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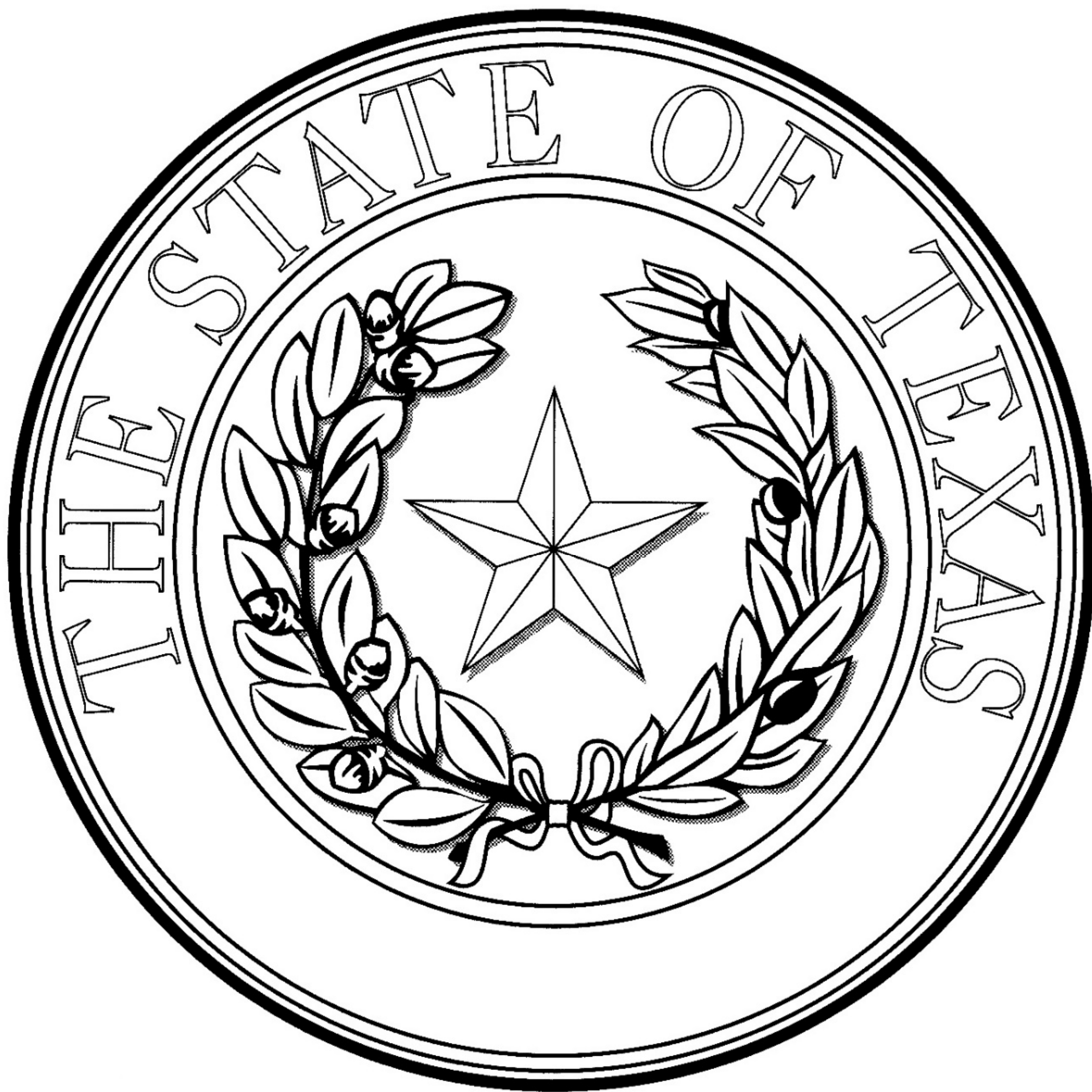

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PROPOSED RULES

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 1. ADMINISTRATION

PART 8. TEXAS JUDICIAL COUNCIL

CHAPTER 174. INDIGENT DEFENSE POLICIES AND STANDARDS

SUBCHAPTER C. POLICY MONITORING REQUIREMENTS

DIVISION 1. DEFINITIONS

1 TAC §174.26

The Texas Indigent Defense Commission (Commission) is a permanent Standing Committee of the Texas Judicial Council. The Commission proposes amendments to Texas Administrative Code, Title 1, Part 8, Chapter 174, Subchapter C, Division 1, §174.26, concerning definitions used in policy monitoring requirements.

EXPLANATION OF PROPOSED AMENDMENTS AND NEW RULE

The proposed amendments to 1 TAC §174.26 would:

--Change the time period for review from the prior 12 months to the prior fiscal year, other agreed time period, or other reasonable time period as determined by the Commission. Since reporting to the Commission is done on a fiscal year basis, this time period is generally preferred. Alternative time periods may be used when significant changes to local practice occur during the last fiscal year.

--Add definitions of full reviews, limited scope reviews and drop-in visits. The different types of policy monitoring visits will allow Commission staff to efficiently review practices in various county sizes and situations.

FISCAL NOTE

Mr. Geoffrey Burkhart, Executive Director, Texas Indigent Defense Commission, has determined that for each year of the first five years the proposed amendments are in effect, enforcing or administering the sections will have no fiscal impact on state or local governments.

PUBLIC BENEFIT AND COSTS

Mr. Burkhart has determined that for each of the first five-year period the amendment is in effect the public benefit will be an improvement in the indigent defense services by helping the Commission assure the requirements of federal and state law related to indigent defense are followed. There are no anticipated economic costs to persons required to comply with the proposed amendments. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore, preparation of an economic impact statement and a regulatory flexibility analysis is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

Finally, Mr. Burkhart has determined that for each year of the first five years in which the proposed amendments are in effect, the amendments will have the following effect on government growth. The proposed amendments will not create or eliminate any government programs or employee positions. Additionally, the proposed amendments will not require an increase or decrease in future legislative appropriations to the Commission or change any fees paid to the Commission. The proposed amendments do not create a new regulation. The proposed amendments expand certain existing regulations, including by providing definitions for three types of monitoring visits Commission staff may conduct. The proposed amendments would not repeal any rules, nor increase or decrease the number of individuals subject to the applicability of the rules. The proposed amendments are not anticipated to affect this state's economy.

SUBMITTAL OF COMMENTS

Comments on the proposed amendments may be submitted in writing to Wesley Shackelford, Deputy Director, Texas Indigent Defense Commission, 209 West 14th Street, Room 202, Austin, Texas 78701 or by email to wshackelford@tidc.texas.gov no later than 30 days from the date that these proposed amendments are published in the *Texas Register.*

STATUTORY AUTHORITY

The amendments are proposed under the Texas Government Code §79.037(a) and (b), which requires the Commission to monitor the effectiveness of the county's indigent defense policies, standards, and procedures and to ensure compliance by the county with the requirements of state law relating to indigent defense.

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

§174.26. Subchapter Definitions.

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

(1) Executive Director--The executive director of the Commission.

(2) Authorized Official--The county judge or other designee authorized to apply for, accept, decline, modify, or cancel a grant designated under §173.301 of this title (relating to Grant Officials).

(3) Period of review--The fiscal year [~~12 months~~] preceding the date of the monitoring visit, other agreed time period, or other reasonable time period as determined by the Commission.

(4) Policies and Standards Committee--A committee of the Commission charged with developing policies and standards related to improving indigent defense services.

(5) Policy Monitor--The employee of the Commission who monitors the effectiveness of a county's indigent defense policies, standards, and procedures.

(6) Risk Assessment--A tool to rank each county's potential risk of not being in compliance with indigent defense laws.

(7) Commission--Commission means the Texas Indigent Defense Commission.

(8) Full review--An on-site policy monitoring review covering all the core requirements in §174.28(c) of this chapter (relating to relating to On-Site Monitoring Process).

(9) Limited scope review--An on-site policy monitoring review covering fewer than all of the core requirements in §174.28(c) of this chapter.

(10) Drop-in visit--An informal, on-site visit to assess indigent defense processes of a county.

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 January 17, 2020.

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Wesley Shackelford
Deputy Director
Texas Judicial Council
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For further information, please call: (512) 936-6997

DIVISION 2. POLICY MONITORING PROCESS AND BENCHMARKS

1 TAC §174.27, §174.28

The Texas Indigent Defense Commission (Commission) is a permanent Standing Committee of the Texas Judicial Council. The Commission proposes amendments to Texas Administrative Code, Title 1, Part 8, Chapter 174, Subchapter C, Division 2, §174.27 and §174.28, concerning policy processes and benchmarks.

EXPLANATION OF PROPOSED AMENDMENTS AND NEW RULE

The proposed amendments to 1 TAC §174.27 would:

--Make non-substantive revisions to the factors considered as part of the risk assessment to streamline the definitions.

--Expand the list of factors that may lead to a policy monitoring visit to include findings from a previous visit, a complaint, and media reports. These factors are in addition to the risk assessment and requests from a state or local official currently provided for in the rules.

The proposed amendments to 1 TAC §174.28 would:

--Clarify the rule related to determining whether a jurisdiction meets the prompt appointment of counsel requirements to measure the time to when an appointment is made or when a denial of indigence determination is made, rather than when an indigence determination is made.

--Clarify the rule related to assessing the distribution of appointments to provide that only attorneys who were on the appointment list for the entire time period under review will be included in the distribution analysis.

--Change the section heading from "Payment Process" to "Data Reporting" to more accurately describe the processes under review.

--Clarify that the Commission will, for full and limited scope reviews, issue a report and require a response to noncompliance findings from local officials and, for drop-in visits, may write a letter with recommendations and without requiring a response.

FISCAL NOTE

Mr. Geoffrey Burkhart, Executive Director, Texas Indigent Defense Commission, has determined that for each year of the first five years the proposed amendments are in effect, enforcing or administering the sections will have no fiscal impact on state or local governments.

PUBLIC BENEFIT AND COSTS

Mr. Burkhart has determined that for each of the first five-year period the amendment is in effect the public benefit will be an improvement in the indigent defense services by helping the Commission assure the requirements of federal and state law related to indigent defense are followed. There are no anticipated economic costs to persons required to comply with the proposed amendments. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore, preparation of an economic impact statement and a regulatory flexibility analysis is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

Finally, Mr. Burkhart has determined that for each year of the first five years in which the proposed amendments are in effect, the amendments will have the following effect on government growth. The proposed amendments will not create or eliminate any government programs or employee positions. Additionally, the proposed amendments will not require an increase or decrease in future legislative appropriations to the Commission or change any fees paid to the Commission. The proposed amendments do not create a new regulation. The proposed amendments expand certain existing regulations, including by providing for a monitoring visit to be conducted as a result of findings from a previous visit, a complaint, or media reports indicating a potential violation of laws related to indigent defense. The proposed amendments would not repeal any rules, nor increase or decrease the number of individuals subject to the applicability of the rules. The proposed amendments are not anticipated to affect this state's economy.

SUBMITTAL OF COMMENTS

Comments on the proposed amendments may be submitted in writing to Wesley Shackelford, Deputy Director, Texas Indigent Defense Commission, 209 West 14th Street, Room 202, Austin, Texas 78701 or by email to wshackelford@tidc.texas.gov no later than 30 days from the date that these proposed amendments are published in the *Texas Register.*

STATUTORY AUTHORITY

The amendments are proposed under the Texas Government Code §79.037(a) and (b), which requires the Commission to monitor the effectiveness of the county's indigent defense policies, standards, and procedures and to ensure compliance by the county with the requirements of state law relating to indigent defense.

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

§174.27. Risk Assessment.

(a) A risk assessment of each county shall be conducted by the policy monitoring team [~~monitor~~] each fiscal year as the primary means of determining which counties will be selected for on-site policy monitoring. On-site monitoring visits to counties shall then be apportioned by administrative judicial region, county size, risk assessment scores, past visits, and other documented factors. The risk assessment shall use a variety of factors related to the provision of indigent defense services, including but not limited to the following:

(1) Investigation [~~Whether a county reported investigation~~] and expert witness expenses;

(2) Reimbursements [~~Whether a county reported reimbursements~~] for attorney fees;

(3) Per [~~Amount of per~~] capita indigent defense expenses;

(4) Felony, misdemeanor, and juvenile attorney appointment rates;

(5) County population [~~Population of a county~~];

(6) Complaints [~~Whether complaints~~] about a county [~~have been~~] received by the Commission;

(7) Receipt of a TIDC improvement [~~Whether a county~~] [~~received a multi-year discretionary~~] grant;

(8) Requests [~~Whether the justices of the peace or municipal judges reported requests~~] for counsel during magistrate warnings under Article 15.17, Code of Criminal Procedure; and [~~in their Texas Judicial Council Monthly Court Activity Reports;~~]

[~~(9) the ratio of misdemeanor requests for counsel from Article 15.17 hearings as reported in Texas Judicial Council Monthly Activity Reports to the number of misdemeanor cases paid reported by the county; and~~]

(9) [~~(10)~~] Appellate [~~Whether a county reported appeals~~] cases.

(b) Counties may receive monitoring visits as a result of factors outside of the risk assessment, including findings from a previous visit, a complaint, media reports, or a request from an [~~An~~] elected state or local official [~~may request a monitoring visit~~]. If Commission staff make a drop-in visit, fiscal monitoring review, or grant program review, and determines that violations of the Fair Defense Act or Commission rules may be present in a county, the monitor may conduct a monitoring visit [~~limited-scope review~~] of the county's procedures.

§174.28. On-Site Monitoring Process.

(a) Purpose. The process promotes local compliance with the requirements of the Fair Defense Act and Commission rules and provides technical assistance to improve processes where needed.

(b) Monitoring Process. The policy monitor examines the local indigent defense plans and local procedures and processes to determine if the jurisdiction meets the statutory requirements and rules adopted by the Commission. The policy monitor also attempts to randomly select samples of actual cases from the period of review by using a 15% confidence interval for a population at a 95% confidence level.

(c) Core Requirements. On-site policy monitoring focuses on the six core requirements of the Fair Defense Act and related rules. Policy monitoring may also include a review of statutorily required reports to the Office of Court Administration and Commission. This rule establishes the process for evaluating policy compliance with a requirement and sets benchmarks for determining whether a county is in substantial policy compliance with the requirement. For each of these elements, the policy monitor shall review the local indigent defense plans and determine if the plans are in compliance with each element.

(1) Prompt and Accurate Magistration.

(A) The policy monitor shall check for documentation indicating that the magistrate or county has:

(i) Informed and explained to an arrestee the rights listed in Article 15.17(a), Code of Criminal Procedure, including the right to counsel;

(ii) Maintained a process to magistrate arrestees within 48 hours of arrest;

(iii) Maintained a process for magistrates not authorized to appoint counsel to transmit requests for counsel to the appointing authority within 24 hours of the request; and

(iv) Maintained magistrate processing records required by Article 15.17(a), (e), and (f), Code of Criminal Procedure, and records documenting the time of arrest, time of magistration, whether the person requested counsel, and time for transferring requests for counsel to the appointing authority.

(B) A county is presumed to be in substantial compliance with the prompt magistration requirement if magistration in at least 98% of the policy monitor's sample is conducted within 48 hours of arrest.

(2) Indigence Determination. The policy monitor checks to see if procedures are in place that comply with the indigent defense plan and the Fair Defense Act.

(3) Minimum Attorney Qualifications. The policy monitor shall check that attorney appointment lists are maintained according to the requirements set in the indigent defense plans. Only attorneys approved for an appointment list are eligible to receive appointments.

(4) Prompt Appointment of Counsel.

(A) The policy monitor shall check for documentation of timely appointment of counsel in criminal and juvenile cases.

(i) Criminal Cases. The policy monitor shall determine if counsel was appointed or denied for arrestees within one working day of receipt of the request for counsel in counties with a population of 250,000 or more, or three working days in other counties. If the policy monitor cannot determine the date the appointing authority received a request for counsel, then the timeliness of appointment will be based upon the date the request for counsel was made plus 24 hours for the transmittal of the request to the appointing authority plus the time allowed to make the appointment of counsel.

(ii) Juvenile Cases. The policy monitor shall determine if counsel was appointed prior to the initial detention hearing for eligible in-custody juveniles. If counsel was not appointed, the policy monitor shall determine if the court made a finding that appointment of counsel was not feasible due to exigent circumstances. If exigent circumstances were found by the court and the court made a determination to detain the child, then the policy monitor shall determine if counsel was appointed for eligible juveniles immediately upon making this determination. For out-of-custody juveniles, the policy monitor

shall determine if counsel was appointed within five working days of service of the petition on the juvenile.

(B) A county is presumed to be in substantial compliance with the prompt appointment of counsel requirement if, in each level of proceedings (felony, misdemeanor, and juvenile cases), at least 90% of appointments of counsel and denials of indigence determinations in the policy monitor's sample are timely.

(5) Attorney Selection Process. The policy monitor shall check for documentation indicating:

(A) In the case of a contract defender program, that all requirements of §§174.10 - 174.25 of this title are met;

(B) In the case of a managed assigned counsel program, that counsel is appointed according to the entity's plan of operation;

(C) That attorney selection process actually used matches what is stated in the indigent defense plans; and

(D) For assigned counsel and managed assigned counsel systems, the number of appointments in the policy monitor's sample per attorney at each level (felony, misdemeanor, juvenile, and appeals) during the period of review and the percentage share of appointments represented by the top 10% of attorneys accepting appointments. A county is presumed to be in substantial compliance with the fair, neutral, and non-discriminatory attorney appointment system requirement if, in each level of proceedings (felony, misdemeanor, and juvenile cases), the percentage of appointments received by the top 10% of recipient attorneys does not exceed three times their respective share. The top 10% of recipient attorneys is the whole attorney portion of the appointment list that is closest to 10% of the total list. For this analysis, the monitor will include only attorneys [~~who may have been temporarily unavailable for part of the year but will exclude attorneys~~] who were [~~not~~] on an appointment list for [~~any part of~~] the entire time period under review.

