

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
TDHCA Governing Board Approved Draft of
§1.5 Waiver Applicability in the Case of Federally Declared Disasters

Disclaimer

Attached is a draft of proposed 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.5 Waiver Applicability in the Case of Federally Declared Disasters, that was approved by the TDHCA Governing Board on January 13, 2022. This action entails the repeal and replacement of the current rule. This document, including its preamble, is expected to be published in the January 28, 2022, edition of the *Texas Register* and that published version will constitute the official version for purposes of public comment and can be found at the following link: <https://www.sos.texas.gov/texreg/index.shtml>.

Public Comment

Public Comment Period: Start: 8:00 a.m. Austin local time on January 28, 2022
End: 5:00 p.m. Austin local time on February 28, 2022

Comments received after 5:00 p.m. Austin local time on February 28, 2022, will not be accepted. Written comments may be submitted, in hard copy or electronic formats within the designated public comment period to:

Texas Department of Housing and Community Affairs
Attn: Brooke Boston
Rules Comments
P.O. Box 13941
Austin, Texas 78711-3941
Email: brooke.boston@tdhca.state.tx.us

Those making public comment are encouraged to reference the specific draft rule, policy, or plan related to their comment as well as a specific reference or cite associated with each comment.

Please be aware that all comments submitted to the TDHCA will be considered public information.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.5 Waiver Applicability in the Case of Federally Declared Disasters

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.5 Waiver Applicability in the Case of Federally Declared Disasters. The purpose of the proposed repeal is to clarify the rule’s applicability in the case of state waivers and state declared disasters.

Tex. Gov’t Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV’T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the proposed repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to the handling of waivers in the case of a declared disaster.
2. The repeal does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The repeal does not require additional future legislative appropriations.
4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The repeal will expand the applicability of an existing regulation. The current rule limits its applicability to federal waivers and federally declared disasters. The proposed rule expands this applicability to state waivers and state declared disasters as well.
7. The repeal will not increase or decrease the number of individuals subject to the rule’s applicability as the rule itself is not applicable to individuals, but to state rules and procedures.
8. The repeal will not negatively or positively affect the state’s economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV’T CODE §2006.002.

The Department has evaluated the proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV’T CODE §2007.043. The proposed repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed and new sections would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held January 28, 2022, to February 28, 2022, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by email to bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, February 28, 2022.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed action affects no other code, article, or statute.

§1.5. Waiver Applicability in the Case of Federally Declared Disasters.

Preamble, including required analysis, for proposed new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.5 Waiver Applicability in the Case of State or Federally Declared Disasters

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.5 Waiver Applicability in the Case of State or Federally Declared Disasters.

The purpose of the proposed rule is to clarify the rule's applicability in the case of state waivers and state declared disasters.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the proposed new section would be in effect:

1. The new section does not create or eliminate a government program but relates to the handling of waivers in the case of a declared disaster.
2. The new section does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The new section does not require additional future legislative appropriations.
4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new section does not creating a new regulation, except that they are replacing sections being repealed simultaneously to provide for revisions.
6. The new section will expand the applicability of an existing regulation. The current rule limits its applicability to federal waivers and federally declared disasters. The proposed rule expands this applicability to state waivers and state declared disasters as well.
7. The new section will not increase or decrease the number of individuals subject to the rule's applicability as the rule itself is not applicable to individuals, but to state rules and procedures.
8. The new section will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the proposed new section and determined that the proposed action will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed new section does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the proposed new section as to its possible effect on local economies and has determined that for the first five years the proposed new section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed new section is in effect, the public benefit anticipated as a result of the new section would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the new section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed new section are in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held January 28, 2022, to February 28, 2022, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by email to bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, February 28, 2022.

STATUTORY AUTHORITY. The proposed new section is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new section affects no other code, article, or statute.

10 TAC Chapter 1, Subchapter A, §1.5 Waiver Applicability in the Case of State or Federally Declared Disasters

(a) When the federal government has provided the Department a waiver, suspension, or contract amendment of a federal programmatic regulation, federal statute, or contract term in response to a state or federally declared disaster, and the requirement waived, suspended, or amended had been codified in this Title, the Executive Director or designee may waive, suspend, or modify the rule within this Title, if:

_____ (1) the Executive Director or designee has determined that not doing so may negatively affect the health, safety, or welfare of program recipients;

_____ (2) such waiver, suspension, or modification to the rule within this Title is clearly related is limited to the federally provided waiver, suspension, or modification; and

_____ (3) such waiver or suspension would not have negatively affected the selection of an award of Department resources.

(b) When the state government has provided the Department a waiver or suspension of a state statute in response to a state or federally declared disaster, and the requirement waived or suspended had been codified in this Title, the Executive Director or designee may waive, suspend, or modify the rule within this Title, if:

(1) the Executive Director or designee has determined that not doing so may negatively affect the health, safety, or welfare of program recipients;

(2) such waiver, suspension, or modification to the rule within this Title must be clearly related to the state provided waiver or suspension;

(3) such waiver or suspension would not have negatively affected the selection of an award of Department resources; and

(4) the Executive Director or designee has determined that doing so is not inconsistent with any applicable federal statute, regulations or contract requirements.