflected on the ARB orders being appealed is sufficient. In the event two or more tracts are not contiguous, the property owner may select the one property that will be arbitrated; otherwise, the property with the highest appraised or market value will be selected for arbitration. [For purposes of this section, two or more tracts of land qualify as contiguous if:]

1. each tract of land physically touches another tract of land being appealed;
2. no intervening area, whether natural or manmade, that is owned by another person, entity, or governmental unit, separates the tracts;
3. the property type of each tract being appealed is identified on the request for binding arbitration as "Land" or "Agricultural" or any other category of real property that is not an improvement; and]
4. all of the tracts of land being appealed are of the same property type, i.e., all are designated "Land" or all are designated "Agricultural" or all are designated another category of real property that is not an improvement.

(h) A deposit is required to be submitted with each request for binding arbitration in the following amounts, as applicable:

1. $450 if the property qualifies as the owner's residence homestead under Tax Code, §11.13, and the appraised or market value is $500,000 or less as determined by the ARB order;
2. $500 if the property qualifies as the owner's residence homestead under Tax Code, §11.13, and the appraised or market value is more than $500,000 as determined by the ARB order;
3. $500 if the property does not qualify as the owner's residence homestead under Tax Code, §11.13, and the appraised or market value is $1 million or less as determined by the ARB order;
4. $800 if the property does not qualify as the owner's residence homestead under Tax Code, §11.13, and the appraised or market value is more than $1 million but not more than $2 million as determined by the ARB order;
(5) $1,050 if the property does not qualify as the owner's residence homestead under Tax Code, §111.13, and the appraised or market value of the property is more than $2 million but not more than $3 million as determined by the ARB order; and

(6) $1,550 if the property does not qualify as the owner's residence homestead under Tax Code, §111.13, and the appraised or market value of the property is more than $3 million but not more than $5 million as determined by the ARB order.


(a) Property owners may represent themselves or, at their own cost, may be represented in binding arbitration by the following agents, each of whom is required to hold a current and active license, certification, or registration:

1. an attorney who is licensed in Texas;
2. a person who is licensed as a real estate broker or sales agent under Occupations Code, Chapter 1101;
3. a person who is licensed or certified as a real estate appraiser under Occupations Code, Chapter 1103;
4. a property tax consultant registered under Occupations Code, Chapter 1152; or
5. an individual who is licensed as a certified public accountant under Occupations Code, Chapter 901.

(b) An owner may authorize a specific individual, qualified under subsection (a) of this section, to act as an agent on his or her behalf in binding arbitration under Tax Code, Chapter 41A. The terms and conditions of subsections (c) - (h) [(e) - (g)] of this section apply to agents qualified under subsection (a) of this section and to the manner in which these agents are appointed for binding arbitration.

(c) For a valid appointment of an arbitration agent to represent an owner in binding arbitration, the owner or authorized individual is required to complete and sign the comptroller-prescribed Appointment of Agent(s) for Binding Arbitration (Form 50-791). No other agent appointment or authorization form or document is acceptable. No signature other than the property owner's or an authorized individual's on Form 50-791 is valid [and the signature must be a hand-made signature (also known as a wet ink or manual signature), created when a person physically marks a paper document on a specific date]. Neither an individual being designated as the property owner's agent under this section nor an agent appointed under Tax Code, §1.111, may sign the Appointment of Agent(s) for Binding Arbitration (Form 50-791) on behalf of the property owner. Submission of only the original, a paper copy, or an electronic image of the original physical document (such as a PDF) shall be accepted as a valid Appointment of Agent(s) for Binding Arbitration.

(d) Authorized [The owner must specify on Form 50-791 the] actions the agent may be authorized to take on a property owner's behalf with respect to the binding arbitration [Authorized actions are as follows:]

1. sign and file or initiate the request for binding arbitration to start the appeal;
2. receive and send communications regarding the arbitration proceeding;
3. negotiate with the appraisal district to try to settle the case before the arbitration hearing;
4. execute a settlement agreement with the appraisal district to resolve the protest without an arbitration hearing;
5. withdraw a request for binding arbitration; and
6. appear and represent the property owner at the binding arbitration hearing.

(e) If the property owner does not wish to authorize the agent to undertake any one or more of the specific actions identified in subsection (d) of this section, the owner shall strike through the action(s) on Form 50-791 that the agent is not authorized to take.