(6) Data Reporting [~~Payment Process~~]. The policy monitor shall check for documentation indicating that the county has established a process for collecting and reporting itemized indigent defense expense and case information.

(d) Report.

(1) Report Issuance. For full and limited-scope reviews, the [~~The~~] policy monitor shall issue a report to the authorized official within 60 days of the on-site monitoring visit to a county, unless a documented exception is provided by the director, with an alternative deadline provided, not later than 120 days from the on-site monitoring visit. The report shall contain recommendations to address findings [~~areas~~] of noncompliance. For drop-in visits, the policy monitor may issue a letter with recommendations.

(2) County Response. Within 60 days of the date a [~~the~~] report is issued by the policy monitor, the authorized official shall respond in writing to each finding of noncompliance, and shall describe the proposed corrective action to be taken by the county. The county may request the director to grant an extension of up to 60 days.

(3) Follow-up Reviews. The policy monitor shall conduct follow-up reviews of counties where a [~~the~~] report included noncompliance findings. The follow-up review shall occur within a reasonable time but not more than two years following receipt of a county's response to a [~~the~~] report. The policy monitor shall review a county's implementation of corrective actions and shall report to the county and to the Commission any remaining issues not corrected. Within 30 days of the date the follow-up report is issued by the policy monitor, the authorized official shall respond in writing to each recommendation, and shall describe the proposed corrective action to be taken by the county. The county may request the director to grant an extension of up to 30 days.

(4) Failure to Respond to Report. If a county fails to respond to a monitoring report or follow-up report within the required time, then a certified letter will be sent to the authorized official, financial officer, county judge, local administrative district court judge, local administrative statutory county court judge, and chair of the juvenile board notifying them that all further payments will be withheld if no response to a [~~the~~] report is received by the Commission within 10 days of receipt of the letter. If funds are withheld under this section, then the funds will not be reinstated until the Commission or the Policies and Standards Committee approves the release of the funds.

(5) Noncompliance. If a county fails to correct any noncompliance findings, the Commission may impose a remedy under §173.307 of this title (relating to Remedies for Noncompliance).

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 January 17, 2020.

TRD-202000223
Wesley Shackelford
Deputy Director
Texas Judicial Council
Earliest possible date of adoption: March 1, 2020
For further information, please call: (512) 936-6997

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION
SUBCHAPTER C. PREVIOUS PARTICIPATION AND EXECUTIVE AWARD REVIEW AND ADVISORY COMMITTEE

10 TAC §§1.301 - 1.303

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review Advisory Committee. The purpose of the proposed repeal is to streamline the process for conducting previous participation reviews.

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 proposed repeal does not create or eliminate a government program but relates to changes to an existing activity, previous participation reviews.

2. The proposed 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 proposed repeal does not require additional future legislative appropriations.

4. The proposed 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 proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

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

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

8. The proposed 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 changed 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 31, 2020, to March 2, 2020, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email patricia.murphy@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, March 2, 2020.

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 amended sections affect no other code, article, or statute.

§1.301. Previous Participation Reviews for Multifamily Awards and Ownership Transfers.

§1.302. Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter.

§1.303. Executive Award and Review Advisory Committee (EARAC).

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 January 16, 2020.

TRD-202000165
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 1, 2020
For further information, please call: (512) 475-1762

10 TAC §§1.301 - 1.303

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review Advisory Committee, which includes §1.301, Previous Participation Reviews for Multifamily Awards and Ownership Transfers, §1.302, Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter, and §1.303, Executive Award and Review Advisory Committee (EARAC). The purpose of the proposed new sections is to streamline the process for conducting previous participation reviews. The proposed sections add a new definition for Actively Monitored Development; align the consideration of control with other Department rules; clarify that if both Applicants are considered a Category 2 when evaluated separately and their Combined Portfolio is a Category 3, the Application will be considered a Category 2; provide that previously approved applicants are approved provided that conditions have not been violated and there have been no new events of noncompliance; eliminate the requirement for the compliance division to recommend denial for all Category 3 applicants; and eliminate the connection between events of noncompliance and possible conditions.

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 sections would be in effect:

1. The proposed new sections do not create or eliminate a government program but relate to changes to an existing activity: previous participation reviews.

2. The proposed new sections do 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 proposed new sections do not require additional future legislative appropriations.

4. The proposed new sections will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The proposed new sections are not creating a new regulation, except that they are replaced sections being repealed simultaneously to provide for revisions.

6. The proposed new sections will not expand, limit, or repeal an existing regulation.

7. The proposed new sections will not increase or decrease the number of individuals subject to the rule's applicability.

8. The proposed new sections 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 sections and determined that they 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 sections do 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 sections as to their possible effects on local economies and has determined that for the first five years the proposed new sections 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 sections are in effect, the public benefit anticipated as a result of the new sections would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the new sections.

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 sections are in effect, enforcing or administering the new sections 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 31, 2020, to March 2, 2020, to receive input on the proposed new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email patricia.murphy@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, March 2, 2020.

STATUTORY AUTHORITY. The proposed new sections are made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

§1.301. Previous Participation Reviews for Multifamily Awards and Ownership Transfers.

(a) Purpose and Applicability. The purpose of this rule is to provide the procedures used by the Department to comply with Tex. Gov't Code §§2306.057, and 2306.6713 which require the Compliance Division to assess the compliance history of the Applicant and any Affiliate, the compliance issues associated with the proposed or existing Development, and provide such assessment to the Board. This rule also ensures Department compliance with 2 CFR §200.331(b) and (c), and Uniform Grant Management Standards (UGMS), where applicable.

(b) Definitions. The following definitions apply only as used in this Subchapter. Other capitalized terms used in this Section have the meaning assigned in the specific Chapters and Rules of this Title that govern the program associated with the request, or assigned by federal or state laws.

(1) Actively Monitored Development--A Development that within the last three years has been monitored by the Department, either through a Uniform Physical Condition Standards (UPCS) inspection or a file monitoring review. UPCS inspections include inspections completed by Department staff, Department contractors and inspectors from the Real Estate Assessment Center through federal alignment efforts.

(2) Affiliate--Persons are Affiliates of each other or are "affiliated" if they are under common Control by each other or by one or more third parties. "Control" is as defined in §11.1 of this Title (relating to General items relating to Pre-Application, Definitions, Threshold Requirements and Competitive Scoring). For Applications for Multifamily Direct Loans and 811 PRA, or for Ownership Transfers of Multifamily Properties containing Multifamily Direct Loans or 811 PRA, for purposes of assurance that the Affiliate is not on the Federal Suspended or Debarred Listing, Affiliate is also defined as required by 2 CFR Part 180.

(3) Applicant--In addition to the definition of applicant in §11.1 of this Title, in this Subchapter, the term applicant includes Persons requesting approval to purchase a Department monitored Development.

(4) Combined Portfolio--Actively Monitored Developments within the Control of Persons affiliated with the Application as identified by the Previous Participation Review and as limited by Subsection (c) of this Section.

(5) Corrective Action Period--The timeframe during which an Owner may correct an Event of Noncompliance, as permitted in §10.602 or §10.803 of this Title (relating to Notice to Owners and Corrective Action Periods and Compliance and Events of Noncompliance, respectively), including any permitted extension or deficiency period.

(6) Events of Noncompliance--Any event for which a multifamily rental Development may be found to be in noncompliance for compliance monitoring purposes as further provided for in §10.803 of this Title or in the table provided at §10.625 of this Title (relating to Events of Noncompliance).

(7) Monitoring Event--An onsite or desk monitoring review, a Uniform Physical Condition Standards inspection, the submission of the Annual Owner's Compliance Report, Final Construction Inspection, a Written Policies and Procedures Review, or any other instance when the Department's Compliance Division or other reviewing area provides written notice to an Owner or Contact Person requesting a response by a certain date. This would include, but not be limited to, responding to a tenant complaint.

(8) Person--"Person" is as defined in 10 TAC Chapter 11 (relating Qualified Allocation Plan (QAP)). For Applications for Multifamily Direct Loans and 811 PRA, or for Ownership Transfers of Multifamily Properties containing Multifamily Direct Loans or 811 PRA, for purposes of assurance that the Applicant or Affiliate is not on the Federal Suspended or Debarred Listing, Person is also defined as required by 2 CFR Part 180.

(9) Single Audit--As used in this rule, the term relates specifically to an audit required by 2 CFR §200.501 or UGMS Subpart E.

(c) Items Not Considered. When conducting a previous participation review the items in Paragraphs (1) through (10) of this Subsection will not be taken into consideration:

(1) Events of Noncompliance, Findings, Concerns, and Deficiencies (under any Department program) that were corrected over three years from the date the Event is closed;

(2) Events of Noncompliance with an "out of compliance date" prior to the Applicant's period of Control if the event(s) is currently corrected;

(3) Events of Noncompliance with an "out of compliance date" prior to the Applicant's period of Control if the event(s) is currently uncorrected and the Applicant has had Control for less than one year, or if the Owner is still within the timeframe of a Department-approved corrective action from the Department's Enforcement Committee;

(4) The Event of Noncompliance "Failure to provide Fair Housing Disclosure notice";

(5) The Event of Noncompliance "Program Unit not leased to Low income Household" sometimes referred to as "Household Income above income limit upon initial Occupancy" for units at Developments participating in U.S. Department of Housing and Urban Development programs (or used as HOME Match) or U.S. Department of Agriculture, if the household resided in the unit prior to an allocation of Department resources and Federal Regulations prevent the Owner from correcting the issue;

(6) The Event of Noncompliance "Casualty loss" if the restoration period has not expired;

(7) Events of Noncompliance that the Applicant believes can never be corrected and the Department agrees in writing that such item should not be considered;

(8) Events of Noncompliance corrected within their Corrective Action Period or within 10 days of the day the Owner received notice that the Corrective Action was insufficient;

(9) Events of failure to respond within the Corrective Action Period which have been fully corrected prior to January 1, 2019, will not be taken into consideration under Subsection (e)(2)(C) and (e)(3)(C) of this Section; and

(10) Events of Noncompliance precluded from consideration by Tex. Gov't Code §2306.6719(e).

(d) Applicant Process. Persons affiliated with an Application or an Ownership Transfer request must complete the Department's Uniform Previous Participation Review Form and respond timely to staff inquiries regarding apparent errors or omissions, but for Applications no later than the Administrative Deficiency deadline. For an Ownership Transfer request, a recommendation will be delayed until the required forms or responsive information is provided.

(e) Determination of Compliance Status. Through a review of the form, Department records, and the compliance history of the Affiliated multifamily Developments, staff will determine the applicable category for the Application or Ownership Transfer request using the criteria in Paragraphs (1) through (3) of this Subsection. Combined Portfolios will not be designated as a Category 3 if both Applicants are considered a Category 2 when evaluated separately. For example, if each Applicant is a Category 2 and their Combined Portfolio is a Category 3, the Application will be considered a Category 2.

(1) Category 1. An Application will be considered a Category 1 if the Actively Monitored Developments in the Combined Portfolio have no issues that are currently uncorrected, all Monitoring Events were responded to during the Corrective Action Period, and the Application does not meet any of the criteria of Category 2 or 3.

(2) Category 2. An Application will be considered a Category 2 if any one or more of the following criteria are met:

(A) The number of uncorrected Events of Noncompliance plus the number of corrected Events of Noncompliance that were not corrected during the Corrective Action Period total at least three but is less than 50% of the number of Actively Monitored Developments in the Combined Portfolio;

(B) There are uncorrected Events of Noncompliance but the number of Events of Noncompliance is 10% or less than the number of Actively Monitored Developments in the Combined Portfolio. Corrective action uploaded to the Department's Compliance Monitoring and Tracking System (CMTS) or submitted during the seven day period referenced in Subsection (f) of this Section will be reviewed and the Category determination may change as appropriate; or

(C) Within the three years immediately preceding the date of Application, any Person subject to previous participation review failed to respond during the Corrective Action Period for three or fewer Monitoring Events; or

(D) The Applicant is required to have a Single Audit and a relevant and germane issue was identified in the Single Audit (e.g. Notes to the Financial Statements), or the required Single Audit is past due.

(3) Category 3. An Application will be considered a Category 3 if any one or more of the following criteria are met:

(A) The number of uncorrected Events of Noncompliance plus the number of corrected Events of Noncompliance that were not corrected during the Corrective Action Period total at least three and equal or exceed 50% of the number of Actively Monitored Developments in the Combined Portfolio;

(B) The number of Events of Noncompliance that are currently uncorrected total 10% or more than the number of Actively Monitored Developments in the Combined Portfolio. Corrective action

uploaded to CMTS or submitted during the seven day period referenced in Subsection (f) of this Section will be reviewed and the Category determination may change as appropriate;

(C) Within the three years immediately preceding the date of Application, any Person subject to previous participation review failed to respond during the Corrective Action Period for more than three Monitoring Events;

(D) Any Development Controlled by the Applicant has been the subject of an agreed final order entered by the Board and the terms have been violated;

(E) Any Person subject to previous participation review failed to meet the terms and conditions of a prior condition of approval imposed by the EARAC, the Governing Board, voluntary compliance agreement, or court order;

(F) Payment of principal or interest on a loan due to the Department is past due beyond any grace period provided for in the applicable documents for any Development currently Controlled by the Applicant or that was Controlled by the Applicant at the time the payment was due and a repayment plan has not been executed with the Department, or an executed repayment plan has been violated;

(G) The Department has requested and not been provided evidence that the owner has maintained required insurance on any collateral for any loan held by the Department related to any Development Controlled by the Applicant;

(H) The Department has requested and not been provided evidence that property taxes have been paid or satisfactory evidence of a tax exemption on any collateral for any loan held by the Department related to any Development Controlled by the Applicant;

(I) Fees or other amounts owed to the Department by any Person subject to previous participation review are 30 days or more past due and a repayment plan has not been executed with the Department, or an executed repayment plan has been violated;

(J) Despite past condition(s) agreed upon by any Person subject to previous participation review to improve their compliance operations, three or more new Events of Noncompliance have since been identified by the Department, and have not been resolved during the corrective action period;

(K) Any Person subject to previous participation review has or had Control of a TDHCA funded Development that has gone through a foreclosure; or

(L) Any Person subject to previous participation review or the proposed incoming owner is currently debarred by the Department or currently on the federal debarred and suspended listing.

(f) Compliance Notification to Applicant and EARAC. The Compliance Division will notify Applicants of their compliance status from the categories identified in Paragraphs (1) to (4) of this Subsection.

(1) Previously approved. If EARAC or the Board previously approved the compliance history of an Applicant, with or without conditions (including approvals resulting from a Dispute under §1.303(g) of this Subchapter (relating to Executive Award and Review Advisory Committee (EARAC))) such conditions have not been violated, and no new events have occurred since the last approval, the compliance history will be deemed acceptable without further review or discussion and recommended as approved or approved with the same prior conditions.

(2) Category 1. The compliance history of Category 1 applications will be deemed acceptable (for Compliance purposes only) without further review or discussion.

(3) Category 2 and Category 3. Category 2 and 3 Applicants will be informed by the Compliance Division that the Application is a Category 2 or 3 and provided a seven calendar day period to provide written comment, submit any remaining evidence of corrective action for uncorrected events, propose one or more of the conditions listed in §1.303 of this Subchapter, or propose other conditions for consideration before the Compliance Division makes its final submission to EARAC.

(4) The Department will not make an award or approve an Ownership Transfer to any entity who has an Affiliate, Board member, or a Person identified in the Application that is currently on the Federal Debarred and Suspended Listing. An Applicant or entity requesting an Ownership Transfer will be notified of the debarred status and will be given the opportunity (subject to other Department rules) to remove and replace the Affiliate, Board member, or Person so that the transfer or award may proceed.

(g) Compliance Recommendation to EARAC for Awards.

(1) After taking into consideration the information received during the seven-day period, Category 2 Applications will be recommended for approval or approval with conditions (for compliance purposes only). Any recommendation for an award with conditions will utilize the conditions identified in §1.303 of this Subchapter. The Applicant will be notified if their award is recommended for approval with conditions.

(2) After taking into consideration the information received during the seven-day period, Category 3 applications will be recommended for approval, approval with conditions (for compliance purposes only) or denial. Any recommendation for an award or ownership transfer with conditions will utilize the conditions identified in §1.303 of this Subchapter. The Applicant will be notified if their award is recommended for denial or approval with conditions.

(3) An Applicant that will be recommended for denial or awarded with conditions will be informed of their right to file a Dispute under §1.303 of this Subchapter.

(h) Compliance Recommendation for Ownership Transfers. After taking into consideration the information received during the seven-day period the results will be reported to the Executive Director with a recommendation of approval, approval with conditions, or denial. If the Executive Director determines that the request should be denied, or approved with conditions and the requesting entity disagrees, the matter may be appealed to the Board under §1.7 of this Title (relating to Appeals).

§1.302. Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter.

(a) Purpose and applicability. This Section applies to program awards not covered by §1.301 of this Subchapter (relating to Previous Participation Reviews for Multifamily Awards and Ownership Transfers). With the exception of a household or project commitment contract, prior to awarding or allowing access to Department funds through a Contract or through a Reservation Agreement a previous participation review will be performed in conjunction with the presentation of award actions to the Department's Board.

(b) Capitalized terms used in this Section herein have the meaning assigned in the specific Chapters and Rules of this Title that govern the program associated with the request, or assigned by federal or state laws. For this Section, the word Applicant means the entity that the Department's Board will consider for an award of

funds or a Contract. As used in this Section, the term Single Audit relates specifically to the audit required by 2 CFR §200.501 or UGMS Subpart E.

