

# PROPOSED RULES

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

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

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

## TITLE 7. BANKING AND SECURITIES

### PART 1. FINANCE COMMISSION OF TEXAS

#### CHAPTER 9. RULES OF PROCEDURE FOR CONTESTED CASE HEARINGS, APPEALS, AND RULEMAKINGS

The Finance Commission of Texas (the finance commission) proposes amendments to §9.1, concerning Application, Construction, and Definitions; and §9.12, concerning Default in 7 TAC, Chapter 9, concerning Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings.

The purpose of the proposed amendment to §9.1 is to clarify the authority of the Texas Department of Banking (DOB) to employ a hearings officer.

The purpose of the proposed amendments to §9.12 is to clarify the procedures used by the finance agencies to dispose of a contested case in the event of default. The finance agencies are the DOB, the Department of Savings and Mortgage Lending (SML), and the Office of Consumer Credit Commissioner (OCCC). The amendments are necessary to ensure 9.12 conforms to the State Office of Administrative Hearings (SOAH) procedural default rule (1 TAC §155.501), which was updated November 20, 2020.

The proposed amendment to §9.1 adds a reference to Texas Finance Code, §11.202 which provides the statutory authority for the DOB to employ a hearings officer to serve the finance agencies. The effect is to ensure the public is aware of the source of this authority.

The proposed amendments to §9.12 consist of minor technical corrections ensuring that the language is consistent with SOAH's default rule found in 1 TAC §155.501. Section 9.12 governs default proceedings for contested case hearings involving the finance agencies. Subsection (b) specifies the default procedures that apply to hearings conducted by SOAH, specifically referencing default proceedings conducted pursuant to 1 TAC §155.501. The proposed amendments to §9.12 are a result of substantive updates to §155.501 by SOAH in 2020, with the effect of ensuring the finance agencies' procedural rule remains consistent.

Wendy Rodriguez, Deputy Commissioner, Texas Department of Banking, on behalf of the Finance Commission of Texas, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Deputy Commissioner Rodriguez also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will

be that the finance commission's rules will be more easily understood by licensees required to comply with the rules, and will be more easily enforced.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro- businesses or rural communities. There will be no difference in the cost of compliance for these entities. There will be no effect on individuals required to comply with the amendments as proposed.

For each year of the first five years that the amended rules will be in effect, the amended rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; and
- positively or adversely affect this state's economy.

To be considered, comments on the proposed amendments must be submitted no later than 5:00 p.m. on August 5, 2024. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to [legal@dob.texas.gov](mailto:legal@dob.texas.gov).

#### SUBCHAPTER A. GENERAL

##### 7 TAC §9.1

The amendments are proposed under Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The amendments are also proposed under specific rulemaking authority in the substantive statutes administered by the agencies. Texas Finance Code, §11.301, §31.003(a)(5), and 181.003(a)(5) authorize the finance commission to adopt rules necessary or reasonable to facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission. Texas Finance Code, §152.052(a) authorizes the finance commission to adopt rules necessary to implement and clarify Chapter 152. Texas Finance Code, §154.051(b) authorizes the Department of Banking to adopt

rules concerning matters incidental to the enforcement and orderly administration of Chapter 154.

Texas Finance Code, §11.302 authorizes the finance commission to adopt rules applicable to state savings associations or savings banks. Texas Finance Code, §66.002(3) authorizes the finance commission to adopt procedural rules for processing, hearing, and deciding applications filed with the savings and mortgage lending commissioner or SML under Texas Finance Code, Title 3, Subtitle B. Texas Finance Code, §96.002(a)(2) authorizes the finance commission to adopt procedural rules for processing, hearing, and deciding applications filed with the savings and mortgage lending commissioner or SML under Finance Code, Title 3, Subtitle C. Texas Finance Code, §11.306 authorizes the finance commission to adopt residential mortgage loan origination rules as provided by Texas Finance Code, Chapter 156; and, Texas Finance Code, §156.102(a) authorizes the finance commission to adopt rules to enforce such chapter. Texas Finance Code, §157.0023 authorizes the finance commission to adopt rules to enforce Chapter 157. Texas Finance Code, §158.003(b) authorizes the finance commission to adopt rules to enforce Chapter 158. Texas Finance Code, §159.108 authorizes the finance commission to adopt rules to enforce Chapter 159. Texas Finance Code, §180.004 authorizes the commission to adopt rules to enforce Chapter 180.