(f) The owner must identify on Form 50-791 a specific individual to act as agent and provide the agent's license or certificate number and type that qualifies under subsection (a) of this section. The owner also may identify a second, specific, qualified individual to act as an alternate agent. Unless the alternate agent is with the same organization as the first individual identified as an agent, an [in the event the first individual identified as the agent is not available. An] alternate agent shall not be recognized as authorized to act unless and until the alternate agent provides written notice to the appraisal district and to the appointed arbitrator that the first agent is not available. A company or business entity does not qualify as an agent. If an owner authorizes an agent to receive deposit refunds, the agent authorization form must include the agent's Social Security Number (SSN), Texas Identification Number (TIN) issued by the comptroller's office, Federal Employer Identification Number (FEIN) for proprietorships only, or Individual Taxpayer Identification Number (ITIN) issued by the Internal Revenue Service to individuals not eligible to obtain an SSN, in order for any deposit refund to be processed. Only the individual(s) designated in the Appointment of Agent(s) for Binding Arbitration (Form 50-791) may undertake representation of the property owner in the arbitration for which the form was submitted. No other individual, including a licensed attorney, may act on the property owner's behalf in that proceeding unless and until another subsequently executed Form 50-791 is completed that meets the requirements of this section.

(g) In completing Form 50-791, the property owner's name, current mailing address, phone number and email address (if available) are to be provided. If the property owner is not an individual, an authorized individual shall complete an authorized individual is completing and sign [signing] the form on behalf of the property owner. This [such as under a power of attorney or as an employee of a business, this] individual's name and contact information must be provided on the form, as well as the basis for his or her authority. The authorized individual may be asked to show their authority to sign on behalf of the property owner or legal entity. Contact information for neither the representative being designated nor an agent designated under Tax Code, §1.111, is permitted to be provided as either the property owner's or the authorized individual's contact information. If a concern arises regarding the authority of the agent to represent the property owner in a particular arbitration, the arbitrator, if one was assigned, shall contact the owner or authorized individual directly to resolve the matter.

(h) Once the property owner or authorized individual [manually] signs the Appointment of Agent(s) for Binding Arbitration (Form 50-791), it is valid for three years, expiring on the third anniversary of the date of its execution. Prior to expiration, the appointment may be revoked in writing. The property owner or authorized individual may revoke the Form 50-791 agent appointment at any time by delivery of written notice to the agent, and alternate agent if one was designated, to the address provided in the appointment form or the agent's last known address. A copy of the revocation notice is to be provided to the appraisal district and to the arbitrator appointed to the case.

(h) In undertaking representation of the property owner pursuant to Tax Code, §41A.08(b), including filing a Request for Binding Arbitration (Form AP-219), all agents certify that:

(a) Within ten (10) calendar days of receipt of each request for binding arbitration, the appraisal district shall complete the appropriate tasks using the comptroller's online arbitration system or in the manner set out below if using the paper-based arbitration system as follows:

(1) review each request for binding arbitration to determine if a sufficient [the] deposit [in the amount required] under §9.4252(b)(2) of this title (relating to Request for Arbitration) has been provided, and if not, request the sufficient deposit, and if a sufficient deposit is not provided, reject the request pursuant to subsection (b) of this section and if it has, determine whether each of the requirements of §9.4252(f) of this title have been met;

(2) assign a unique arbitration number to each request;

(3) complete and sign that portion of the comptroller's Request for Binding Arbitration form applicable to the appraisal district [to certify], based on the examination of the documentation submitted, which of the requirements of §9.4252(f) of this title have been met for a valid request for binding arbitration; and

(4) forward, pursuant to subsection (d) of this section, each Request for Binding Arbitration form, the accompanying deposit, and the ARB order (as well as the appointment of agent form 50-791, if provided), and supporting documentation for any items not checked in the appraisal district portion of the Request for Binding Arbitration form, if applicable, to the comptroller's office, except those requests which shall be rejected under subsection (b) of this section for failure to provide a sufficient [the required] deposit [in the correct amount].

(b) The appraisal district shall reject each request for binding arbitration that does not have a sufficient [the required] deposit [in the correct amount] as provided under §9.4252(h) of this title. In such event, the appraisal district shall return the request with a notification of the rejection to the owner or agent by regular first-class mail or electronic mail.

(c) The appraisal district shall provide promptly any additional information the comptroller's office requests to process the request for binding arbitration submission.