(c) Upon Department request, Applicant will be required to submit:

(1) A listing of the members of its board of directors, council, or other governing body as applicable or certification that the same relevant information has been submitted in accordance with §1.22 of this Subchapter (relating to Providing Contact Information to the Department), and if applicable with §6.6 of this Title (relating to Subrecipient Contact Information and Required Notifications);

(2) A list of any multifamily Developments owned or Controlled by the Applicant that are monitored by the Department;

(3) Identification of all Department programs that the Applicant has participated in within the last three years;

(4) An Audit Certification Form for the Applicant or entities identified by the Applicant's Single Audit, or a certification that the form has been submitted to the Department in accordance with §1.403 of this Chapter (relating to Single Audit Requirements). If a Single Audit is required by UGMS Subpart E, a copy of the State Single Audit must be submitted to the Department;

(5) In addition to direct requests for information from the Applicant, information is considered to be requested for purposes of this Section if the requirement to submit such information is made in a NOFA or Application for funding; and

(6) Applicants will be provided a reasonable period of time, but not less than seven calendar days, to provide the requested information.

(d) The Applicant's/Affiliate's financial obligations to the Department will be reviewed to determine if any of the following conditions exist:

(1) The Applicant or Affiliate entities identified by the Applicant's Single Audit owes an outstanding balance in accordance with §1.21 of this Chapter (relating to Action by Department if Outstanding Balances Exist), and a repayment plan has not been executed between the Subrecipient and the Department or the repayment plan has been violated;

(2) The Department has requested and not been provided evidence that the Owner has maintained required insurance on any collateral for any loan held by the Department; or

(3) The Department has requested and not been provided evidence that property taxes have been paid or satisfactory evidence of a tax exemption on any collateral for any loan held by the Department.

(e) The Single Audit of an Applicant, or Affiliate entities identified by the Applicant's Single Audit, subject to a Single Audit, and not currently contracting for funds with the Department will be reviewed. In evaluating the Single Audit, the Department will consider both audit findings, and management responses in its review to identify concerns that may affect the organization's ability to administer the award. The Department will notify the Applicant of any Deficiencies, findings or other issues identified through the review of the Single Audit that requires additional information, clarification, or documentation, and will provide a deadline to respond.

(f) The Compliance Division will make a recommendation of award, award with conditions, or denial based on:

(1) The information provided by the Applicant;

(2) Information contained in the most recent Single Audit;

(3) Issues identified in Subsection (d) of this Section;

(4) The Deficiencies, Findings and Concerns identified during any monitoring visits conducted within the last three years (whether or not the Findings were corrected during the Corrective Action Period); and

(5) The Department's record of complaints concerning the Applicant.

(g) Compliance Recommendation to EARAC.

(1) If the Applicant has no history with Department programs, and Compliance staff has not identified any issues with the Single Audit or other required disclosures, the Application will be deemed acceptable (for Compliance purposes) without EARAC review or discussion.

(2) An Applicant with no history of monitoring Findings, Concerns, and/or Deficiencies or with a history of monitoring Findings, Concerns, and/or Deficiencies that have been awarded without conditions subsequent to those identified Findings, Concerns, and/or Deficiencies, will be deemed acceptable without EARAC review or discussion for Compliance purposes, if there are no new monitoring Findings, Concerns, or Deficiencies or complaint history, and if the Compliance Division determines that the most recent Single Audit or other required disclosures indicate that there is no significant risk to the Department funds being considered for award.

(3) The Compliance Division will notify the Applicant when an intended recommendation is an award with conditions or denial. Any recommendation for an award with conditions will utilize the conditions identified in §1.303 of this Subchapter. The Applicant will be provided a seven calendar day period to provide written comment, submit any remaining evidence of corrective action for uncorrected events, propose one or more of the conditions listed in §1.303 of this Subchapter, or propose other conditions for consideration by the Board.

(4) After review of materials submitted by the Applicant during the seven day period, the Compliance Division will make a final recommendation regarding the award. If recommending denial or award with conditions, the Applicant will be notified of their right to file a dispute under §1.303 of this Subchapter.

(h) Consistent with §1.403 of Subchapter D of this Chapter, (relating to Single Audit Requirements), the Department may not enter into a Contract or extend a Contract with any Applicant who is delinquent in the submission of their Single Audit unless an extension has been approved in writing by the cognizant federal agency except as required by law, and in the case of certain programs, funds may be reserved for the Applicant or the service area covered by the Applicant.

(i) Except as required by law, the Department will not enter into a Contract with any Applicant or entity who has an Affiliate, Board member, or person identified in the Application that is currently debarred by the Department or is currently on the Federal Suspended or Debarred Listing. Applicants will be notified of the debarred status of an Affiliate, Board Member or Person and will be given an opportunity to remove and replace that Affiliate, Board Member or Person so that funding may proceed. However, individual Board Member's participation in other Department programs is not required to be disclosed, and will not be taken into consideration by EARAC.

(j) Previous Participation reviews will not be conducted for Contract extensions. However, if the Applicant is delinquent in submission of its Single Audit, the Contract will not be extended except as required by law, unless the submission is made, and the Single Audit has been reviewed and found acceptable by the Department.

(k) For CSBG funds required to be distributed to Eligible Entities by formula, the recommendation of the Compliance Division will only take into consideration Subsection (i) of this Section.

(l) Previous Participation reviews will not be conducted for Contract Amendments that staff is authorized to approve.

§1.303. Executive Award and Review Advisory Committee (EARAC).

(a) Authority and Purpose. The Executive Award and Review Advisory Committee (EARAC) is established by Tex. Gov't Code §2306.1112 to make recommendations to the Board regarding funding and allocation decisions related to Low Income Housing Tax Credits and federal housing funds provided to the state under the Cranston Gonzalez National Affordable Housing Act. Per Tex. Gov't Code §2306.1112(c), EARAC is not subject to Tex. Gov't Code, Chapter 2110. The Department also utilizes EARAC as the body to consider funding and allocation recommendations to the Board related to other programs, and to consider an awardee under the requirements of 2 CFR §200.331(b) and (c), and UGMS, which requires that the Department evaluate an applicant's risk of noncompliance and consider imposing conditions if appropriate prior to awarding funds for certain applicable programs and as described in §1.403 of Subchapter D of this Chapter. It is also the purpose of this rule to provide for the operation of the EARAC, to provide for considerations and processes of EARAC, and to address actions of the Board relating to EARAC recommendations. Capitalized terms used in this Section herein have the meaning assigned in the specific Chapters and Rules of this Title that govern the program associated with the request, or assigned by federal or state laws.

(b) EARAC may meet in person or by email to make recommendations on awards, discuss deficiencies needed to make recommendations, and address inquiries by Applicants or responses to a negative recommendation.

(c) EARAC Recommendation Process.

(1) A positive recommendation by EARAC represents a determination that, at the time of the recommendation and based on available information, EARAC has not identified a rule or statutory-based impediment that would prohibit the Board from making an award.

(2) A positive recommendation by EARAC may have conditions placed on it. Conditions placed on an award by EARAC will be limited to those conditions noted in Subsection (e) of this Section, or as suggested by the Applicant and agreed upon by the Department.

(3) The Applicant will be notified of proposed conditions. If the Applicant does not concur with the applicability of one or more of the conditions, it will be provided an opportunity to dispute the conditions as described in Subsection (g) of this Section, regarding EARAC Disputes.

(4) Category 3 applicants that will be recommended for denial will be notified and informed of their right to dispute the negative EARAC recommendation as described in Subsection (g) of this Section, regarding EARAC Disputes.

(d) Conditions to an award may be placed on a single property, a portfolio of properties, or a portion of a portfolio of properties if applicable (e.g., one region of a management company is having issues, while other areas are not). The conditions listed in Subsection (e) of this Section may be customized to provide specificity regarding affected properties, Persons or dates for meeting conditions. Category 2 or Category 3 Applications may be awarded with the imposition of one or more of the conditions listed in Subsection (e) of this Section.

(e) Possible Conditions.

(1) Applicant/Owner is required to ensure that each Person subject to previous participation review for the Combined Portfolio will correct all applicable issues of non-compliance identified by the previous participation review on or before a specified date and provide the Department with evidence of such correction within 30 calendar days of that date.

(2) Owner is required to have qualified personnel or a qualified third party perform a one-time review of an agreed upon percentage of files and complete the recommended actions of the reviewer on or before a specified deadline for an agreed upon list of Developments. Evidence of reviews and corrections must be submitted to the Department upon request.

(3) The Applicant or the management company contracted by the Applicant is required to prepare or update its internal procedures to improve compliance outcomes and to provide copies of such new or updated procedures to the Department upon request or by a specified date.

(4) Owner agrees to hire a third party to perform reviews of an agreed upon percentage of their resident files on a quarterly basis, and complete the recommended actions of the reviewer for an agreed upon list of Developments. Evidence of reviews and corrections must be submitted to the Department upon request.

(5) Owner is required to designate a person or persons to receive Compliance correspondence and ensure that this person or persons will provide timely responses to the Department for and on behalf of the proposed Development and all other Development subject to TDHCA LURAs over which the Owner has the power to exercise Control.

(6) Owner agrees to replace the existing management company, consultant, or management personnel, with another of its choosing.

(7) Owner agrees to establish an email distribution group in CMTS, to be kept in place until no later than a given date, and include agreed upon employee positions and/or designated Applicant members.

(8) Owner is required to revise or develop policies regarding the way that it will handle situations where persons under its control engage in falsification of documents. This policy must be submitted to TDHCA on or before a specified date and revised as required by the Department.

(9) Owner or Subrecipient is required to ensure that agreed upon persons attend and/or review the trainings listed in (A), (B), (C) and/or (D) of this Paragraph (only for Applications made and reviewed under §1.301 of this Subchapter) and/or (E) for applications made and reviewed under §1.302 of this Subchapter and provide TDHCA with certification of attendance or completion no later than a given date.

(A) Housing Tax Credit Training sponsored by the Texas Apartment Association;

(B) 1st Thursday Income Eligibility Training conducted by TDHCA staff;

(C) Review one or more of the TDHCA Compliance Training Presentation webinars:

(i) 2012 Income and Rent Limits Webinar Video;

(ii) 2012 Supportive Services Webinar Video;

(iii) Income Eligibility Presentation Video;

(iv) 2013 Annual Owner's Compliance Report (AOCR) Webinar Video;

(v) Most current Tenant Selection Criteria Presentation;

(vi) Most current Affirmative Marketing Requirements Presentation;

(vii) Fair Housing Webinars (including but not limited to the 2017 FH webinars);

(D) Training for Certified Occupancy Specialist or Blended Occupancy Specialist; or

(E) Any other training deemed applicable and appropriate by the Department, which may include but is not limited to, weatherization related specific trainings such as OSHA, Lead Renovator, or Building Analyst training.

(10) Owner is required to submit the written policies and procedures for all Developments subject to a TDHCA LURA for review and will correct them as directed by the Department.

(11) Owner is required to have qualified personnel or a qualified third party perform Uniform Physical Condition Standards inspections of 5% of their Units on a quarterly basis for a period of one year, and promptly repair any deficiencies. Different Units must be selected every quarter. Evidence of inspections and corrections must be submitted to the Department upon request.

(12) Within 60 days of the condition issuance date the Owner will contract for a third party Property Needs Assessment and will submit to the Department a plan for addressing noted issues along with a budget and timeframe for completion.

(13) Owner agrees to have a third party accessibility review of the Development completed at a time to be determined by the Applicant but no later than prior to requesting a TDHCA final construction inspection. Evidence of review must be submitted to the Department upon request.

(14) Applicant/Owner is required to provide all documentation relating to a Single Audit on or before a specified date.

(15) Any of the conditions identified in 2 CFR §200.207 which may include but are not limited to requiring additional, more detailed financial reports; requiring additional project monitoring; or establishing additional prior approvals. If such conditions are utilized, the Department will adhere to the notification requirements noted in 2 CFR §200.207(b).

(16) Applicant is required to have qualified personnel or a qualified third party perform an assessment of its operations and/or processes and complete the recommended actions of the reviewer on or before a specified deadline.

(17) Applicant is required to have qualified personnel or a qualified third party performs DOE required Quality Control Inspections of 5% of its Units on a quarterly basis for a period of one year, and promptly repair any deficiencies. Different Units must be selected every quarter. Evidence of inspections and corrections must be submitted upon request.

(18) Applicant is required to provide evidence that reserves for physical repairs are fully funded as required by §10.404 of this Title (relating to Replacement Reserves).

(19) In the case of a Development being funded with direct loan funds, Applicant is required to provide evidence of invoices and a lien waiver from the contractor, subcontractor, materials supplier, equipment lessor or other party to the construction project stating they have received payment and waive any future lien rights to the property for the amount paid at the time of every draw request submitted.

(f) Failure to meet conditions.

(1) The Executive Director may, for good cause and as limited by federal commitment, expenditure, or other deadlines, grant one extension to a deadline specified in a condition, with no fee required, for up to six months, if requested prior to the deadline. Any subsequent extension, or extensions requested after the deadline, must be approved by the Board.

(2) If any condition agreed upon by the Applicant and imposed by the Board is not met as determined by the evidence submitted (or lack thereof) when requested, the Applicant may be referred to the Enforcement Committee for debarment.

(g) Dispute of EARAC Recommendations.

(1) The Appeal provisions in §1.7 of this Title relating to the appeals of a staff decision to the Executive Director, are not applicable.

(2) If an Applicant does not agree with any of the following items, an Applicant or potential Subrecipient of an award may file a dispute that may be considered by EARAC or may be presented to the Board without further EARAC consideration consistent with Paragraph (3) of this Subsection.

(A) Their category as determined under §1.301(f) of this Subchapter;

(B) Any conditions proposed by EARAC; or

(C) A negative recommendation by EARAC.

(3) Prior to the Board meeting at which the EARAC recommendation is scheduled to be made, an Applicant or potential Subrecipient may submit to the Department (to the attention of the Chair of EARAC), their Dispute detailing:

(A) The condition or determination with which the Applicant or potential Subrecipient disagrees;

(B) The reason(s) why the Applicant/potential Subrecipient disagrees with EARAC's recommendation or conditions;

(C) If the dispute relates to conditions, any suggested alternate condition language;

(D) If the dispute relates to a negative recommendation, any suggested conditions that the Applicant believes would allow a positive recommendation to be made; and

(E) Any supporting documentation not already submitted to EARAC.

(4) An Applicant must file a written Dispute not later than the seventh calendar day after notice of denial or award with conditions has been provided. The Dispute must include any materials that the Applicant wishes EARAC and/or the Board to consider. An Applicant may request to meet with EARAC and EARAC is not obligated to meet with the Applicant.

(5) EARAC is not required to consider a Dispute prior to making its recommendation to the Board.

(6) If an Applicant proposes alternative conditions EARAC may provide the Board with a recommendation to accept, reject, or modify such proposed alternative conditions.

(7) A Dispute will be included on the Board agenda if received at least seven calendar days prior to the required posting date of that agenda. If the Applicant desires to submit additional materials for Board consideration, it may provide the Department with such materials, provided in pdf form, to be included in the presentation of the

matter to the Board if those materials are provided not later than close of business of the fifth calendar day before the date on which notice of the relevant Board meeting materials must be posted, allowing staff sufficient time to review the Applicant's materials and prepare a presentation to the Board reflecting staff's assessment and recommendation. The agenda item will include the materials provided by the Applicant and may include a staff response to the dispute and/or materials. It is within the board chair's discretion whether or not to allow an applicant to supplement its response. An Applicant who wishes to provide supplemental materials at the time of the Board meeting must comply with the requirements of §1.10 of this Chapter (relating to Public Comment Procedures). There is no assurance the board chair will permit the submission, inclusion, or consideration of any such supplemental materials.

(8) The Board and EARAC will make reasonable efforts to accommodate properly and timely filed Disputes under this Subsection.

(h) Board Discretion. Subject to limitations in federal statute or regulation or in UGMS, the Board has the discretion to accept, reject, or modify any EARAC recommendations in response to a recommendation for an award or in response to a Dispute. The Board may impose other conditions not noted or contemplated in this rule as recommended by EARAC, or as requested by the Applicant; in such cases the conditions noted will have the force and effect of an order of the Board.

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 January 16, 2020.

TRD-202000166
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 1, 2020
For further information, please call: (512) 475-1762

CHAPTER 90. MIGRANT LABOR HOUSING FACILITIES

10 TAC §90.9

The Texas Department of Housing and Community Affairs (the Department) proposes new §90.9, relating to Dispute Resolution, Appeals, and Hearings, in 10 TAC Chapter 90, Migrant Labor Housing Facilities. In accordance with Tex. Gov't Code Chapter 2306, Subchapter LL, a person may not establish, maintain, or operate a Migrant Labor Housing Facility without obtaining a License from the Department, and Subchapter LL further outlines requirements relating to the application, inspection, fees, and suspension of Licenses. The proposed new rule had been part of the rules in 10 TAC Chapter 90 that were recently repealed and replaced and had been approved by the Board on October 5, 2019, as a proposed rule for publication in the *Texas Register* for public comment, but this one section of Chapter 90 was inadvertently not included in the replacement rules that were published in the *Texas Register* (44 TexReg 6126) on October 25, 2019, received public comment, and were adopted by the Board on January 16, 2020.

Tex. Gov't Code §2001.0045(b) does not apply to the proposal for action because it is exempt under both §2001.0045(c)(6) which exempts rule changes necessary to protect the health, safety, and welfare of the residents of this state, and §2001.0045(c)(9), which exempts rule changes necessary to implement legislation.

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, Executive Director, has determined that, for the first five years the proposed rulemaking would be in effect:

1. The proposed rule does not create or eliminate a government program, but relates to the readoption of this rule, which makes changes to an existing activity: the licensing and oversight of certain Migrant Labor Housing Facilities.

2. The proposed rule does not require a change in work that would require the creation of new employee positions. While some additional work by the Department may be required associated with the acceptance of additional license applications and fees, added inspections, and follow-up of compliance with possible inspections findings and resultant potential for more contested cases, the Department anticipates handling this additional work with existing staff resources. The rule change does not reduce work load such that any existing employee positions could be eliminated.

3. The proposed rule does not require additional future legislative appropriations.

4. The proposed rule does not address fees or revenue in any way.

5. The proposed rule is not creating a new regulation, except that it is replacing a rule which was repealed to provide for review, public comment and possible revisions.