Texas Finance Code, §11.304 authorizes the finance commission to adopt rules necessary for supervising the consumer credit commissioner and for ensuring compliance with Texas Finance Code, Chapter 14, and Title 4. Texas Finance Code, §393.622 authorizes the finance commission to adopt rules to enforce Chapter 393. Texas Finance Code, §394.214 authorizes the finance commission to adopt rules to enforce Chapter 394. Texas Occupations Code, §1956.0611 authorizes the finance commission to adopt rules to enforce Subchapter B, Chapter 1956.

The statutory provisions affected by the proposal are contained in Texas Finance Code: Chapters 11, 14, 152, 154, 156-159, 180, 393, 394; Title 3, Subtitles A-C; Title 4; Texas Health and Safety Code, Chapter 712; and Texas Occupations Code, Chapter 1956.

*§9.1. Application, Construction, and Definitions.*

(a) This chapter governs contested case hearings conducted by an administrative law judge employed or contracted by an agency under Texas Finance Code, §11.202. All contested case hearings conducted by the State Office of Administrative Hearings (SOAH) are governed by SOAH's procedural rules found at Title 1, Chapter 155 of the Texas Administrative Code and §9.12(b) of this title (relating to Default).

(b) - (c) (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 June 21, 2024.

TRD-202402742

Robert K. Nichols

General Counsel

Finance Commission of Texas

Earliest possible date of adoption: August 4, 2024

For further information, please call: (512) 475-1382



## SUBCHAPTER B. CONTESTED CASE HEARINGS

### 7 TAC §9.12

The amendments are proposed under Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The amendments are also proposed under specific rulemaking authority in the substantive statutes administered by the agencies. Texas Finance Code, §11.301, §31.003(a)(5), and 181.003(a)(5) authorize the finance commission to adopt rules necessary or reasonable to facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission. Texas Finance Code, §152.052(a) authorizes the finance commission to adopt rules necessary to implement and clarify Chapter 152. Texas Finance Code, §154.051(b) authorizes the Department of Banking to adopt rules concerning matters incidental to the enforcement and orderly administration of Chapter 154.

Texas Finance Code, §11.302 authorizes the finance commission to adopt rules applicable to state savings associations or savings banks. Texas Finance Code, §66.002(3) authorizes the finance commission to adopt procedural rules for processing, hearing, and deciding applications filed with the savings and mortgage lending commissioner or SML under Texas Finance Code, Title 3, Subtitle B. Texas Finance Code, §96.002(a)(2) authorizes the finance commission to adopt procedural rules for processing, hearing, and deciding applications filed with the savings and mortgage lending commissioner or SML under Finance Code, Title 3, Subtitle C. Texas Finance Code, §11.306 authorizes the finance commission to adopt residential mortgage loan origination rules as provided by Texas Finance Code, Chapter 156; and, Texas Finance Code, §156.102(a) authorizes the finance commission to adopt rules to enforce such chapter. Texas Finance Code, §157.0023 authorizes the finance commission to adopt rules to enforce Chapter 157. Texas Finance Code, §158.003(b) authorizes the finance commission to adopt rules to enforce Chapter 158. Texas Finance Code, §159.108 authorizes the finance commission to adopt rules to enforce Chapter 159. Texas Finance Code, §180.004 authorizes the commission to adopt rules to enforce Chapter 180.

Texas Finance Code, §11.304 authorizes the finance commission to adopt rules necessary for supervising the consumer credit commissioner and for ensuring compliance with Texas Finance Code, Chapter 14, and Title 4. Texas Finance Code, §393.622 authorizes the finance commission to adopt rules to enforce Chapter 393. Texas Finance Code, §394.214 authorizes the finance commission to adopt rules to enforce Chapter 394. Texas Occupations Code, §1956.0611 authorizes the finance commission to adopt rules to enforce Subchapter B, Chapter 1956.

*§9.12. Default.*

(a) (No change.)

(b) SOAH hearings. In a hearing conducted by the State Office of Administrative Hearings (SOAH), the agency may request that the administrative law judge make a finding of default under 1 TAC §155.501 (relating to Failure to Attend Hearings and Default Proceedings).

(1) Service of notice of hearing. A notice of hearing may be served to the party's last known address. Applicants and holders of

licenses, registrations, charters, and permits shall keep the agency informed as to their correct current mailing addresses and may be served with initial process by registered or certified mail, return receipt requested, to the address provided to the agency.