(d) The appraisal district shall deliver the materials identified in subsection (a)(4) of this section to the comptroller by hand delivery or by certified first-class mail, and must simultaneously deliver a copy of the submission to the owner or agent, as appropriate, by regular first-class mail or electronic mail.

§9.4255. Comptroller Processing of Request, Online Arbitration System, and 45 Calendar-Day Settlement Period.

(a) Upon receipt of a request for binding arbitration through the online arbitration system or from the appraisal district if using the paper-based system, the comptroller shall review the request to determine whether to accept or reject the request. Before rejecting a request, the comptroller shall notify the owner or agent and the appraisal district of the defect in the request (determination to accept or deny the request using the online arbitration system,) by regular first-class mail, or by electronic mail, at the comptroller's discretion. If notified by electronic mail, the notification is deemed delivered on the date the comptroller transmits the electronic mail.

(b) If the owner or agent, as applicable, fails [either] to complete and sign the Request for Binding Arbitration (Form AP-219), or to provide an opinion of value on this form, to include with the request a copy of the ARB order being appealed, in cases in which an agent is initiating the request, fails to include a completed Form 50-791, or fails to address any other defect that the comptroller determines to be curable, the request for binding arbitration shall be rejected [denied] unless the defect is cured, according to the comptroller, [by signing the form or providing the value opinion in writing] within the fifteen (15) days of the comptroller's written, [or verbal] notice of the defect, as described in subsection (a) of this section. If the owner or agent fails to cure the defect on or before the 15th day after the date the comptroller delivers the notice, the comptroller shall reject the request. [Failure. If the online arbitration system is used, the filer will be unable to complete the online request for binding arbitration if he or she fails to provide an opinion of value or to click on the "accept" or similar button in response to a statement, certification, or attestation to demonstrate the user agrees the responsive action is the legal equivalent of the filer's handwriting signature. If an owner submits the Request for Binding Arbitration (Form AP-219) using the traditional paper-based system, and fails to include with the request a copy of the ARB order being appealed, the request will be denied unless the defect is cured by providing a copy of the ARB order within ten (10) calendar days of the comptroller's written or oral notice of the failure.]

(c) Upon acceptance of a valid request for binding arbitration, the comptroller shall notify the appraisal district and the property owner or authorized individual, or the agent if one was designated under §9.4253 of this title (relating to Agent Representation in Arbitration), that the request for binding arbitration has been accepted. The parties shall have 45 calendar days from the date on the comptroller's letter or notice of such acceptance in which to try to settle the case or otherwise determine that the request for arbitration should be withdrawn before an arbitrator is appointed to the case according to §9.4256 of this title (relating to Comptroller Appointment of Arbitrators). If the property owner or agent promptly notifies the comptroller's office in writing received before an arbitrator accepts the case [the expiration of this 45 calendar day period] that the request for arbitration is withdrawn, the withdrawal will be considered timely [an arbitrator will be assigned to the case] and the deposit will be refunded, less the $50 administrative fee due the comptroller's office. If the property owner or agent does not notify the comptroller's office in writing [received] before an arbitrator accepts the case [the expiration of this 45 calendar day period] that the request for arbitration is withdrawn, the comptroller shall select and appoint an arbitrator to the case pursuant to §9.4256 of this title (relating to Comptroller Appointment of Arbitrators) and the arbitrator shall be entitled to the fee pursuant to §9.4264(g) of this title (relating to Payment of Arbitrator Fee, Refund

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of Property Owners Deposit, and Correction of Appraisal Roll). If the owner or agent is participating in the online arbitration system, written notice of withdrawal is accepted and effective only if entered into the system.

(d) Compliance with the provisions of this subchapter is required whether the comptroller's office administers the binding arbitration process through the traditional paper-based system or through the online arbitration system.

(e) For purposes of this subchapter, whenever the comptroller requires a document to be signed or a signature to be provided, a hand-made signature (also known as a wet ink or manual signature), created when a person physically marks a paper document and includes a copy or an electronic image of the original signed physical document (such as a PDF), is required. A hand-made signature may be required if the online arbitration system provides an "accept" or similar button which may be clicked in response to a statement, certification or attendance, to demonstrate the user agrees the responsive action is the legal equivalent of the user's hand-made signature.