6. The proposed rule will not limit or repeal an existing regulation. This additional section clarifies the process under which the prospective license may challenge or appeal a decision made by the Department.

7. The proposed rule does not impact the number of individuals subject to the rule's applicability.

8. The rule is not expected to have any measurable effect on the state's economy since it merely clarifies the procedural provisions of appealing a staff determination.

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 it 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 effects 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 sections 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 is in effect, enforcing or administering the new sections 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 30, 2020, to February 27, 2020, to receive input on the new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Tom Gouris, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email tom.gouris@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, FEBRUARY 27, 2020.

STATUTORY AUTHORITY. The proposal is pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

§90.9. Dispute Resolution, Appeals, and Hearings.

(a) A licensee is entitled to appeal any order issued by the Director, including any order as a result of an inspection or a complaint and any order denying a license or issuing a license subject to specified conditions.

(b) In lieu of or during the pendency of any appeal, a licensee may request to meet with the Director or, at his or her option, his or her designee to resolve disputes. Any such meeting may be by telephone or in person. Meetings in person shall be in the county where the migrant labor housing facility affected is located unless the licensee agrees otherwise.

(c) A licensee may request alternative dispute resolution in accordance with the Department's rules regarding such resolution set forth at §1.17 of this title (relating to Alternative Dispute Resolution).

(d) All appeals are contested cases subject to and to be handled in accordance with Chapter 2001, Tex. Gov't Code.

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 January 17, 2020.

TRD-202000220
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 1, 2020
For further information, please call: (512) 475-1762

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

16 TAC §25.471

The Public Utility Commission of Texas (commission) proposes amendments to §25.471, relating to general provisions of customer protection rules. The proposed amendments will clarify that, where specifically stated, Chapter 25, Subchapter R, General Provisions of Customer Protection Rules applies to brokers. The proposed amendments will modify §25.471 to reflect new sections that are proposed in Project No. 49794, Rulemaking for Broker Registrations. The proposed amendments will also make other minor changes.

Growth Impact Statement

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

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

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

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

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

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

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

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

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

Cliff Crouch, Manager of Licensing and Compliance, Customer Protection Division, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Mr. Crouch has also determined that for each year of the first five years the proposed section is in effect, the anticipated public benefits expected as a result of the adoption of the proposed rule will be clarification of the applicability of Chapter 25, Subchapter R. Mr. Crouch further determined that there will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

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

Costs to Regulated Persons

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

Public Hearing

The commission staff will conduct a public hearing on this rulemaking, if requested in accordance with Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on February 20, 2020. The request for a public hearing must be received by February 14, 2020. If no request for public hearing is received and the commission staff cancels the hearing, it will file in this project a notification of the cancellation of the hearing prior to the scheduled date for the hearing.

Public Comments

Comments on the proposed amendment may be filed with the commission's filing clerk at 1701 North Congress Avenue, Austin, Texas or mailed to P.O. Box 13326, Austin, TX 78711-3326, by February 14, 2020. Sixteen copies of comments to the proposed amendment are required to be filed by §22.71(c) of 16 Texas Administrative Code. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rule on adoption. All comments should refer to project number 50406.

Statutory Authority

This amendment is proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and §39.3555, which requires entities that register as brokers with the commission to comply with customer protection provisions, disclosure requirements, and marketing guidelines established by the commission.

Cross reference to statutes: Public Utility Regulatory Act §§14.002 and 39.3555.

§25.471. General Provisions of Customer Protection Rules.

(a) Application. This subchapter applies to aggregators and retail electric providers (REPs). In addition, where specifically stated, these rules [~~shall~~] apply to transmission and distribution utilities (TDUs), the registration agent, brokers and power generation companies. These rules specify when certain provisions are applicable only to some, but not all, of these providers.

(1) - (2) (No change.)

(3) The rules in this subchapter are minimum, mandatory requirements that must [~~shall~~] be offered to or complied with for all customers unless otherwise specified. Except for the provisions of §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider), §25.481 of this title (relating to Unauthorized Charges), and §25.485(a) - (b) of this title (relating to Customer Access and Complaint Handling), a customer other than a residential or small commercial class customer, or a non-residential customer whose load is part of an aggregation in excess of 50 kilowatts, may agree to terms of service that reflect either a higher or lower level of customer protections than would otherwise apply under these rules. Any agreements containing materially different protections from those specified in these rules must [~~shall~~] be reduced to writing and provided to the customer. Additionally, copies of such agreements must [~~shall~~] be provided to the commission upon request.

(4) - (5) (No change.)

(b) Purpose. The purposes of this subchapter are to:

(1) - (3) (No change.)

(4) prohibit fraudulent, unfair, misleading, deceptive, or anticompetitive acts and practices by aggregators, [~~and~~] REPs, and brokers in the marketing, solicitation and sale of electric service and in the administration of any terms of service for electric service.

(c) (No change.)

(d) Definitions. For the purposes of this subchapter the following words and terms have the following meaning, unless the context clearly indicates otherwise:

(1) - (9) (No change.)

(10) Retail electric provider (REP)--Any entity as defined in §25.5 of this title (relating to Definitions). For purposes of this rule, a municipally owned utility or an electric cooperative is only considered a REP where it sells retail electric power and energy outside its certified service territory. An agent of the REP may perform all or part of the REP's responsibilities pursuant to this subchapter. For purposes of this subchapter, the REP will [~~shall~~] be responsible for the actions of the agent.

(11) Small commercial customer--A non-residential customer that has a peak demand of less than 50 kilowatts during any 12-month period, unless the customer's load is part of an aggregation program whose peak demand is in excess of 50 kilowatts during the same 12-month period.

(12) - (13) (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 January 17, 2020.

TRD-202000214
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: March 1, 2020
For further information, please call: (512) 658-1138

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 65. BOILERS

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 65, Subchapter A, §65.2; Subchapter C, §65.13; Subchapter N, §65.206 and §65.214; Subchapter O, §65.300; and Subchapter R, §65.603 and §65.607, regarding the Boilers Program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 65 implement Texas Health and Safety Code, Chapter 755, Boilers.

The proposed rules are the product of analysis and discussion among the staff and with the Board of Boiler Rules. The primary focus and goal are the protection of public health, safety, and welfare. All participants agreed that it is necessary to that protection to implement a simple method to prevent additional deaths and injuries to Texans. Other unrelated changes are included in the proposal relating to administrative matters and overall clarity in the rules.

The proposed rules include three components. First, a carbon monoxide (CO) detector and interlock system is newly required for boilers installed in boiler rooms on or after June 1, 2020, which will significantly reduce deaths and injuries resulting from CO poisoning. This requirement is necessary to protect public health, safety, and welfare. Second, the proposed rules provide the Department the opportunity to address public comments received during the most recent four-year review of the boiler rules. Finally, the proposed rules make edits and clarifications for consistency and understandability.

The proposed rules were presented to and discussed by the Board of Boiler Rules at its meeting on November 7, 2019. The Board did not make any changes to the proposed rules. The Board voted and recommended that the proposed rules be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The amendments to §65.2 update the Modular Boiler definition and clarify the Authorized Inspector definition.

The amendments to §65.13 add clarifying wording for temporary boiler operating permits.

The amendments to §65.206 update the name of the section to reflect its increased scope and add the requirement for a CO detector and interlock system to disable the burners of any CO-producing boiler if the concentration of CO in the boiler room reaches a dangerous level. The amendments also specify applicability and update citations. The section is renumbered accordingly.

The amendments to §65.214 update wording for a modular boiler requirement consistent with the revised definition of Modular Boiler, and update a citation.

Amendments to §65.300 make clarifying wording changes.

The amendments to §65.603 reword existing boiler room ventilation requirements to more clearly describe both applicability and the ventilation options.

The amendment to §65.607 corrects a citation.

Texas Government Code, §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The Notice of Intent to Review the boiler rules was published in the *Texas Register* on August 24, 2018 (43 TexReg 5545). During the subsequent public comment period two comments were submitted. The content of the comments and the conclusion of the review process appeared in the *Texas Register* on February 8, 2019 (44 TexReg 594). No changes to the boiler rules were made during the rule review process and none are being proposed in this rulemaking that are related to the rule review. However, the Department is taking this opportunity to address those comments as part of the response to the comments received for this proposed rule.

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 also determined that there will be no increase or loss of revenue to local governments or to the state.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect any local economies, 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 rule requiring the CO detector and interlock system is in effect, the public benefit will be lives saved and illnesses avoided, a significant benefit to public health, safety, and welfare. In the last six years the Department has completed 13 carbon monoxide accident investigations related to boiler rooms. Each accident resulted in either multiple injuries, fatalities, or both. Three of these incidents occurred at schools where several hundred children and teachers were treated for CO exposure either at the school or were transported to a local hospital for care. Five of the incidents occurred at hotels in which exposure resulted in the injured being transported to the hospital. Five of the incidents occurred at apartment complexes. Two of these incidents involved three fatalities and multiple tenants were injured. Most or all of these incidents could have been prevented had CO detection and interlock systems been in place. In addition to saving lives and preventing injuries from

CO poisoning, the benefits to the public of the new interlock requirement will include reduced hospitalizations and medical expenses, and reduced need for emergency response services.

Multiple edits in the amended sections including updates, corrections, and improved word choices make the boiler rules more understandable and easier to use. These improvements and the increased clarity of the updated boiler room ventilation requirements will facilitate easier compliance with these requirements by the affected regulated entities.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there will be additional costs to persons who are required to comply with portions of the proposed rules. For those entities affected, the anticipated cost to purchase and install a CO detector and interlock system is estimated to be approximately $750 to buy the system and approximately $250 for installation, totaling approximately $1,000 per boiler room. The cost to buy and install the system is not expected to be significantly higher for boiler rooms with multiple boilers. The cost to calibrate the system periodically following installation is not anticipated to add to the routine costs of boiler maintenance.

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

With the exception of the rule requiring CO detectors and interlock systems to be installed in boiler rooms, there will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that this requirement will have an adverse economic effect on small businesses and micro-businesses the agency has prepared an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed and required under Texas Government Code §2006.002.

Economic Impact Statement

The requirement to install a CO detector and interlock system applies to all new and existing boiler rooms in Texas containing boilers installed or reinstalled after June 1, 2020 that are regulated by the Department and that can produce CO. Virtually any entity that uses hot water, including entities such as apartment complexes, hospitals, and nursing homes, uses boilers to heat water. Other affected entities include public and private schools, government buildings, warehouses, restaurants, hotels, fitness centers, and breweries. Currently about 53,500 boilers regulated by the Department are installed in Texas. Approximately 3,000 boilers are installed outside (industrial boilers) and are not affected by the proposed CO detector and interlock requirement. Approximately 5% of existing boiler rooms are already required by their design to have a CO detector and interlock system. Approximately 2,000 new and existing boiler rooms have a boiler installed each year. Existing boiler rooms that do not have boilers added are not affected by the proposed requirement.

Approximately 20% of boiler installations annually take place at small or micro-businesses so approximately 400 small and micro-businesses will be subject to the proposed CO detector and interlock system requirement when they install CO-producing boilers each year over the next five years. The CO detector and interlock system needs to be installed only once in each affected boiler room. Among the small and micro-business types affected are dry cleaners, hotels, apartment complexes, and breweries. Implementation of the proposed rules would require all boiler rooms with new or reinstalled CO-producing boilers to be equipped with a CO detector that will shut off all CO-producing boilers in the room if the concentration of CO in the boiler room exceeds 50 parts per million (the Occupational Health and Safety Administration permissible exposure limit).

The anticipated cost to purchase and install a CO detector interlock system is estimated to be approximately $1,000 per boiler room (approximately $750 to buy the system and approximately $250 for installation). The cost to buy and install the system is not expected to be significantly higher for boiler rooms with multiple boilers. The cost to calibrate the system periodically following installation is not expected to add to the routine costs of boiler maintenance. The requirement to install the CO detector and interlock system is a one-time cost and any subsequent activities related to calibrating the detector are expected to be part of routine maintenance. Additional cost for calibration in the years following installation should be none to insignificant.

No alternative methods exist that would achieve the purpose of the proposed rule. The CO detector and interlock system functions to immediately disable the burners of the boiler(s) in the boiler room when the CO concentration exceeds 50 ppm, effectively shutting the boiler(s) down and preventing further emissions of CO. The increase of CO concentration in the boiler room inevitably results from a malfunction requiring professional attention to restore proper operability.

Some boiler rooms have an interlock system that shuts the boiler(s) down in the event of a fire, but such a system does not provide protection against dangerous levels of CO and therefore cannot substitute for it. Likewise, an alarm-only system is insufficient because any response to address the problem would not result in immediate shutdown, and thus would not prevent further accumulation of CO and would not provide protection of the health and safety of nearby occupants or repair personnel prior to eventual response to the alarm. Further, the length of time necessary to respond to an alarm could and would vary widely and would not invariably result in halting the continued buildup of CO before disastrous consequences could occur.

Regulatory Flexibility Analysis

As discussed in the Economic Impact Statement, the purpose of the proposed rules is to protect the health, safety, and welfare of the public, and there are no alternative regulatory methods available to achieve that purpose. An alarm system would not offer the immediate and absolute protection of health and safety that the CO detector and interlock system provides, and therefore it is not a reasonable or suitable alternative.

The Department considered imposing the new requirement on existing facilities but decided that requiring retrofitting would be unduly burdensome, especially on small and micro-businesses. Because the new requirement will apply to boilers installed and reinstalled after June 1, 2020, owners will have reasonable time to design the CO detector and interlock system into the boiler installation plan and complete it at installation, thus avoiding retrofitting and additional visits by installation personnel. This will help to minimize the adverse impacts on small and micro-businesses.

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

The proposed rules have a fiscal note that imposes a cost on regulated persons who must install a CO detector and interlock sys-

tem. However, the proposed rules falls under the exception for rules that are necessary to protect the health, safety, and welfare of the residents of this state under §2001.0045(c)(6). Because of the applicable exception 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 not create a new regulation.

6. The proposed rules expand, limit, or repeal an existing regulation.

7. The proposed rules 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.

Approximately 2,000 new and existing boiler rooms have a boiler installed each year. Existing boiler rooms that do not have boilers added are not affected by the proposed requirement. Roughly 5% of existing boiler rooms are already required by their design to have a CO detector and interlock system. Approximately 20% of boiler installations annually take place at small or micro-businesses so about 400 small and micro-businesses will now be subject to the proposed CO detector and interlock system requirement when they install CO-producing boilers each year over the next five years.

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 Dalma Sotero, Assistant General Counsel, Texas Department of Licensing and Regulation, PO 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.*

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §65.2

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755, 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 Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

§65.2. Definitions.

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

(1) - (6) (No change.)

(7) Authorized Inspector--An inspector employed by an Authorized Inspection Agency who holds [~~authorized inspection agency holding~~] a commission issued by the executive director.

(8) - (40) (No change.)

(41) Modular Boiler--A [~~steam or hot water~~] heating boiler assembly consisting of a group of individual boilers called modules, intended to be installed as a unit, with a single inlet and single outlet. Modules may be under one jacket or may be individually jacketed.

(42) - (69) (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.

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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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SUBCHAPTER C. BOILER REGISTRATION AND CERTIFICATE OF OPERATION--REQUIREMENTS

16 TAC §65.13

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755, 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 Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

§65.13. Boiler Installation.

(a) - (b) (No change.)

(c) Temporary Boiler Operating Permit.

(1) The owner or operator may request a Temporary Boiler Operating Permit on a department-approved form.

(2) The owner or operator must pay the applicable fee provided [~~required~~] under §65.300.

(3) Upon approval of the Temporary Boiler Operating Permit from the department, the boiler may be operated prior to the required initial inspection for up to thirty (30) days.

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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SUBCHAPTER N. RESPONSIBILITIES OF THE OWNER AND OPERATOR

16 TAC §65.206, §65.214

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755, 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 Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

§65.206. [~~Care of~~] Boiler Room.

(a) Each boiler room containing one or more boilers from which carbon monoxide can be produced shall be equipped with a carbon monoxide detector with a manual reset.

(1) The carbon monoxide detector and boiler(s) shall be interlocked to disable the burners when the measured level of CO rises above 50 ppm.

(2) The carbon monoxide detector shall disable the burners upon loss of power to the detector.

(3) The carbon monoxide detector shall be calibrated in accordance with the manufacturer's recommendations or every eighteen months after installation of the detector. A record of calibration shall be posted at or near the boiler, or be readily accessible to an inspector.

(4) The requirements in this subsection apply to boiler rooms in which new installations or reinstallations of one or more boilers are completed on or after June 1, 2020.

(b) [~~(a)~~] The boiler room shall be free from accumulation of rubbish and materials that obstruct access to the boiler, its setting, or firing equipment.

(c) [~~(b)~~] The storage of flammable material or gasoline-powered equipment in the boiler room is prohibited.

(d) [~~(c)~~] The roof over boilers designed for indoor installations, shall be free from leaks and maintained in good condition.

(e) [~~(d)~~] Adequate drainage shall be provided.

(f) [~~(e)~~] All exit doors shall open outward.

(g) [~~(f)~~] It is recommended that the ASME Code, Section VI, Care and Operation of Heating Boilers, [~~covering the care and operation of heating boilers~~] be used as a guide for proper and safe operating practices.

(h) [~~(g)~~] It is recommended that the ASME Code, Section VII, Care and Operation of Power Boilers [~~care and operation of power boilers~~], be used as a guide for proper and safe operating practices.

§65.214. Modular Boilers.

All modular [~~steam heating and hot water~~] heating boilers that meet all of the requirements of ASME Code, Section IV, [~~HG-716,~~] shall be registered with a single Texas boiler number.

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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SUBCHAPTER O. FEES

16 TAC §65.300

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755, 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 Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

§65.300. Fees.