(2) Adequate proof of notice of hearing. At the time of the request, the agency must present adequate proof to the administrative law judge that the agency properly served the party with the notice of hearing, as required by 1 TAC §155.501(b).

(3) Effect of default. If the administrative law judge receives the required showing of proof to support a default, the allegations contained in the notice of hearing may be deemed admitted, and the relief sought in the notice may be granted with respect to any party given proper notice of the hearing.

(4) Disposing of default case. The agency may request that the administrative law judge dismiss the case from the SOAH docket and remand it to the agency for informal disposition as permitted by Texas Government Code, §2001.056 and §2001.058(d-1).

(5) Final order after default. If the administrative law judge issues an [a conditional] order of default dismissal [and remand] that provides the defaulting party with adequate notice and opportunity to set aside the default under 1 TAC §155.501(e) and the case is remanded to the agency, [conditional order of dismissal and remand has become final,] the agency may issue a final order that:

(A) finds that the agency served the party with a notice of hearing stating that if the party failed to attend the hearing, then the allegations contained in the notice of hearing could be deemed admitted, and the relief sought might be granted;

(B) describes how the notice of hearing was served on the party;

(C) finds that the party failed to attend the hearing;

(D) finds that the allegations described in the notice are deemed admitted;

(E) concludes that the party has defaulted as a matter of law; and

(F) grants the relief described in the notice of hearing.

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 June 21, 2024.

TRD-202402743

Robert K. Nichols

General Counsel

Finance Commission of Texas

Earliest possible date of adoption: August 4, 2024

For further information, please call: (512) 475-1382



## CHAPTER 10. CONTRACT PROCEDURES SUBCHAPTER C. CONTRACT MONITORING

### 7 TAC §10.40

The Finance Commission of Texas (the commission) proposes to amend 7 Texas Administrative Code §10.40 (§10.40), concerning enhanced contract and performance monitoring, and the posting of certain contracts on commission supervised finance agency websites. The proposed amendments would remove a

redundant provision of the current rule and ensure §10.40 conforms with Texas Government Code, §2261.253.

Adopted in 2017, §10.40 contains the finance agencies' (defined below) procedures concerning contracting for the purchase of goods or services from private vendors. The finance agencies are the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner (the finance agencies).

Subsection (b)(2) currently limits application of §10.40 to contracts for which requests for bids or proposals were made public on or after September 1, 2015, and contracts exempt from competitive bidding entered into on or after September 1, 2015. Subsection (b)(2) is no longer necessary because the finance agencies no longer have any outstanding contracts for which requests were made before September 1, 2015. The proposed amendments thus remove the now superfluous subsection.

Subsection (b)(3) currently identifies certain documents that are not subject to §10.40, consistent with Texas Government Code, §2261.253(d). A proposed amendment to the heading of subsection (b)(2) would specify that the documents are not subject to "this section," replacing current text referring only to "enhanced monitoring." Other proposed amendments would specify that documents not subject to §10.40 "include" the four documents listed in subsection (b)(2). This is intended to clarify that the list in subsection (b)(2) is not an exhaustive list, and other documents might not be subject to the rule (e.g., documents excluded under another provision of Texas Government Code, §2261.253).

Texas Government Code, §2261.253(c) requires state agencies to "by rule [...] establish a procedure to identify each contract that requires enhanced contract or performance monitoring." While each finance agency has prescribed and implemented a procedure for identifying those contracts for enhanced monitoring, the proposed amendments add a new paragraph to subsection (c), ensuring full compliance with §2261.253(c).

Subsection (d) currently describes website posting of contracts. A proposed amendment to subsection (d)(1) replaces a specific reference to Texas Government Code, §2261.253(a) with a more general reference to posting in compliance with Texas Government Code, §2261.253. This is intended to clarify that the agencies will comply with respect to contracts that meet the requirements of §2261.253 as a whole.

Wendy Rodriguez, Deputy Commissioner, Texas Department of Banking, on behalf of the Finance Commission of Texas, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Deputy Commissioner Rodriguez has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be that the commission's rules are more easily understood by licensees subject to the rules, and are more easily enforced by the finance agencies.

There is no anticipated cost to persons who are required to comply with the proposed amendments. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities. There will be no effect on individuals required to comply with the amendments as proposed.