(f) The comptroller's office requests that email addresses be provided on various forms, including the Request for Binding Arbitration (Form AP-219), the Appointment of Agent(s) for Binding Arbitration (Form 50-791), and in connection with the use of the online arbitration system. If email addresses are provided, it is considered a voluntary disclosure and constitutes consent to the collection and disclosure of the information for the purposes for which it was requested and the email addresses may be subject to disclosure under the Texas Public Information Act.

(g) All appraisal districts, arbitrators, and agents are required to use the online system when the comptroller's office makes it generally available for the administration of the binding arbitration system and to communicate with property owners who elect to use the online arbitration system. If a property owner does not choose to use the online arbitration system, the appraisal district and arbitrator are to communicate and deliver materials to the property owner using first-class mail, electronic mail, or any other method acceptable to the property owner, appraisal district, and arbitrator.

(h) Arbitrations appealing ARB orders issued for the 2018 tax year and subsequent tax years shall be governed by the applicable provisions of this subchapter. Arbitrations appealing ARB orders issued for the 2017 tax year and previous tax years shall be governed by the terms of §9.804 of this title.


(a) An arbitration under Tax Code, Chapter 41A, commences with the initiation of a request for binding arbitration to appeal a specific order of the appraisal review board. The arbitration may be concluded, either without or after a hearing, by rejection or denial of the request for binding arbitration, issuance of the Arbitration Determination and Award (Form 50-704) which may include dismissal of the case, or withdrawal of the request for arbitration with or without execution of a settlement agreement between the parties finally resolving the matter. Arbitration services shall be provided pursuant to this section.

(b) Unless the property owner or agent and the appraisal district both agree to arbitration by submission of written documents only, the arbitration will be conducted in person or by teleconference. The arbitrator may decide whether to conduct the arbitration in person or by teleconference unless the property owner or agent indicates on the Request for Binding Arbitration (Form AP-219) that the arbitration be conducted in person or by teleconference only. If the arbitration is conducted in person, the arbitrator and both parties shall appear in person for the hearing.

(c) Upon acceptance of an appointment after the 45 calendar-day settlement period, the arbitrator shall contact promptly through the online arbitration system, by telephone, or electronic mail the property owner or agent and the appraisal district to notify the parties of his or her appointment, to propose one or more dates for the arbitration hearing, and to request alternate hearing dates from the parties if the date(s) proposed is not acceptable. The arbitrator should cooperate with the appraisal district and the owner or agent in scheduling the arbitration hearing.

(d) The arbitrator shall set the hearing date and serve written notice of the hearing information required by subsection (e) of this section as follows:

1. if the arbitrator, property owner, authorized individual or agent, and appraisal district have all agreed in writing to the same hearing date after consultation under subsection (c) of this section, the arbitrator shall serve the notice of hearing with the agreed date on the property owner or authorized individual or agent and the appraisal district by uploading it to the online arbitration system or by electronic mail and providing a paper copy to the property owner or authorized individual by first-class mail; or

2. if no agreement is reached after fourteen (14) or more calendar days of the arbitrator's initial contact attempt under subsection (c) of this section, the arbitrator shall set the hearing date, providing a minimum of 21 calendar-days notice before the hearing, and shall serve the notice on the property owner or authorized individual or agent and the appraisal district by uploading it to the online arbitration system or by electronic mail and providing a paper copy to the property owner or authorized individual through the U.S. Postal Service or a private third-party service such as FedEx or United Parcel Service (UPS) so long as proof of delivery is provided.

(e) The arbitrator shall provide or include in the written notice of hearing served under subsection (d) of this section, the following information:

1. the appraisal-district assigned arbitration number;

2. the date and time of the arbitration hearing;

3. the physical address of the hearing location if the hearing is in person;

4. the date by which the parties must exchange evidence before the hearing;

5. the arbitrator's contact information, including email address, phone number, and mailing address, as well as a fax number if available;

6. a copy of the arbitrator's written procedures for the hearing;

7. the methods, including through the online arbitration system, or by electronic mail, U.S. first-class mail, or overnight or per-
sonal delivery, by which the parties are to communicate and exchange materials; and

(8) any other matter about which the arbitrator wishes to advise the parties before the hearing.

(f) The arbitrator may continue a hearing for reasonable cause. The arbitrator shall continue a hearing if both parties agree to the continuance. The arbitrator may hear and determine the controversy on the evidence produced at the hearing even if a party fails to appear so long as the party has received notice of the hearing pursuant to subsection (d) of this section. Appearance at the hearing waives any defect in the notice.