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

(d) Commission Fees. The Authorized Inspector seeking or holding the Commission shall make payment for the following fees:

(1) New commission--$50

(2) Reinstatement of commission--$50

(3) Renewal of commission--$50

(4) Duplicate card--$25

(5) Reissuance of card after re-employment--$50

(6) Late renewal fees for commissions issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(e) Authorized Inspection Agency[/]Letter of Recognition. The Authorized [~~authorized~~] Inspection Agency shall make payment for the following fees:

(1) Initial [~~Original~~] Application--$100

(2) (No change.)

(f) - (j) (No change.)

(k) Temporary Boiler Operating Permit Fee. The owner or operator shall make a $50 fee payment.

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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SUBCHAPTER R. TECHNICAL REQUIREMENTS

16 TAC §65.603, §65.607

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755, 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 Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

§65.603. Boiler Room Ventilation.

(a) Each boiler room containing one or more boilers from which carbon monoxide can be produced shall [~~The boiler room must~~] have an adequate and uninterrupted air supply to assure proper combustion and ventilation.

(b) The combustion and ventilation air may be supplied by either an unobstructed opening or by power ventilators or fans as provided below.

(1) For a single unobstructed opening, the opening shall be sized on the basis of one square inch (645 square millimeters) of free area for each 2,000 Btu/hour (.586 kilowatts) input of the combined burners located in the boiler room.

(2) For two unobstructed openings, one commencing not more than 12 inches (304.8 millimeters) from the ceiling of the room and one commencing not more than 12 inches (304.8 millimeters) from the floor of the room, the opening shall be sized on the basis of one square inch (645 square millimeters) of free area for each 3,000 Btu/hour (.879 kilowatts) input per opening of the combined burners located in the boiler room.

(3) [~~(2)~~] The power ventilator or fans shall be sized on the basis of 0.2 cfm. (5.6 liters per minute) for each 1,000 Btu/hour (.29 kilowatts) fuel input for the combined burners located in the boiler room. The boiler and the fans shall be interlocked to disable [~~so that~~] the burners [~~will not operate~~] unless a supply of combustion, ventilation, and dilution air in accordance with [~~as required by~~] the boiler manufacturer's recommendations is maintained.

(4) Power ventilators or fans designed to maintain pressure in the boiler room shall be sized on the basis of 0.2 cfm. (5.6 liters per minute) for each 1,000 Btu/hour (.29 kilowatts) fuel input for the combined burners located in the boiler room. The boiler and the fan control shall be interlocked to disable the burners unless a supply of combustion, ventilation and dilution air in accordance with the boiler manufacturer's recommendations is maintained.

(c) Boilers of a sealed combustion design by the manufacturer [~~manufacture~~].

(1) When a boiler(s) in the boiler room is of a sealed combustion design by the manufacturer [~~manufacture~~] of the boiler and pulls air for combustion from outside of the building, ventilation of the boiler room is not required [~~the required ventilation opening is not provided, the boiler room shall be equipped with a manual reset type Carbon Monoxide Detector. The Carbon Monoxide Detector and boiler shall be interlocked so that the burners will not operate when the measured level of CO rises above 100ppm. The Carbon Monoxide detector shall disable the appliance burners upon loss of power to the detector~~].

(2) When the boiler room is configured to include both designs, i.e. a boiler(s) of a sealed combustion design by the manufacturer [~~manufacture~~] of the boiler that pulls air for combustion from outside of the building and a boiler(s) that is not of a sealed combustion design by the manufacturer [~~manufacture~~] of the boiler, the boiler room shall meet the ventilation requirements in subsection (b) only for the boiler(s) that are not of the sealed combustion design that pull air from outside of the building [~~requirements in A or B below shall be met~~].

[~~(A) The boiler room shall be in compliance with subsection (b)(1) or (b)(2).~~]

[~~(B) The boiler(s) that is not of the sealed combustion design is required to meet the ventilation requirement of subsection (b)(1) or (b)(2). The boiler(s) that are of the sealed combustion design are required to meet the ventilation requirement of subsection (c)(1).~~]

[~~(d) Carbon Monoxide Detectors shall be calibrated every eighteen months and a record of calibration shall be posted at or near the boiler, or readily accessible to an inspector.~~]

§65.607. Power Boilers, Excluding Unfired Steam Boilers and Process Steam Generators.

(a) Safety valves and pressure relief valves.

(1) - (4) (No change.)

(5) Except for changeover valves as defined in §65.2(14) [~~§65.1(13)~~], other valve(s) shall not be placed:

(A) - (B) (No change.)

(6) - (14) (No change.)

(b) - (i) (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.

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

SUBCHAPTER K. MOBILE SOURCE INCENTIVE PROGRAMS

DIVISION 3. DIESEL EMISSIONS REDUCTION INCENTIVE PROGRAM FOR ON-ROAD AND NON-ROAD VEHICLES

30 TAC §114.622, §114.629

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §114.622 and §114.629.

If adopted, the amendments to §114.622 and §114.629 will be submitted to the United States Environmental Protection Agency as revisions to the State Implementation Plan.

Background and Summary of the Factual Basis for the Proposed Rules

The Texas Emissions Reduction Plan (TERP) was established under Texas Health and Safety Code (THSC), Chapter 386, by Senate Bill 5, during the 77th Texas Legislature, 2001. The TERP was created to provide financial incentives for reducing emissions of on-road heavy-duty motor vehicles and non-road equipment, with the Diesel Emissions Reduction Incentive Program (DERIP) established under THSC, Chapter 386, Subchapter C as the primary incentive program. The DERIP includes the Emissions Reduction Incentive Grants Program, Rebate Grants Program, and third-party grants.

House Bill (HB) 1346, 86th Texas Legislature, 2019, amended THSC, Chapter 386, Subchapter C to provide that the commission may not set the minimum percentage of vehicle miles traveled or hours of operation required to take place in a nonattainment area or affected county as less than 55%. HB 1627, 86th Texas Legislature, 2019 amended THSC, Chapter 386, Subchapter A to remove Victoria County from the list of affected counties eligible for grants under the TERP DERIP.

The proposed rulemaking would revise §114.622 and §114.629 to implement HB 1346 and HB 1627.

Section by Section Discussion

The commission proposes to make changes, such as grammatical corrections. These changes are non-substantive and are not specifically discussed in this preamble.

§114.622, Incentive Program Requirements

The commission proposes to amend §114.622(b) and (c) to change the minimum percentage of usage in a nonattainment area or affected county from 75% to 55% to implement HB 1346.

§114.629, Affected Counties and Implementation Schedule

The commission proposes to amend §114.629(a) to remove Victoria County from the list of affected counties eligible for grants under the TERP DERIP to implement HB 1627.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of the state as a result of administration or enforcement of the proposed rules.

This rulemaking addresses necessary changes required to implement two pieces of legislation, HB 1346 and HB 1627. The proposed rulemaking affects the rules for the TERP DERIP, reduces the minimum percentage of usage in a nonattainment area or affected county from 75% to 55%, and removes Victoria County from the list of counties eligible for grants under the program.

Because units of local government are eligible under certain circumstances to receive grants from the program, they may experience a positive fiscal impact. Units of local government in Victoria County may be affected by the proposed rulemaking because the rulemaking implements state law which removed the county from the list of eligible counties.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be compliance with state law.

Because the proposed rulemaking has the potential to increase the applicant pool by reducing the minimum percentage of usage in an eligible area, it may result in a net increase of the number of individuals or businesses who experience a positive fiscal impact upon receipt of a grant. The removal of Victoria County from the list of affected counties will affect the eligibility of certain businesses and individuals for the grant program.

Local Employment Impact Statement

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

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The proposed rulemaking relates to an optional grant program.

Small Business and Micro-Business Assessment

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

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because the rulemaking does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The amendments to §114.622 and §114.629 are proposed in accordance with HB 1346 and HB 1627, which amended THSC, Chapter 386, Subchapters A and C. The proposed rulemaking revises eligibility criteria for a voluntary grant program. Because the proposed rules place no involuntary requirements on the regulated community, the proposed rules would not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. In addition, none of these amendments place additional financial burdens on the regulated community.

In addition, a regulatory impact analysis is not required because the proposed rulemaking does not meet any of the applicability criteria for requiring a regulatory analysis of a "Major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general authority of the commission. This rulemaking does not exceed a standard set by federal law. Additionally, this rulemaking does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the THSC that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007, does not apply.

Under Texas Government Code, §2007.002(5), taking means: (A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Texas Constitution, Article I, Section 17 or 19; or (B) a governmental action that: (i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and (ii) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

Promulgation and enforcement of the proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with the amendments to THSC, Chapter 386 as a result of HB 1346 and HB 1627. The proposed rules would revise a voluntary program and only affect motor vehicles that are not considered to be private real property. The proposed rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

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

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on February 25, 2020, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-122-114-AI. The comment period closes on March 3, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Amancio Gutierrez, Grant Development and Management Section, (512) 239-3770.

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan.

The amendments are proposed as part of the implementation of THSC, Chapter 386, Subchapters A and C, as amended by House Bill (HB) 1346 and HB 1627, 86th Texas Legislature, 2019.

§114.622. Incentive Program Requirements.

(a) Eligible projects include:

(1) purchase or lease of on-road and non-road diesels;

(2) emissions-reducing retrofit projects for on-road or non-road diesels;

(3) emissions-reducing repower projects for on-road or non-road diesels;

(4) purchase and use of emissions-reducing add-on equipment for on-road or non-road diesels;

(5) development and demonstration of practical, low-emissions retrofit technologies, repower options, and advanced technologies for on-road or non-road diesels with lower nitrogen oxides (NO_x) emissions;

(6) use of qualifying fuel;

(7) implementation of infrastructure projects;

(8) replacement of on-road and non-road diesels with newer on-road and non-road diesels; and

(9) other projects that have the potential to reduce anticipated NO_x emissions from diesel engines.

(b) For a proposed project as listed in subsection (a) of this section, other than a project involving a marine vessel or engine, a project involving non-road equipment used for natural gas recovery purposes, a project involving replacement of a motor vehicle, or a project involving the purchase or lease of a motor vehicle, not less than 55% [~~75%~~] of vehicle miles traveled or hours of operation projected for the five years immediately following the award of a grant must be projected to take place in a nonattainment area or affected county of this state. The commission may also allow vehicle travel on highways and roadways, or portions of a highway or roadway, designated by the commission and located outside a nonattainment area or affected county to count towards the percentage of use requirement.

(c) For a proposed motor vehicle replacement, purchase, or lease project, the period used to determine the emissions reductions and cost-effectiveness of each replacement, purchase, or lease activity included in the project must extend for five years or more, or 400,000 miles, whichever occurs earlier. Not less than 55% [~~75%~~] of the vehicle miles traveled projected for the period used to determine the emissions reductions must be projected to take place in a nonattainment area or affected county of this state. The commission may also allow vehicle travel on highways and roadways, or portions of a highway or roadway, designated by the commission and located outside of a nonattainment county or affected county to count towards the percentage of use requirement.

(d) For a proposed project that includes a replacement of equipment or a repower, the old equipment or engine must be recycled or scrapped provided, however, that the executive director may allow permanent removal from the state [~~State~~] of Texas in specific grants where the applicant has provided sufficient assurances that the old locomotive will not be returned to the state [~~State~~] of Texas.

(e) For a proposed project to replace a motor vehicle, the vehicle and engine must be decommissioned by crushing the vehicle and engine, by making a hole in the engine block and permanently destroying the frame of the vehicle, or by another method approved by the executive director that permanently removes the vehicle and engine from operation in this state. For a proposed project to repower a motor vehicle, the engine being replaced must be decommissioned in a manner consistent with the requirements for decommissioning an engine as part of a vehicle replacement project. The executive director shall allow an applicant for a motor vehicle replacement or repower project to propose an alternative method for complying with the requirements of this subsection.

(f) For a project to replace a motor vehicle, the vehicle being replaced may have been owned, leased, or otherwise commercially financed by the applicant. The applicant must have a legal right to

replace and recycle or scrap the vehicle and engine before a grant is awarded for that project.

(g) The commission may set cost-effectiveness limits as needed to ensure the best use of available funds. The commission may also base project selection decisions on additional measures to evaluate the effectiveness of projects in reducing NO_x emissions in relation to the funds to be awarded.

(h) The executive director may waive eligibility requirements established under subsections (b) - (f) of this section on a finding of good cause, which may include a waiver of any ownership and use requirements established for replacement of a motor vehicle for short lapses in registration or operation attributable to economic conditions, seasonal work, or other circumstances. In determining good cause and deciding whether to grant a waiver, the executive director shall ensure that the emissions reductions that will be attributed to the project will still be valid and, where applicable, meet the conditions for assignment for credit to the state implementation plan.

(i) Projects funded with a grant from this program may not be used for credit under any state or federal emissions reduction credit averaging, banking, or trading program except as provided under Texas Health and Safety Code, §386.056.

(j) A proposed project as listed in subsection (a) of this section is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to:

(1) an otherwise qualified project, regardless of the fact that the state implementation plan assumes that the change in equipment, vehicles, or operations will occur, if on the date the grant is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document; or

(2) the purchase of an on-road diesel or equipment required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

(k) A proposed retrofit, repower, replacement, or add-on equipment project must achieve a reduction in NO_x emissions to the level established in the commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program (RG-388)* for that type of project compared with the baseline emissions adopted by the commission for the relevant engine year and application.

(l) If a grant recipient fails to meet the terms of a project grant or the conditions of this division, the executive director can require that the grant recipient return some or all of the grant funding to the extent that emission reductions are not achieved or cannot be demonstrated.

(m) Criteria established in the guidelines, including revisions to the commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program (RG-388)*, apply to the Texas Emissions Reduction Plan program. Regardless of [~~Notwithstanding~~] the provisions of this chapter, as authorized under Texas Health and Safety Code, §386.053(d), revisions to the guidelines may include, among other changes, adding additional pollutants; adding stationary engines or engines used in stationary applications; adding vehicles and equipment that use fuels other than diesel; or adjusting eligible program categories; as appropriate, to ensure that incentives established under this program achieve the maximum possible emission reductions.

§114.629. Affected Counties and Implementation Schedule.

(a) Applicable counties in the incentive program include: Bastrop, Bexar, Brazoria, Caldwell, Chambers, Collin, Comal, Dallas, Denton, El Paso, Ellis, Fort Bend, Galveston, Gregg, Guadalupe, Hardin, Harris, [~~Hardin,~~] Harrison, Hays, Henderson, Hood, Hunt, Jefferson, Johnson, Kaufman, Liberty, Montgomery, Nueces, Orange, Parker, Rockwall, Rusk, San Patricio, Smith, Tarrant, Travis, Upshur, [~~Victoria,~~] Waller, Williamson, Wilson, Wise, and any other county located within an area of Texas designated as a nonattainment area for ground-level ozone under Federal Clean Air Act, §107(d), as amended.

(b) Equipment purchased before September 1, 2001 is not eligible for a grant under this 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.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 1, 2020
For further information, please call: (512) 239-6812

CHAPTER 328. WASTE MINIMIZATION AND RECYCLING
SUBCHAPTER K. GOVERNMENTAL ENTITY RECYCLING AND PURCHASING OF RECYCLED MATERIALS

30 TAC §§328.200 - 328.204

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §§328.200 - 328.204.

Background and Summary of the Factual Basis for the Proposed Rules

This rulemaking is proposed to add new rules that would apply to certain governmental entities to establish recycling programs and purchasing preferences for products made of recycled materials.

Senate Bill (SB) 1376, 86th Texas Legislature, 2019, amended Texas Health and Safety Code (THSC), §361.425 and §361.426 to exempt certain governmental entities from compliance with recycling requirements, if the commission finds that compliance would create a hardship on the governmental entity. SB 1376 also requires the commission to exempt certain governmental entities from compliance with purchasing preferences for recycled materials, if the commission finds that compliance would create a hardship on the governmental entity.

The rulemaking proposes new Chapter 328, Subchapter K, Governmental Entity Recycling and Purchasing of Recycled Materials, to establish requirements for a governmental entity to create a recycling program, to give preference in purchasing to products made of recycled materials, and to create an exemption that would apply to certain governmental entities, if compliance with these rules would create a hardship.

Section by Section Discussion

§328.200, Purpose

The commission proposes new §328.200 which would pertain to governmental entities and establish a standard to implement a recycling program.

§328.201, Definitions

The commission proposes new §328.201 to define governmental entity, hardship, and recyclable materials within the context of the requirements.

§328.202, General Requirements

The commission proposes new §328.202 to describe the responsibilities for governmental entities to establish a recycling program. Overall, the entity must consider how to collect and store recyclable materials, maintain containers for recyclable materials, create procedures with buyers of recyclable materials, evaluate and modify the recycling program, and create measures to encourage employee participation.

§328.203, Exemptions

The commission proposes new §328.203 to provide specific exemptions that are allowed under the rule as well as opportunities for an exemption request due to a hardship.

§328.204, Purchasing Preference for Recycled Materials

The commission proposes new §328.204 to require certain governmental entities to give preference to purchase products made of recycled materials.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rulemaking is in effect, no fiscal implications are anticipated for the agency or for other units of state government. Fiscal implications are not anticipated for units of local government because the proposed rulemaking includes a process to apply for an exemption in the cases of a hardship.

This rulemaking addresses recent changes to THSC, §361.425, Governmental Entity Recycling. The proposed rulemaking is required by law and needed to create a process for units of government to apply for an exemption from the requirements.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be compliance with state law. The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rulemaking is in effect. The proposed rulemaking includes a process for an exemption if compliance with the proposed rules and the associated state law is shown to create a hardship.

Small Business and Micro-Business Assessment

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

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; the requirement for the government recycling program existed in state law. This proposed rulemaking does create a process for a unit of government to gain an exemption from the requirement if a hardship is found. The proposed rulemaking will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create or expand the regulation of units of government or individuals; the requirement for the recycling program existed in state law. During the first five years, the proposed rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. New §§328.200 - 328.204 are proposed in accordance with SB 1376, which amended THSC, Chapter 361, Subchapter N. The proposed rules establish requirements for a governmental entity to create a recycling program and to give preference in purchasing to products made of recycled materials. The proposed rules would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or sector of the state. In addition, the proposed rules provide an exemption for the regulated community if compliance with the proposed rules would create a hardship on the regulated entity.