(g) Each party at the hearing is entitled to be heard; present evidence material to the controversy; and cross-examine any witness. The arbitrator shall ask each witness testifying to swear or affirm that the testimony he or she is about to give shall be the truth, the whole truth, and nothing but the truth. The arbitrator's decision is required to be based solely on the evidence provided at the hearing.

(h) The arbitrator shall decide to what extent the arbitration hearing procedures are formal or informal. The arbitrator shall have available at the hearing a copy of the written procedures the arbitrator previously delivered to the parties with the hearing notice. The parties shall be allowed to record audio of the proceedings, but may record video only with the consent of the arbitrator.

(i) The parties to an arbitration proceeding may represent themselves or, at their own cost, may be represented by an agent if the requirements of §9.4253 of this title (relating to Agent Representation in Arbitration) have been met.

(j) An arbitrator should behave in a professional manner at all times in rendering arbitration services. An arbitrator should treat the parties with respect in the course of the binding arbitration proceeding. The arbitrator shall not engage in conduct that creates a conflict of interest.

(k) The confidentiality provisions of Tax Code, §22.27, concerning information provided to an appraisal office, apply to confidential information provided to arbitrators. The information may not be disclosed except as provided by law.

(l) The arbitrator shall not communicate with the owner, the appraisal district, or an agent, nor shall the owner, the appraisal district, or an agent communicate with the arbitrator, prior to the arbitration hearing or after the arbitration hearing and before the arbitration determination and award is issued, concerning specific evidence, argument, facts, or the merits, regarding the property subject to arbitration. Such communications may be grounds for the removal of the arbitrator from the comptroller's registry of arbitrators.

(m) The arbitrator shall dismiss a pending arbitration action with prejudice, for lack of jurisdiction, under any one of the following circumstances:

(1) that taxes on the property subject to the appeal are delinquent because for any prior year, all property taxes due have not been paid or because for the year at issue, the undisputed tax amount was not paid before the delinquency date set by the applicable section of Tax Code, Chapter 31;

(2) that the ARB order(s) appealed did not determine a protest filed pursuant to Tax Code, §41.41(a)(1) or (2) concerning either the appraised or market value of the property or unequal appraisal of the property;

(3) that the appraised or market value of the property as determined in the ARB order was either more than $5 million or the property did not qualify as the owner's residence homestead under Tax Code, §11.13;

(4) that the request for arbitration was filed with the appraisal district after the deadline established in Tax Code, §41A.03 [more than 45 calendar days after the date the owner received the ARB order determining the protest];

(5) that the owner filed an appeal with the district court under Tax Code, Chapter 42, concerning the value of the property at issue in the pending arbitration; or

(6) that the owner or agent and appraisal district have executed a written agreement resolving the matter.

(n) When a binding arbitration proceeding is brought pursuant to Tax Code, §41A.03(a-1) involving two or more contiguous tracts of land, the arbitrator shall dismiss from consideration in the proceeding each tract of land and each appraisal review board order appealed in which it is determined that any of the circumstances set forth in subsection (m) of this section apply to the particular tract or ARB order. However, the combined total value of all ARB orders appealed may exceed the $5 million threshold so long as each individual tract meets the $5 million limit.

(o) The arbitrator must complete an arbitration proceeding in a timely manner and will make every effort to complete the proceeding within 120 days from his or her acceptance of the appointment. Failure to comply with the timely completion of arbitration proceedings may constitute good cause for removal of the arbitrator from the comptroller's registry of arbitrators pursuant to §9.4262(b) of this title (relating to Removal of Arbitrator from the Registry of Arbitrators).

§9.4264. Payment of Arbitrator Fee, Refund of Property Owner Deposit, and Correction of Appraisal Roll.

(a) Each deposit submitted with a request for arbitration shall be assigned a unique reference number associated with the specific arbitration and deposited into the comptroller's arbitration fund account.

(b) The payment of arbitrators' fees and arbitration deposit refunds shall be processed, after the comptroller retains $50 for administrative costs, in the following manner:

(1) If the arbitrator determines that the appraised or market value, as applicable, of the property that is the subject of the appeal is nearer to the property owner's opinion of value of the property as stated in the request for binding arbitration than the value reflected in the ARB order, the comptroller shall refund the property owner's arbitration deposit. In this case, the appraisal district, on receipt of a copy of the award, shall pay the arbitrator's fee.

(2) If the arbitrator determines that the appraised or market value, as applicable, of the property that is the subject of the appeal is not nearer to the property owner's opinion of value of the property as stated in the request for binding arbitration than the value reflected in the ARB order, the comptroller shall pay the arbitrator's fee out of the owner's arbitration deposit.

(3) If the arbitrator determines that the appraised or market value, as applicable, of the property that is the subject of the appeal is exactly one-half of the difference in value between the property owner's opinion of value of the property as stated in the request for binding arbitration and the ARB order, the comptroller shall process payment of the arbitrator's fee and arbitration deposit pursuant to paragraph (2) of this subsection.

(c) The chief appraiser shall correct the appraised or market value, as applicable, of the property as shown on the appraisal roll to reflect the arbitrator's determination if the conditions of either subsection (b)(1) or (3) of this section are met. The chief appraiser shall correct
the appraised or market value, as applicable, of the property as shown on the appraisal roll to reflect the arbitrator's determination if the conditions of subsection (b)(2) of this section are met and if the value, as determined by the arbitrator, is less than the value reflected on the ARB order.

(d) Unless the appraisal district is to pay the arbitrator's fee pursuant to subsection (b)(1) of this section, the arbitrator's fee will be paid to him or her from the owner's deposit and mailed to the address shown on the arbitrator's registry application. If the arbitrator's fee is less than the maximum allowable fee under §9.4260(d) of this title (relating to Arbitrator Duties), the comptroller shall refund to the owner or agent any remaining deposit, less $50 retained by the comptroller for administrative costs. If the arbitrator's fee is the maximum allowable fee under §9.4260(d) of this title, the comptroller shall retain $50 of the deposit for administrative costs and no refund will be paid.

(e) If the comptroller rejects [denies] a request for arbitration as provided by §9.4255(a) of this title (relating to Comptroller Processing of Request), the comptroller shall refund to the owner or agent the deposit, less the $50 retained by the comptroller for administrative costs.

(f) If an arbitrator dismisses a pending arbitration pursuant to §9.4261(m)(2) through (m)(6) of this title (relating to Provision of Arbitration Services), the arbitrator's fee shall be paid out of the deposit. If the arbitration is dismissed under §9.4261(m)(1) of this title for delinquent taxes, the comptroller shall refund to the owner or agent the deposit, less the $50 retained by the comptroller for administrative costs.

(g) An owner or agent may withdraw a request for arbitration using the online arbitration system or by written notice delivered to the appraisal district, the comptroller, and the arbitrator, if one has been appointed. If the owner or agent notifies the comptroller of the withdrawal of a request for arbitration in writing received before an arbitrator has accepted the case [the expiration of the 45 calendar day settlement period] pursuant to §9.4255(c) of this title, the comptroller shall refund to the owner or agent the deposit, less the $50 retained by the comptroller for administrative costs. If the owner or agent does not notify the comptroller of the withdrawal of a request for arbitration in writing received before an arbitrator has accepted the case [the expiration of the 45 calendar day settlement period] pursuant to §9.4255(c) of this title, the comptroller shall pay out of the deposit the fee, if any, charged by the arbitrator.

(h) A refund to an owner or agent or a payment to an arbitrator is subject to the provisions of Government Code, §403.055. Deposit refunds will not be processed without the required identification as provided under §9.4252(b) of this title (relating to Request for Arbitration) and §9.4253(e)(4) of this title (relating to Agent Representation in Arbitration). The comptroller will not issue a warrant for payment to a person who is indebted to the state or has a tax delinquency owing to the state until the indebtedness or delinquency has been fully satisfied. 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 August 1, 2019.
TRD-201902456
Victoria North
Chief Counsel, Fiscal and Agency Affairs Legal Services Division
Comptroller of Public Accounts
Earliest possible date of adoption: September 15, 2019
For further information, please call: (512) 472-0387

TITLE 34. PUBLIC FINANCE
PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 51. GENERAL ADMINISTRATION

34 TAC §51.14, §51.15

The Teacher Retirement System of Texas (TRS) proposes new rules §51.14, concerning enhanced contract monitoring procedures, and §51.15, concerning contract monitoring roles and responsibilities, in Title 34, Part 3, of the Texas Administrative Code.