In addition, a regulatory impact analysis is not required because the proposed rulemaking does not meet any of the applicability criteria for requiring a regulatory analysis of a "Major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law;

2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program, or; 4) adopt a rule solely under the general authority of the commission. Proposed new §§328.200 - 328.204 do not exceed an express requirement of state law, federal law, or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are authorized by specific sections of the THSC that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007, does not apply.

Under Texas Government Code, §2007.002(5), taking means: (A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or (B) a governmental action that: (i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and (ii) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

Promulgation and enforcement of the proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. The primary purpose of the rulemaking is to amend Chapter 328 in accordance with the amendments to THSC, Chapter 361 as a result of SB 1376. The proposed rules would establish requirements for a governmental entity to create a recycling program and require certain governmental entities to give preference to purchase products made of recycled materials. The proposed rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

This rulemaking is not applicable to the Coastal Management Program.

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

Effect on Sites Subject to the Federal Operating Permits Program

This rulemaking is not subject to requirements of the Federal Operating Permit program.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on February 27, 2020, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-125-328-AD. The comment period closes on March 3, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Calen Roome, Public Education Unit, (512) 239-4621.

Statutory Authority

The new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The new rules are also proposed under Texas Health and Safety Code (THSC), §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.425, which provides that the commission shall adopt rules for administering governmental entity recycling programs; and THSC, §361.426 which provides that the commission shall adopt rules for administering governmental entity preferences for recycled products.

The new rules are proposed as part of the implementation of THSC, Chapter 361, Subchapter N, as amended by Senate Bill 1376, 86th Texas Legislature, 2019.

§328.200. Purpose.

The purpose of this subchapter is to establish requirements for a governmental entity to create a recycling program and provide preference for purchasing recycled materials.

§328.201. Definitions.

The following terms, when used in this subchapter, shall have the following meanings.

(1) Governmental entity--A state agency, state court or judicial agency, a university system or institution of higher education, a county, municipality, school district, or special district.

(2) Hardship--A circumstance that causes unreasonable burden on the governmental entity.

(3) Recyclable material--A material generated by the entity's operations, including aluminum, steel containers, aseptic packaging and polycoated paperboard cartons, high-grade office paper, and corrugated cardboard.

§328.202. General Requirements.

A governmental entity shall:

(1) establish a program for the separation and collection of all recyclable materials generated by the entity's operations;

(2) provide procedures for collecting and storing recyclable materials, containers for recyclable materials, and procedures for making contractual or other arrangements with buyers of recyclable materials;

(3) evaluate the amount of recyclable material recycled and modify the recycling program as necessary to ensure that all recyclable materials are effectively and practicably recycled; and

(4) establish educational and incentive programs to encourage maximum employee participation.

§328.203. Exemptions.

(a) This subchapter does not apply to:

(1) a school district with a student enrollment of less than 10,000 students; and

(2) a municipality with a population of less than 5,000, if compliance with this subchapter would create a hardship.

(b) A governmental entity may exclude one or more recyclable materials from their program if the commission finds that:

(1) a recycling program for a recyclable material is not available through their solid waste provider; or

(2) the inclusion of a recyclable material would create a hardship.

(c) A governmental entity may request additional consideration from the commission if compliance with this subchapter would create a hardship.

§328.204. Purchasing Preference for Recycled Materials.

A state agency, state court, or judicial agency not subject to Texas Government Code, Title 10, Subtitle D, and a county, municipality, school district, junior or community college, or special district shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality. Preferences will be applied in accordance with state procurement statutes and rules.

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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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 1, 2020
For further information, please call: (512) 293-1806

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CHAPTER 344. LANDSCAPE IRRIGATION

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§344.1, 344.20 - 344.22, 344.24, 344.30, 344.31, 344.33 - 344.38, 344.40, 344.42, 344.43, 344.50 - 344.52, 344.60 - 344.65, 344.70 - 344.72, and 344.80; to repeal §344.32; and new §344.66.

Background and Summary of the Factual Basis for the Proposed Rules

This rulemaking is in response to two petitions submitted by the Irrigator Advisory Council (IAC), which were approved by the commission on October 4, 2017, to initiate rulemaking with stakeholder involvement (Non-Rule Project Numbers 2017-041-PET-NR and 2017-042-PET-NR). The IAC requested that the commission classify all irrigation systems as health hazards; eliminate the use of double check valves; add the use of Spill Resistant Vacuum Breakers; require that the backflow prevention assembly be tested after repair, replacement, or relocation; require the use of in-line filters or strainers as recommended by the manufacturers; and change the term "Backflow prevention devices" to "Backflow prevention assemblies."

The executive director's staff collected stakeholder feedback on the proposed changes to the IAC's petitions. Public meetings were held in Austin, Corpus Christi, El Paso, Fort Worth, Harlingen, Houston, Lubbock, and San Antonio. In addition, written comments were received from 207 interested parties. The feedback from the meetings and comments were incorporated into the proposed draft rule language.

In 2007, the 80th Texas Legislature passed three bills directly affecting landscape irrigation. House Bill (HB) 4 and Senate Bill (SB) 3 directed the commission to adopt rules that govern: 1) the connection of an irrigation system to any water supply; 2) the design, installation, and operation of irrigation systems; 3) water conservation; and 4) the duties and responsibilities of irrigators. These rule changes were included in the most recent updates to Chapter 344 that were effective on January 1, 2009. HB 1656 added a new landscape irrigation license classification, irrigation inspector, and directs municipalities with a population of 20,000 or more to adopt ordinances that require irrigation inspectors to be licensed by the commission and irrigators to obtain a permit before installing an irrigation system. Municipalities were required to adopt standards and specifications for irrigation systems and include rules adopted by the TCEQ. Municipalities were required to exempt on-site sewage systems, agricultural irrigation systems, and irrigation systems connected to a well which is used for domestic purposes. HB 1656 gave water districts the option of adopting rules to govern landscape irrigation in their areas. These provisions were not included in the most recent update to Chapter 344 and are proposed to be added with this rulemaking.

This rulemaking would incorporate some of the requested changes made by the two IAC rule petitions, as well as, amend existing sections, repeal a section, and add a new section.

These proposed revisions would strengthen the rules and provide for increased protection of the public health and increased water conservation. In addition, this rulemaking would align terms and definitions in this chapter with those in other, relevant chapters of 30 Texas Administrative Code (TAC). Specifically, definitions are proposed to be amended to align with 30 TAC Chapter 290, Public Drinking Water.

Section by Section Discussion

The commission proposes to make various stylistic, non-substantive changes, such as, grammatical corrections, correct use of references, and revisions to improve readability. Additionally, the commission proposes to remove the word "installers" since this word is no longer recognized by TCEQ and replace the words "backflow prevention devices" with "backflow prevention assemblies." These changes are non-substantive and generally are not specifically discussed in this preamble.

SUBCHAPTER A: DEFINITIONS

§344.1, Definitions

The commission proposes to amend §344.1(1), to align the "Air gap" definition with the air gap definition used in Chapter 290. This is a more technically correct definition and would provide better consistency across the two chapters.

The commission proposes §344.1(2) by adding a definition for "As-built drawing" as recommended in the IAC petition. This term is commonly used in the irrigation industry to refer to the final irrigation plan produced at the completion of an installation.

The commission proposes to remove the definition of "Atmospheric vacuum breaker" in §344.1(2). This was requested in the rule petition because it is no longer a viable form of backflow prevention for irrigation systems. The IAC voted in favor of removing the atmospheric vacuum breaker as an approved backflow prevention assembly for landscape irrigation on August 18, 2016.

The commission proposes to amend the definition of "Backflow prevention" in §344.1(3). The revision is made to improve clarity and add the term "backpressure" as a cause of reversal of flow.

The commission proposes to amend the definition of "Backflow prevention assembly" in §344.1(4). The revision would clarify that this is a mechanical assembly and can be used with health hazard and non-health hazard installations. In addition, the term "backflow" is replaced by "hydraulic conditions" to refer to additional conditions where a backflow prevention assembly is required.

The commission proposes to amend the definition of "Cross-connection" in §344.1(7) to align with the definition used in Chapter 290.

The commission proposes to amend the definition of "Design pressure" in §344.1(9) to improve clarity and reference the head-to-head spacing requirement.

The commission proposes to amend the definition for "Double Check Valve" in §344.1(10) to "Double Check Valve Assembly" to refer to all the parts for the proper operation of the double check valve assembly. The IAC recommended that this definition be removed since it is not appropriate for use if all irrigation systems were classified as a health hazard per the recommendation from the rule petition. Stakeholder feedback from other interested parties did not support removal of this definition or classification of all landscape irrigation as a health hazard. Local programs may elect to restrict usage of these devices.

The commission proposes to amend the definition of "Employed" in §344.1(12) to reference the amended definition of "Irrigation services" in §344.1(20) rather than "consulting services or perform any activity relating to the sale, design, installation, maintenance, alteration, repair, or service to irrigation systems."

The commission proposes to add a definition for "Exempt business owner" in §344.1(13) as referenced in Texas Occupations Code, Chapter 1903 and in Chapter 344 landscape irrigation rules and consistent with the usage in §344.31. This term is currently in §§344.21, 344.22, 344.32, 344.35. Subsequent paragraphs will be renumbered.

The commission proposes to add a definition for "Graywater" in §344.1(14), to align with 30 TAC Chapter 210, Subchapter F, Use of Graywater Systems. There has been an increase in the use of graywater in irrigation systems and this chapter is being updated to reflect that increase. This change was recommended by the IAC.

The commission proposes to amend the definition of "Head-to-head spacing" in §344.1(15) (previously §344.1(13)) to specify that the water spray must reach from device to device and to allow for a 10% deviation from the manufacturer's published radius. This aligns with the proposed use of this term in §344.62, Minimum Design and Installation Requirements.

The commission proposes to amend the definition of "Health hazard" in §344.1(16) (previously §344.1(14)) to align with the definition used in Chapter 290.

The commission proposes to remove the definition of "Inspector" in §344.1(16) and combine it with the definition of "Irrigation inspector" in §344.1(18) for improved clarity. The definition of "Irrigation inspector" is proposed to be amended accordingly.

The commission proposes to remove the definition for "Installer" in §344.1(17) since there is no longer a license for "installer" in the landscape irrigation program. This is no longer recognized as a valid term in the industry and has been replaced by "irrigation technician." This change was recommended by the IAC.

The commission proposes to amend the definition for "Irrigation inspector" in §344.1(18)) to incorporate language from the definition for "Inspector," which is proposed to be removed. This includes adding reference to, "A water district operator, governmental entity, or licensed irrigation inspector who inspects irrigation systems and performs other enforcement duties for a municipality or water district and is required to be licensed under Chapter 30 of this title (relating to Occupational Licenses and Registrations) or a licensed plumbing inspector."

The commission proposes to amend the definition for "Irrigation plan" in §344.1(19) to reference the applicable rules in Chapter 344, Subchapter F, Standards for Designing, Installing and Maintaining Landscape Irrigation Systems, and include the term "as-built drawing," which is proposed to be added as a definition to this section.

The commission proposes to amend the definition for "Irrigation services" in §344.1(20) to make it more inclusive of all activities involving an irrigation system and adding "selling" to the list of services included in this term.

The commission proposes to amend the definition for "Irrigation system" in §344.1(21) to improve clarity.

The commission proposes to amend the definition for "Irrigation technician" in §344.1(22), to improve clarity and to add the term "irrigation services" in place of the list of services, "install, maintain, alter, repair, service or supervise installation of an irrigation system." This is consistent with the proposed amended definition of "Irrigation services."

The commission proposes to amend the definition for "Irrigation zone" in §344.1(23) to improve clarity.

The commission proposes to amend the definition for "Irrigator" in §344.1(24) to add the term "irrigation services" in place of the list of services, "install, maintain, alter, repair, service or supervise installation of an irrigation system." This is consistent with the proposed amended definition of "Irrigation services."

The commission proposes to amend the definition of "Master valve" in §344.1(31) to remove the term "remote" and to incorporate the term "assembly" for consistency with the proposed amended definition of "Backflow prevention assembly" in this section.

The commission proposes to amend the definition of "New installation" in §344.1(33) to include the "complete replacement of an existing irrigation system." This reflects the practice in the irrigation industry to consider complete replacements as new systems.

The commission proposes to amend the definition of "Non-health hazard" in §344.1(34) to align with the definition used in Chapter 290.

The commission proposes to amend the definition for "Pass-through contract," in §344.1(36) to clarify that it is also considered a sub-contract to reflect irrigation industry practices.

The commission proposes to amend the definition for "Potable water" in §344.1(37) to refer to the definition of "Drinking water" in Chapter 290.

The commission proposes to amend the definition of "Records of landscape irrigation activities" in §344.1(40) to add the term "irrigation services" in place of the list of services, "installation, maintenance, alteration, repair, or service." This is consistent with the proposed amended definition of "Irrigation services."

The commission proposes to amend the definition of "Static water pressure" in §344.1(42) to clarify that "generally, this is the pressure available to the irrigation system." This is consistent with the irrigation industry use of the term.

The commission proposes to amend the definition of "Supervision" in §344.1(43) to remove the reference to the "installer" which is no longer a recognized TCEQ licensed individual. This change was recommended by the IAC.

The commission proposes to add a definition for "Temporary irrigation system" in §344.1(44), to establish the types of systems addressed in proposed new §344.66 under Chapter 344, Subchapter F.

SUBCHAPTER B, STANDARDS OF CONDUCT FOR IRRIGATORS, INSTALLERS, IRRIGATION TECHNICIANS, AND IRRIGATION INSPECTORS, AND LOCAL REQUIREMENTS

§344.20, Purpose of Standards

The commission proposes to amend §344.20(a) to replace the word "should" with "shall" to better reflect the mandatory nature of this rule.

The commission proposes to amend §344.20(b) to remove the word "installer" as it is no longer a recognized TCEQ licensed individual and to replace the word "should" with "shall" to better reflect the mandatory nature of this rule.

§344.21, Intent

The commission proposes to amend §344.21(a) to remove the word "installer" because it is no longer a recognized TCEQ licensed individual.

The commission proposes §344.21(c) to address exemptions for on-site sewage systems, agricultural irrigation, and irrigation systems connected to a private well to align with statute (HB 1656).

§344.22, Proficiency in the Field of Irrigation; Representation of Qualifications

The commission proposes to amend §344.22 to remove "installers" as it is no longer a recognized TCEQ licensed individual.

§344.24, Local Regulation and Inspection

The commission proposes to amend §344.24(a) to replace "special purpose district" with "water district" to reflect typical organizational structure of districts as they relate to public water supplies.

The commission proposes to amend §344.24(b) to allow for any city, town, county, water district, other political subdivision of the state, or public water supplier to include inspections of the landscape irrigation systems in addition to the connections to the public water supply.

The commission proposes to amend §344.24(c) by removing the reference to "a water district that chooses to implement a landscape irrigation program" and changing the word "must" to "shall" to reflect the mandatory nature of this rule. The previous combined wording was ambiguous that municipalities with a population of 20,000 or more were required to have a program.

The commission proposes to add §344.24(d) to specifically address water districts that choose to implement a landscape irrigation program. "Water district" was included as per statute and the word "shall" was included to reflect the mandatory nature of these rules. This change was recommended by the IAC.

The commission proposes to remove existing §344.24(d) - (f), related to requirements for inspectors, and adding the language to proposed §344.37(a)(7), Duties and Responsibilities of Irrigation Inspectors, for better clarity.

Subchapter C, REQUIREMENTS FOR LICENSED IRRIGATORS, INSTALLERS, IRRIGATION TECHNICIANS, AND IRRIGATION INSPECTORS

§344.30, License Required

The commission proposes to amend §344.30(a) to incorporate "irrigation services" in place of the list of services, "sells, designs, provides consultation services, installs, maintains, alters, repairs, or services an irrigation system" and to clarify that a licensed irrigator is not an "exempt business owner." This is consistent with the proposed definition for "Exempt business owner" and the amended definition of "Irrigation services" in §344.1.

The commission proposes to remove §344.30(b) since this was a requirement prior to January 1, 2010 and refers to "installer" which is no longer a recognized TCEQ licensed individual. This change was made per recommendation from the IAC. The subsequent subsections have been re-lettered.

The commission proposes §344.30(b) (previously §344.30(c)) to remove "beginning January 1, 2009" since this date has passed and is no longer relevant. There is no change to the description of an irrigation technician.

§344.31, Exemption for Business Owner Who Provides Irrigation Services

The commission proposes to amend the title of this section from "Exemption for Business Owner Who Provides Irrigation Services" to "Responsibilities of a Business Owner Who Provides Irrigation Services."

The commission proposes to combine §344.31 and §344.32, Responsibilities of a Business Owner Who Provides Irrigation Services, since both rules refer to the overall responsibilities for exempt business owners. With this change, §344.31 becomes §344.31(a) and §344.32 becomes §344.31(b). The term "irrigation services" is added to refer to the various services including design, installation, maintenance, alteration, repairing, or servicing of irrigation systems. This is consistent with the amended definition of "Irrigation services" in §344.1. The word "business" is added to "exempt owner" in §344.31(b) (previously §344.32) to align with the definition of exempt business owner in §344.1.

§344.32, Responsibilities of a Business Owner Who Provides Irrigation Services

The commission proposes to repeal §344.32 and add the rule text language as proposed §344.31(b) since both rules refer to the overall responsibilities for exempt business owners.

§344.33, Display of License

The commission proposes to amend §344.33(a) to remove "installers" as it is no longer a recognized TCEQ licensed individual.