BACKGROUND AND PURPOSE

The proposed new rules address Senate Bill 65, enacted by the 86th Legislature, which requires TRS to promulgate rules relating to enhanced contract monitoring procedures and contract monitoring roles and responsibilities. Proposed new rule §51.14 establishes factors that TRS staff must use to determine whether enhanced contract monitoring is necessary. Proposed new rule §51.15 sets out contract monitoring roles and responsibilities of TRS' Internal Audit division, Procurement and Contracts business unit, and contract sponsors.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed new rules will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed new rules.

PUBLIC COST/BENEFIT

For each year of the first five years the proposed new rules will be in effect, Mr. Green has also determined that the public benefit anticipated as a result of the proposed new rules will be to update provisions relating to the general administration of the retirement system and allow TRS to comply with statutory provisions requiring the promulgation of such rules. Mr. Green has also determined that there is no economic cost to entities or persons required to comply with the proposed new rules.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed new rules. Therefore, neither an economic impact statement nor regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed new rules. 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 the proposed new rules will be in effect the proposed new rules will not create or eliminate a government program; 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 require an increase or decrease in fees paid to TRS; will not create a new regulation; will not expand, limit, or repeal an 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.

TAKINGS IMPACT ASSESSMENT

TRS has determined that since there are no private real property interests affected by the proposed new rules, 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 new rules because the proposed new rules do not impose a cost on regulated persons.

COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the Texas Register.

STATUTORY AUTHORITY

The new rules are proposed under the authority of Government Code §825.102, which authorizes TRS to adopt rules regarding the general administration of TRS and the transaction of business of TRS’ Board of Trustees (Board).

CROSS-REFERENCE TO STATUTE

Proposed new rule §51.14 implements §2261.253 of the Government Code, which requires the adoption of a procedure by rule to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the Board. Proposed new rule §51.15 implements §2261.202 of the Government Code, which requires the adoption of a policy by rule that clearly defines the contract monitoring roles and responsibilities of internal audit staff and other inspection, investigatory, or audit staff.


(a) The Teacher Retirement System of Texas (TRS) shall assess each contract to determine whether enhanced contract monitoring is necessary.

(b) TRS shall use the following factors to determine whether enhanced contract monitoring is necessary:

(1) the complexity of the services;
(2) the dollar value of the contract;
(3) whether the services or contractor are new or significantly changed;
(4) whether the TRS staff managing the contract are new or significantly changed; and
(5) any other factors that may impact the project.

(c) If TRS determines that a contract requires enhanced monitoring, TRS may require that the vendor provide status reports on a scheduled basis to determine whether performance measures are being met. Enhanced monitoring may also include site visits, additional meetings with the vendor, and other documentation requirements needed to assess progress toward meeting performance measures.

(d) The Director of Procurement and Contracts (Director) shall notify TRS Executive Management of contracts requiring enhanced monitoring under this section. The Director shall also immediately notify the TRS’ Board of Trustees of any serious issue or risk that is identified in a contract monitored under this section.

(e) This section does not apply to an interagency agreement, interlocal agreement, a memorandum of understanding with another state agency, or a contract for which there is no cost to TRS.

§51.15. Contract Monitoring Roles and Responsibilities.

The contract monitoring roles and responsibilities of TRS’ internal audit staff and other inspection, investigative, or compliance staff are as follows:

(i) the internal audit division will perform audits of the contract management function and systems when they are warranted by the results of risk assessment or included in the audit plan approved by TRS pursuant to Government Code, §§2102.005 and 2102.008;

(ii) the Procurement and Contracts business unit will seek to improve contract compliance by serving as a central repository for agency contracts so the agency can perform contract compliance reviews;

(iii) TRS does not have a criminal enforcement unit. Criminal activity related to agency contracts will be reported to the appropriate authorities as set out in statute;

(iv) the contract sponsor that oversees a contract will monitor and report to the Procurement and Contracts business unit regarding contract compliance;

(v) TRS’ Procurement and Contracts business unit will assist the administering business unit and contract sponsor in monitoring agency contracts in connection with applicable historically underutilized and minority business contract requirements; and

(vi) upon contract close-out, the Procurement and Contracts business unit will file vendor performance reports, as required by the rules of the Comptroller of Public Accounts in 34 TAC Part 1, Chapter 20, Subchapter F, Division 2 (relating to Procurement), §20.509 (relating to Vendor Performance Tracking System).

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 August 2, 2019.
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Don Green
Chief Financial Officer
Teacher Retirement System of Texas

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For further information, please call: (512) 542-6201

CHAPTER 53. CERTIFICATION BY COMPANIES OFFERING QUALIFIED INVESTMENT PRODUCTS

34 TAC §§53.1 - 53.17

The Teacher Retirement System of Texas (TRS) proposes to repeal Chapter 53 in Title 34, Part 3, of the Texas Administrative Code regarding the certification of companies offering qualified investment products through what are commonly referred to as 403(b) plans.

BACKGROUND AND PURPOSE

TRS proposes to repeal the following rules: §53.1, relating to definitions, §53.2 relating to applicability, §53.3 relating to maximum fees, costs and penalties, §53.4 relating to qualifications
for certification by companies offering qualified investment products and investment options that are annuity contracts, §53.5 qualifications for certification by companies offering qualified investment products and investment options other than annuity contracts, §53.6 application and fee for certification, §53.7 relating to listing of certified companies; §53.8 relating to product and investment option registration requirements; §53.9 relating to application and fee for approval to register products and investment options, §53.10 relating to registration and listing of products and investment options, §53.11 relating to ongoing company responsibilities regarding certification and TRS registered products and investment options, §53.12 relating to TRS actions regarding certification and TRS registered products and investment options, §53.13 relating to coordination with regulatory and enforcement agencies, §53.14 relating to suspension or revocation of certification, §53.15 relating to notice to potential purchaser of annuity contracts, §53.16 relating to electronic signature, and §53.17 relating to administrative service Providers.

House Bill 2820 removes TRS oversight of all 403(b) financial products offered at TRS participating employers. HB 2820 removes TRS from 403(b) product regulation and ends the dual regulation that is in place currently. The 403(b) products are regulated by other state and federal agencies, such as the Texas Department of Insurance, the State Securities Board, the SEC, FINRA, the IRS, and the Department of Labor.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the rules are be repealed, there will be no foreseeable fiscal implications to state or local governments as a result of the proposed repeal.

PUBLIC COST/BENEFIT

For each year of the first five years the rules are repealed, Mr. Green also has determined that the public benefit anticipated as a result of the proposed repeal will be to update provisions relating to the general administration of the retirement system. Mr. Green has also determined that there is no economic cost to entities or persons required to comply with the repealed rules.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed repeal. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed repeal. 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 the proposed rules are repealed, the proposed repeal will eliminate TRS' 403(b) program and its oversight of all 403(b) financial products offered at TRS participating employers; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will eliminate two fees currently paid to TRS related to the 403(b) program; will not create a new regulation; will repeal TRS' 403(b) program rules; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy.

TAKINGS IMPACT ASSESSMENT

TRS has determined that there are no private real property interests affected by the proposed repealed rules, 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 repeal because the proposed repealed rules do not impose a cost on regulated persons.

COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the Texas Register.

STATUTORY AUTHORITY

The repeal of these rules is proposed under the authority of Government Code §825.102, which authorizes TRS to adopt rules regarding the general administration of TRS and the transaction of business of TRS' Board of Trustees (Board).

CROSS-REFERENCE TO STATUTE

HB 2820 rescinds all rulemaking authority previously granted to TRS relating to the administration of 403(b) products. Chapter 53 is titled Certification by Companies Offering Qualified Investment Products. Every rule in Chapter 53 was proposed and adopted under authority that has now been rescinded by HB 2820.

§53.1. Definitions.
§53.2. Applicability.
§53.3. Maximum Fees, Costs, and Penalties.
§53.4. Qualifications for Certification by Companies Offering Qualified Investment Products and Investment Options that are Annuity Contracts.
§53.5. Qualifications for Certification by Companies Offering Qualified Investment Products and Investment Options Other than Annuity Contracts.
§53.6. Application and Fee for Certification.
§53.7. Listing of Certified Companies.
§53.8. Product and Investment Option Registration Requirements.
§53.9. Application and Fee for Approval to Register Products and Investment Options.
§53.10. Registration and Listing of Products and Investment Options.
§53.11. Ongoing Company Responsibilities Regarding Certification and TRS Registered Products and Investment Options.
§53.12. TRS Actions Regarding Certification and TRS Registered Products and Investment Options.
§53.13. Coordination with Regulatory and Enforcement Agencies.
§53.14. Suspension or Revocation of Certification.
§53.15. Notice to Potential Purchaser of Annuity Contracts.
§53.16. Electronic Signature.
§53.17. Administrative Service Providers.

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