§344.34, Use of License

The commission proposes to amend §344.34(b) to add "or entity" to broaden the applicability of this rule to include businesses and to remove "licensed installer" as it is no longer a recognized TCEQ licensed individual. The commission proposes to amend §344.34(d) to remove references to installer as it is no longer a recognized TCEQ licensed individual.

§344.35, Duties and Responsibilities of Irrigators

The commission proposes to amend §344.35(c) to clarify that the "irrigator-in-charge" is responsible for the irrigation services performed by the exempt business owner's company.

The commission proposes to amend §344.35(d)(1) to remove "stamp or rubber" to accommodate different approved types of an irrigator's seal. The TCEQ recognizes that emerging technology will provide different approved ways for irrigators to display and use their seal.

The commission proposes to amend §344.35(d)(9) to remove "system beginning January 1, 2010." This date has passed and is no longer relevant.

The commission proposes to amend §344.35(d)(10) and (12) (previously §344.35(d)(13)) to refer to "conducting irrigation services" as defined in §344.1 rather than listing specific services.

The commission proposes to remove §344.35(d)(11) since this requirement applies to an "installer" which is no longer a recognized TCEQ licensed individual. Subsequent paragraphs are renumbered.

§344.36, Duties and Responsibilities of Installers and Irrigation Technicians

The commission proposes to amend the section of this title from "Duties and Responsibilities of Installers and Irrigation Technicians" to "Duties and Responsibilities of Irrigation Technicians." The commission proposes to amend §344.36(a) to clarify that irrigation technicians are required to work under the supervision of a licensed irrigator and to remove references to "installer" since it is no longer a recognized TCEQ licensed individual;

The commission proposes §344.36(a)(1) to include the connection of an irrigation system to a water supply.

The commission proposes §344.36(a)(2) to include the installation requirement of an approved backflow prevention assembly, to be consistent with the proposed revised definition of §344.1.

The commission proposes §344.36(a)(3) referencing "irrigation services" as defined in §344.1 rather than listing specific services.

The commission proposes to add §344.36(a)(4) to include the requirement to conduct the final walkthrough as required by §344.63.

The commission proposes to remove §344.36(c) since this requirement applies to an "installer" which is no longer a recognized TCEQ licensed individual. Subsequent subsection is re-lettered.

The commission proposes §344.36(d) to include the requirement that an irrigation technician shall not act as an irrigator nor advertise or offer to perform irrigation services.

§344.37, Duties and Responsibilities of Irrigation Inspectors

The commission proposes to amend §344.37(a) to include "licensed plumbing inspector" as being qualified to conduct irrigation system inspections and to move the recordkeeping requirement for irrigation inspectors from §344.24(d) to §344.37(b)(7).

The commission proposes to amend §344.37(b) to include water district's operators and to move the recordkeeping requirement for irrigation inspectors from §344.24(d) to §344.37(b)(7) and to remove reference to "installer" since this is no longer a recognized licensed individual.

The commission proposes to remove the requirements to verify licensure from §344.37(b)(1) to proposed §344.37(b)(2) and to add water district operator. Subsequent paragraphs are renumbered.

The commission proposes to remove the requirement in §344.37(b)(6) which lists specific types of irrigation activities to be investigated in order to simplify this rule.

The commission proposes to amend §344.37(b)(7) to include, in full, the recordkeeping requirements for irrigation inspectors (previously in §344.24(d)).

§344.38, Irrigator, Installer, and Irrigation Technician Records

The commission proposes to amend the title of this section from "Irrigator, Installer, and Irrigation Technician Records" to "Irrigator Records."

The commission proposes to revise this section to remove references to "rubber stamp" and leave the more general requirement for "seal" to allow for alternate types of seals. This section was also revised to remove references to records kept by installers and irrigation technicians. Installer is no longer a recognized

licensed individual and there are no specific recordkeeping requirements for irrigation technicians.

SUBCHAPTER D, LICENSED IRRIGATOR SEAL

§344.40, Seal Required

The commission proposes to amend §344.40 so that the rule is strengthened against the inappropriate use of an irrigator's seal. This is to prevent occasions when an irrigator allows another person to use their seal, changes the format of their seal so that it does not meet the requirements in §344.41, or does not sign and date their seal.

§344.42, Seal Display

The commission proposes to amend §344.42(b) to remove references to a specific type of media used to produce the seal. The TCEQ recognizes that emerging technology will provide different approved ways for irrigators to display and use their seal.

§344.43, Seal Use

The commission proposes to amend §344.43(e) to simplify the language so that it is consistent with the rest of the rule.

The commission proposes to amend §344.43(e)(1) so that the language regarding the change aligns with §344.43(e).

The commission proposes to amend §344.43(e)(2) to clarify that the irrigator making the change is responsible for that change.

The commission proposes to amend §344.43(e)(3) to require that the irrigator must seal any changes made.

The commission proposes to amend §344.43(f) to specify that the irrigator is responsible for the portion of the irrigation plan they created or changed.

SUBCHAPTER E, BACKFLOW PREVENTION AND CROSS-CONNECTION

§344.50, Backflow Prevention Methods

The commission proposes to amend §344.50(a) to eliminate the requirement for approval of backflow prevention assemblies. It was determined that there was no practical way to meet this requirement. Instead, the requirement is to install the assembly per manufacturer's recommendations and to test it. This is consistent with the requirements in Chapter 290.

The commission proposes to amend §344.50(b) to align with the definition of an air gap in §344.1(1).

The commission proposes to amend §344.50(b)(2) to reference the installation and testing requirements in §344.50(a).

The commission proposes to amend §344.50(b)(3) to reference the installation and testing requirements in §344.50(a) and describe the hydraulic conditions under which the assembly will work. The word "device" was changed to "assembly" per the rule petition.

The commission proposes to amend §344.50(b)(4) to replace atmospheric vacuum breakers (AVBs) as an option for backflow prevention with spill resistant vacuum breakers (SVB) per the recommendation from the rule petition. In practice, AVBs are recognized as not adequate for backflow prevention on irrigation systems because they will not function correctly with a downstream valve. Currently available sprinkler heads are equipped with check valves in order to conserve water and these are not functional with AVBs. Since AVBs cannot be used with a valve downstream of them, each individual zone would have to have its own AVB. AVBs must be installed a minimum of six inches above the highest downstream emission device. These factors increase the cost and complexity of installation with no appreciable benefit.

The commission proposes to amend §344.50(b)(4)(A) to also specify potential for back-pressure.

The commission proposes to amend §344.50(b)(4)(B) to specify the minimum installation height and that it is determined from the highest downstream opening.

Spill resistant vacuum breakers (SVBs) were included as an option for backflow prevention. Requirements for the correct hydraulic conditions (no backpressure) and height installation requirements were included in the requirements for SVBs. These changes were recommended by the rule petition.

The commission proposes to remove the current language in §344.50(c) and include it in proposed §344.50(e) per recommendation from the rule petition. Subsequent subsections are re-lettered.

The commission proposes §344.50(c) (formerly subsection (d)) to replace the word "device" with the word "assembly."

The commission proposes to amend §344.50(c)(1) to add the word "and" for better readability.

The commission proposes to amend §344.50(c)(2) to eliminate the language referencing backpressure since this information was determined to be incorrect. Subsequent paragraph is renumbered.

The commission proposes to amend §344.50(d) (formerly subsection (e)) to include the word "assemblies" and to specify the installation requirements.

The commission proposes to amend §344.50(d)(3) to remove the requirement for the Y-type strainer as the maintenance requirements to periodically clean it did not make it practical to use. Subsequent paragraphs are renumbered.

The commission proposes to amend §344.50(d)(3) to specify that there must be clearance around the assembly to facilitate testing.

The commission proposes to add §344.50(e) to specify testing requirements for backflow prevention assemblies especially those installed to protect against health hazards. This change was requested by the rule petition.

§344.51, Specific Conditions and Cross-Connection Control

The commission proposes to amend §344.51(a) to make it applicable to any method where a chemical can be introduced into an irrigation system which will increase the hazard to the potable water supply. This language was removed from §344.51(c) and moved to §344.51(a).

The commission proposes §344.51(b) to address the hazard posed by those irrigation system components with chemical additives added to them in the manufacturing process. Subsequent subsection is re-lettered.

The commission proposes to remove §344.51(b) and move it down one subsection to §344.51(c). The language remains the same.

The commission proposes to amend §344.51(d)(1) and (2) to clearly specify that an irrigation system on a site that also has an On-site Sewage Facility (OSSF) is considered a health hazard.

§344.52, Installation of Backflow Prevention Device

The commission proposes to amend the title of this section from "Installation of Backflow Prevention Device" to "Installation of Backflow Prevention Assembly."

The commission proposes to amend §344.52(b) to add the word "prevention" as it is the correct term.

The commission proposes to amend §344.52(c) to remove the requirement to provide a test report to the "irrigation system's owner or owner's representative" and to replace the word "device" with assembly. This aligns with the requirements in Chapter 290.

SUBCHAPTER F, STANDARD FOR DESIGNING, INSTALLING AND MAINTAINING LANDSCAPE IRRIGATION SYSTEMS

§344.60, Water Conservation

The commission proposes to update the reference regarding the definition of water conservation from §344.1(44) to §344.1(45).

§344.61, Minimum Standards for the Design of the Irrigation Plan

The commission proposes to amend §344.61(a) to stress the uniqueness of each individual irrigation system and the irrigation plan for it. These changes were also made to address occasions where the same irrigation plan is used multiple times for different sites. The requirement of drawing showing actual installation has been removed from §344.61(a) and is addressed in the proposed amendment to §344.61(c). Language addressing how variances from the original plan can be authorized has been removed from §344.61(a) and is addressed in the proposed amendment to §344.61(d) and (e).

The commission proposes to amend §344.61(b) to specify that the irrigation plan shall clearly show that those areas to be watered were adequately covered and those that were not were clearly identified. This change was made per recommendation from the IAC.

The commission proposes to amend §344.61(c)(2) to reference the requirements in §344.61(b) and specify some common physical features of a site to be irrigated.

The commission proposes to amend §344.61(c)(4) to specify what should be included on the legend of the irrigation plan and prevent irrigation plans with legends that do not adequately describe the symbols used on the irrigation plan. This change was made per recommendation from the IAC.

The commission proposes to amend §344.61(c)(5) to specify what is expected on the irrigation plan in regard to the zone flow measurement and eliminate occasions where the zone flow measurement does not include the station number or valve size. This change was made per recommendation from the IAC.

The commission proposes to amend §344.61(c)(7) to establish that specifications are required for all irrigation system components and lists some of the required information.

The commission proposes to add §344.61(d) to specify that changes shall be clearly noted in red ink and places requirements on the change itself. This language was moved from §344.61(a).

The commission proposes to add §344.61(e) to specify that the as-built drawing provided to the owner or owner's representative shall clearly show all the changes made to the irrigation plan.

§344.62, Minimum Design and Installation Requirements

The commission proposes to amend §344.62(b)(1) to allow for a 10% discrepancy from the manufacturer's published radius in the spacing of emission devices. This will accommodate variations in installations. This change was made per recommendation from the IAC.

The commission proposes to amend §344.62(b)(3) to generalize the requirement for directional spray of emission devices away from impervious surfaces to all irrigation systems and to clarify that this is a requirement for all installations. Exempted areas that drain into a landscaped area have been added.

The commission proposes to amend §344.62(c) to include the requirement to provide the optimum pressure for an emission device and promote water conservation while adequately watering the site. This change was made per recommendation from the IAC.

The commission proposes to amend §344.62(d) to clarify that the acronym "PVC" means polyvinyl chloride.

The commission proposes to amend §344.62(g) to further clarify that water shall not be sprayed on surfaces made of impervious materials.

The commission proposes to amend §344.62(l) to specify that the required depth is six inches and is measured from the topmost pipe so that multiple pipes laid in one trench do not impinge on the depth requirement. For example, irrigators may lay multiple pipes in one trench and the topmost pipe may only be three inches from the surface not the required six inches. This change was made per recommendation from the IAC.

The commission proposes to amend §344.62(n) to specify that the lid of the valve box shall be color-coded purple and not just the box. This is because the box is buried in the ground and is not visible while the lid is visible. This change was made per recommendation from the IAC.

The commission proposes to amend §344.62(o) to remove the effective date as it has passed.

The commission proposes to add §344.62(p) to provide clear requirements for valves and other irrigation system components to be housed in valve boxes. These components are buried, if they are not housed in a valve box, they cannot be located.

§344.63, Completion of Irrigation System Installation

The commission proposes to amend §344.63 to clarify that this section applies to the irrigator and to the irrigation technician. The introductory statement has been amended to specify 'on-site' supervision for the installation and requires the installer to provide the items listed in §344.63(1) - (4).

The commission proposes to amend §344.63(2) to specify that the completed maintenance checklist shall be provided to the owner or owner's representative.

The commission proposes to amend §344.63(2)(A) to accommodate occasions when an automatic controller is not used. Some irrigation systems do not use an automatic controller to turn the different zones on and off and instead use a valve turned by hand.

The commission proposes to amend §344.63(2)(B) to provide better clarity and to provide the meaning of the acronym "historical ET" which means "historical evapotranspiration."

The commission proposes to amend §344.63(2)(C) by providing a more concise explanation of irrigation components that should be listed for maintenance and frequency of service.

The commission proposes to amend §344.63(2)(D) to improve clarity and to include the defined term §344.1(2) "as-built drawing" which is occasionally provided to the owner or owner's representative upon completion of the installation.

The commission proposes to amend §344.63(3) to clarify that the ink on the irrigator's sticker shall be waterproof.

The commission proposes to amend §344.63(4) to include the defined term in §344.1(2) "as-built drawing" which is commonly used in the industry and provided to the owner or owner's representative at completion.

§344.64, Maintenance, Alteration, Repair, or Service of Irrigation Systems

The commission proposes to remove existing §344.64(a) to and move it to §344.72(c) concerning Warranties.

The commission proposes to amend §344.64(a) (previously subsection (b)) to specify that trenches shall be filled with soil free of any objects that could damage the irrigation system and should be compacted to eliminate depressions that could develop if not compacted.

The commission proposes to amend §344.64(b) (previously subsection (c)) to provide a meaning for the acronym PVC.

The commission proposes to amend §344.64(c) (previously subsection (d)) to clarify the location of the isolation valve, to replace the word "device" with "assembly" as per the rule petition, and to reference the installation requirements in §344.62(k).

§344.65, Reclaimed Water

The commission proposes to amend §344.65(4) to clarify that the backflow prevention assembly is required to be on the water line providing water to the entire site in order to protect against contamination.

The commission proposes to amend §344.65(5) to add wording specifying a minimum "eight-inch by eight-inch" sign be posted for reclaimed water use.

§344.66, Temporary Irrigation Systems

The commission proposes new §344.66 to provide rules that regulate temporary irrigation systems in order to provide for water conservation and protection of the public health.

The commission proposes new §344.66(a) to clarify that temporary irrigation systems must be installed by appropriately licensed individuals.

The commission proposes new §344.66(b) to clarify that temporary irrigation systems connected to potable water supplies pose a contamination hazard and require backflow prevention.

The commission proposes new §344.66(c) to clarify that temporary irrigation systems must be installed in a manner that conserves water.

The commission proposes new §344.66(d) to clarify that temporary irrigation systems must be temporary and must have a definite end date at which time they will be removed.

SUBCHAPTER G, ADVERTISING, CONTRACT, AND WARRANTY

§344.70, Advertisement

The commission proposes to amend §344.70(a) to simplify the section by using the term "irrigation services" and to specify that the irrigator's license number must be visible on both outward sides of the vehicle used to advertise irrigation services.

The commission proposes to amend §344.70(b) to apply the requirement regardless of the media used to advertise. This change was made per recommendation from the IAC.

The commission proposes to amend §344.70(c) to clarify the location of the of the information available to the public for complaint purposes.

§344.71, Contracts

The commission proposes to amend §344.71(a) and (b) to provide the correct TCEQ website address and Mail Code information.

The commission proposes to amend §344.71(c) to clarify that regardless of the existence of a pass-through contract, the irrigator is still responsible for providing a warranty to the owner or owner's representative.

§344.72, Warranties

The commission proposes to amend §344.72(b) to provide the correct TCEQ website address and Mail Code information.

The commission proposes to amend §344.72(c) to specify that during the warranty period the irrigator is responsible for the work they performed or that was performed under their supervision. This section also relieves the irrigator of any responsibility for work performed by any other individual on an irrigation system they installed.

SUBCHAPTER H, IRRIGATOR ADVISORY COUNCIL

§344.80, Irrigator Advisory Council

The commission proposes to amend §344.80(e) to clarify that the council member terms are staggered with three members terms ending each odd-numbered year. The commission proposes further amending §344.80(e) to clarify that interim members are selected to serve the remainder of the departing member's term.

Fiscal Note: Costs to State and Local Government

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

The proposed rulemaking includes a clarification in §344.24, which brings the section into compliance with Texas Local Government Code, §551.006. This state law requires a municipality with a population of more than 20,000 people to adopt an ordinance with minimum standards for irrigation systems, including a permit for installers. The inclusion of this clarification in the proposed rulemaking may result in an agency enforcement action if a municipality is found to be out of compliance. This possible enforcement action may include penalties, which would result in a fiscal impact to a unit of local government and the state. The agency has identified 17 municipalities that have not yet adopted the ordinance referenced in §344.24.

For the purpose of this fiscal note, the agency assumes that all municipalities would comply with state law and the proposed rulemaking, and no enforcement action will be required.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated would be improved readability and compliance with state law, as well as increased protection of public health and better water conservation. The proposed rulemaking is not anticipated to result in significant fiscal implications for businesses or individuals.

Under the Texas Local Government Code, §551.006(d), municipalities have the option of recovering their administrative costs by charging a fee to licensed individuals who are obtaining or renewing a municipal permit.

Local Employment Impact Statement

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

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking would not adversely affect rural communities in a material way for the first five years that the proposed rulemaking would be in effect. The proposed rulemaking does reference a state law which requires a municipality with more than 20,000 people to adopt an ordinance with minimum standards for irrigation systems. The agency estimates that 10 municipalities with a population between 20,000 and 25,000 people would need to adopt an ordinance.

Small Business and Micro-Business Assessment

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

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of the Texas Administrative Procedure Act, Texas Government Code, §2001.001 *et. seq.,* and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3). A "Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the proposed rulemaking is to strengthen the rules and provide for better protection of public health and better water conservation. In addition, this rulemaking seeks to align terms and definitions in this chapter with those in other, relevant chapters of 30 TAC. Specifically, definitions are proposed to be amended to align with Chapter 290. Protection of human health and the environment may be a by-product of the proposed rules, but it is not the specific intent of the rules. Therefore, the commission concludes that the proposed rules do not constitute a major environmental rule.

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

The proposed rules do not exceed a federal standard because there are no federal standards regulating the practice of landscape irrigation. The proposed rules do not exceed state law requirements. Also, the proposed rules do not exceed a requirement of an agreement because there are no delegation agreements or contracts between the state of Texas and an agency or representative of the federal government to implement a state and federal program regarding landscape irrigation. And finally, these rules are being proposed under specific state laws, in addition to the general powers of the agency.

Therefore, Texas Government Code, §2001.0225, is not applicable to these proposed rules. The commission invites comment on the draft regulatory impact determination.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated these proposed rules and performed an analysis of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rulemaking is to strengthen the rules and provide for better protection of public health and better water conservation. In addition, this rulemaking seeks to align terms and definitions in this chapter with those in other, relevant chapters of 30 TAC. Specifically, definitions are proposed to be amended to align with Chapter 290.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because the proposed rules would neither burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that

which would otherwise exist in the absence of these regulations. In other words, these rules would not constitute a statutory or constitutional taking because they only update existing rules to comply with current technical standards and conservation methods and do not affect a landowner's rights in private real property.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that it is not a rulemaking identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor would the proposed rules affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program (CMP).

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

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on February 27, 2020, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing, however commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2018-004-344-CE. The comment period closes on March 3, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Al Fuentes, Program Support and Environmental Assistance Division, (512) 239-0400.

SUBCHAPTER A. DEFINITIONS

30 TAC §344.1

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning Irrigation Systems. The amendment is also proposed under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; Texas Occupations Code, §1903.151, concerning Council Membership; Texas Occupations Code, §1903.152, concerning Eligibility of Public Members; Texas Occupations Code, §1903.155, concerning Presiding Officer; Texas Occupations Code, §1903.157, concerning Meetings; Texas Occupations Code, §1903.158, concerning Per Diem; Reimbursement; Texas Occupations Code, §1903.159, concerning Council Duties; and Texas Occupations Code, §1903.251, concerning License Required. The amendment is proposed under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, the amendment is also proposed under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

The proposed amendment implements TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015 and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, 1903.151, 1903.152, 1903.155, 1903.157, 1903.158, 1903.159, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.1. Definitions.

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

(1) Air gap--The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water to a tank, fixture, receptor, sink, or other assembly and the flood level rim of the receptacle. The vertical, physical separation must be at least twice the diameter of the water supply outlet, but never less than 1.0 inch. [~~A complete physical separation between the free-flowing discharge end of a potable water supply pipeline and an open or non-pressure receiving vessel.~~]

(2) As-built drawing--The final irrigation plan produced at the completion of an irrigation system installation and provided to the irrigation system's owner or the owner's representative. The as-built drawing(s) will reflect all changes made to the original irrigation plan and/or specifications during the construction process and show all aspects of the irrigation system including the dimensions, geometry, and location of all elements of the irrigation system. May be referred to as "record drawings" or "as-builts."

[~~(2) Atmospheric Vacuum Breaker--An assembly containing an air inlet valve, a check seat, and an air inlet port. The flow of water into the body causes the air inlet valve to close the air inlet port. When the flow of water stops the air inlet valve falls and forms a check against back-siphonage. At the same time, it opens the air inlet port allowing air to enter and satisfy the vacuum. Also known as an Atmospheric Vacuum Breaker Back-siphonage Prevention Assembly.~~]

(3) Backflow prevention--The [~~mechanical~~] prevention of the reversal of [~~reverse~~] flow, due to [~~or~~] back siphonage or backpressure, of nonpotable water from an irrigation system into the potable water supply [~~source~~].

(4) Backflow prevention assembly--A mechanical [~~Any~~] assembly used to prevent backflow into a potable water system. The type of assembly used is based on the [~~existing or potential~~] degree

of [health] hazard (health hazard or non-health hazard) and hydraulic conditions [backflow condition].

(5) Completion of irrigation system installation--When the landscape irrigation system has been installed, all minimum standards met, all tests performed, and the irrigator is satisfied that the system is operating correctly.

(6) Consulting--The act of providing advice, guidance, review or recommendations related to landscape irrigation systems.

(7) Cross-connection--A physical connection between a public water system and either another supply of unknown or questionable quality, any source which may contain contaminating or polluting substances, or any source of water treated to a lesser degree in the treatment process. [An actual or potential connection between a potable water source and an irrigation system that may contain contaminates or pollutants or any source of water that has been treated to a lesser degree in the treatment process.]

(8) Design--The act of determining the various elements of a landscape irrigation system that will include, but not limited to, elements such as collecting site specific information, defining the scope of the project, defining plant watering needs, selecting and laying out emission devices, locating system components, conducting hydraulic [hydraulics] calculations, identifying any local regulatory requirements, or scheduling irrigation work at a site. Completion of the various components will result in an irrigation plan.

(9) Design pressure--The pressure that is required for an emission device to operate properly and in conjunction with the head-to-head spacing requirement. Design pressure is [calculated by adding] the sum of the minimum operating pressure of [necessary at] an emission device to the total of all pressure losses accumulated from the [an] emission device to the water source.

(10) Double Check Valve Assembly--An assembly that is composed of two independently acting, [approved] check valves, including tightly closing [closed] resilient seated shutoff valves attached at each end of the assembly and fitted with properly located resilient seated test cocks. Also known as a Double Check Valve Backflow Prevention Assembly.

(11) Emission device--Any device that is contained within an irrigation system and that is used to apply water. Common emission devices in an irrigation system include, but are not limited to, spray and rotary sprinkler heads, and drip irrigation emitters.

(12) Employed--The state of being engaged [Engaged] or hired to provide irrigation services and of being [consulting services or perform any activity relating to the sale, design, installation, maintenance, alteration, repair, or service to irrigation systems. A person is employed if that person is] in an employer-employee relationship as defined by Internal Revenue Code, 26 United States Code Service, §3212(d) based on the behavioral control, financial control, and the type of relationship involved in performing employment related tasks.

(13) Exempt business owner--an owner of a business who employs a licensed irrigator to supervise the irrigation services performed by the business as referenced in Texas Occupations Code, Chapter 1903.

(14) Graywater--wastewater from showers, bathtubs, handwashing lavatories, sinks that are used for disposal of household or domestic products, sinks that are not used for food preparation or disposal, and clothes-washing machines. Graywater does not include wastewater from the washing of material, including diapers, soiled with human excreta or wastewater that has come into contact with toilet waste.

(15) [(13)] Head-to-head spacing--The spacing of emission devices such that the distance between them is within [spray or rotary heads equal to] the manufacturer's published radius range and the water spray reaches from device to device. A deviation of 10% or less is acceptable. [of the head.]

(16) [(14)] Health hazard--A cross-connection, potential contamination hazard, or other situation involving any substance that can cause death, illness, spread of disease, or has a high probability of causing such effects if introduced into the potable drinking water supply. [A cross-connection or potential cross-connection with an irrigation system that involves any substance that may, if introduced into the potable water supply, cause death or illness, spread disease, or have a high probability of causing such effects.]

(17) [(15)] Hydraulics--The science of dynamic and static water; the mathematical computation of [determining] pressure losses and/or [and] pressure requirements of an irrigation system.

[(16) Inspector--A licensed plumbing inspector, water district operator, other governmental entity, or irrigation inspector who inspects irrigation systems and performs other enforcement duties for a municipality or water district as an employee or as a contractor.]

[(17) Installer--A person who actually connects an irrigation system to a private or public raw or potable water supply system or any water supply, who is licensed according to Chapter 30 of this title (relating to Occupational Licenses and Registrations).]

(18) Irrigation inspector--A water district operator, governmental entity, or licensed irrigation inspector who inspects irrigation systems and performs other enforcement duties for a municipality or water district and is required to be licensed under Chapter 30 of this title (relating to Occupational Licenses and Registrations) or a licensed plumbing inspector. [A person who inspects irrigation systems and performs other enforcement duties for a municipality or water district as an employee or as a contractor and is required to be licensed under Chapter 30 of this title (relating to Occupational Licenses and Registrations).]

(19) Irrigation plan--A scaled drawing of a new landscape irrigation system to be installed. The irrigation plan shall meet all the requirements in §§344.60 - 344.65 of this title (relating to Water Conservation; Minimum Standards for the Design of the Irrigation Plan; Minimum Design and Installation Requirements; Completion of Irrigation System Installation; Maintenance, Alteration, Repair, or Service of Irrigation Systems; and Reclaimed Water) and is provided as an as-built drawing to the owner or owner's representative upon completion of the irrigation system installation [which lists required information, the scope of the project, and represents the changes made in the installation of the irrigation system].

(20) Irrigation services--All activities involving an irrigation system including, selling [Selling], designing, installing, maintaining, altering, repairing, servicing, permitting, [providing] consulting services [regarding], or connecting an irrigation system to a water supply.

(21) Irrigation system--A system permanently installed on a site and that is composed of an [An] assembly of component parts [that is permanently installed] for the controlled distribution and conservation of water to irrigate, reduce dust, and control erosion in any type of landscape vegetation in any location[, and/or to reduce dust or control erosion]. This term does not include a system that is used on or by an agricultural operation as defined by Texas Agricultural Code, §251.002.

(22) Irrigation technician--A person who works under the supervision of a licensed irrigator to perform irrigation services [install,

maintain, alter, repair, service or supervise installation of an irrigation system,] including the connection of an irrigation [such] system [in or] to a private or public, raw or potable water supply system or any other water supply, and who is required to be licensed under Chapter 30 of this title (relating to Occupational Licenses and Registrations).

(23) Irrigation zone--A subdivision of an irrigation system with a matched precipitation rate based on plant [material] type ([such as] turf, shrubs, or trees), microclimate ([factors (such as] sun/shade ratio), topographic features, [(such as slope) and] soil type ([conditions (such as] sand, loam, clay, or combination), and [or for] hydrological control.

(24) Irrigator--A person who performs irrigation services and/or [sells, designs, offers consultations regarding, installs, maintains, alters, repairs, services or] supervises the installation of an irrigation system, including the connection of such system to a private or public, raw or potable water supply system or any water supply, and who is required to be licensed under Chapter 30 of this title (relating to Occupational Licenses and Registrations).

(25) Irrigator-in-Charge--The irrigator responsible for all irrigation work performed by an exempt business owner, including, but not limited to obtaining permits, developing design plans, supervising the work of other irrigators or irrigation technicians, and installing, selling, maintaining, altering, repairing, or servicing a landscape irrigation system.

(26) Landscape irrigation--The science of applying the necessary amount of water to promote or sustain healthy growth of plant material or turf.

(27) License--An occupational license that is issued by the commission under Chapter 30 of this title (relating to Occupational Licenses and Registrations) to an individual that authorizes the individual to engage in an activity that is covered by this chapter.

(28) Mainline--A pipe within an irrigation system that delivers water from the water source to the individual zone valves.

(29) Maintenance checklist--A document made available to the irrigation system's owner or owner's representative that contains information regarding the operation and maintenance of the irrigation system, including, but not limited to: checking and repairing the irrigation system, setting the automatic controller, checking the rain or moisture sensor, cleaning filters, pruning grass and plants away from irrigation emitters, using and operating the irrigation system, the precipitation rates of each irrigation zone within the system, any water conservation measures currently in effect from the water purveyor, the name of the water purveyor, a suggested seasonal or monthly watering schedule based on current evapotranspiration data for the geographic region, and the minimum water requirements for the plant material in each zone based on the soil type and plant material where the system is installed.

(30) Major maintenance, alteration, repair, or service--Any activity that involves opening to the atmosphere the irrigation main line at any point prior to the discharge side of any irrigation zone control valve. This includes, but is not limited to, repairing or connecting into a main supply pipe, replacing a zone control valve, or repairing a zone control valve in a manner that opens the system to the atmosphere.

(31) Master valve--A [remote] control valve located after the backflow prevention assembly [device] that controls the flow of water to the irrigation system mainline.

(32) Matched precipitation rate--The condition in which all sprinkler heads within an irrigation zone apply water at the same rate

(33) New installation--An irrigation system installed at a location where one did not previously exist or is a complete replacement of an existing irrigation system.

(34) Non-health hazard--A cross-connection, [or] potential contamination hazard, or other situation involving [cross connection from a landscape irrigation system that involves] any substance that generally will [would] not be a health hazard but will [would] constitute a nuisance or be aesthetically objectionable if introduced into the public [potable] water supply.

(35) Non-potable water--Water that is not suitable for human consumption. Non-potable water sources include, but are not limited to, irrigation systems, lakes, ponds, streams, gray water [that is discharged from washing machines, dishwashers or other appliances], water [vapor] condensate from cooling towers, reclaimed water, and harvested rainwater.

(36) Pass-through contract--A written contract between a contractor or builder and a licensed irrigator or exempt business owner to perform part or all of the irrigation services. A pass-through contract is also referred to as a sub-contract. [relating to an irrigation system.]

(37) Potable water--Water that is suitable for human consumption and meets the definition of drinking water in §290.38(23) of this title (relating to Definitions).

(38) Pressure Vacuum Breaker--An assembly that contains [containing] an independently operating internally loaded check valve and an independently operating loaded air inlet valve located on the discharge side of the check valve. Also known as a Pressure Vacuum Breaker Back-siphonage Prevention Assembly.

(39) Reclaimed water--Domestic or municipal wastewater which has been treated to a quality suitable for beneficial use, such as landscape irrigation.

(40) Records of landscape irrigation activities--The irrigation plans, contracts, warranty information, invoices, copies of permits, and all other documents that relate to irrigation services [the installation, maintenance, alteration, repair, or service of a landscape irrigation system].

(41) Reduced Pressure Principle Backflow Prevention Assembly--An assembly containing two independently acting approved check valves together with a hydraulically operating mechanically independent pressure differential relief valve located between the two check valves and below the first check valve.

(42) Static water pressure--The pressure of water when it is not moving. Generally, this is the pressure available to the irrigation system.

(43) Supervision--The on-the-job oversight and direction by a licensed irrigator who is fulfilling his or her professional responsibility to the client and/or employer in compliance with local and [or] state requirements. Also performed by a licensed [installer working under the direction of a licensed irrigator or beginning January 1, 2009, an] irrigation technician who is working under the direction of a licensed irrigator to perform [install, maintain, alter, repair or service an] irrigation services [system].

(44) Temporary Irrigation System--A temporarily installed, above ground system of pipes and component parts used to distribute water to the landscaping of a site for the establishment of plant growth, reduction of dust, and erosion control. Temporary irrigation systems must meet the requirements in §344.66 of this title (relating to Temporary Irrigation Systems).

(45) [~~(44)~~] Water conservation--The design, installation, service, and operation of an irrigation system in a manner that prevents the waste of water, promotes the most efficient use of water, and applies the least amount of water that is required to maintain healthy individual plant material or turf, reduce dust, and control erosion.

(46) [~~(45)~~] Zone flow--A measurement, in gallons per minute or gallons per hour, of the actual flow of water through a zone valve, calculated by individually opening each zone valve and obtaining a valid reading after the pressure has stabilized. For design purposes, the zone flow is the total flow of all nozzles in the zone at a specific pressure.

(47) [~~(46)~~] Zone valve--An automatic valve that controls a single zone of a landscape irrigation 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.

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SUBCHAPTER B. STANDARDS OF CONDUCT FOR IRRIGATORS, [~~INSTALLERS,~~] IRRIGATION TECHNICIANS, AND IRRIGATION INSPECTORS, AND LOCAL REQUIREMENTS

30 TAC §§344.20 - 344.22, 344.24

Statutory Authority

These amendments are proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning Irrigation Systems. These amendments are also proposed under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; and Texas Occupations Code, §1903.251, concerning License Required. These amendments are proposed under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, these amendments are also proposed under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These proposed amendments, implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015 and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.20. Purpose of Standards.

(a) The correct practice of irrigation as a science and profession is essential for the protection and conservation of the water resources of the state and shall [~~should~~] be conducted by individuals who are held to the highest ethical standards. The legislature has vested the commission with the authority and duty to establish and enforce standards of professional conduct and ethics for practitioners in the irrigation industry.

(b) Every applicant for an irrigator, [~~installer,~~] irrigation technician, or irrigation inspector license shall [~~must~~] become fully informed of the obligations and responsibilities inherent in the practice of irrigation as outlined by these standards of conduct. Each licensed irrigator, [~~installer,~~] irrigation technician, or irrigation inspector is deemed to have notice of these standards of conduct and is required to abide by the standards.

§344.21. Intent.

(a) These standards of conduct are established to prescribe responsibility on the part of an irrigator, [~~an installer,~~] an irrigation technician, an irrigation inspector, and a qualifying exempt business owner to aid in governing the irrigation industry.

(b) The commission will determine what actions constitute violations of the standards in accordance with Chapter 70 of this title (relating to Enforcement) and Texas Water Code, Chapter 7 and institute appropriate disciplinary action, which may lead to monetary penalties or the suspension or revocation of a license in accordance with the applicable state statutes.

(c) This section does not apply to:

(1) an on-site sewage disposal system, as defined by Texas Health and Safety Code, §366.002; or

(2) an irrigation system:

(A) used on or by an agricultural operation as defined by Texas Agriculture Code, §251.002; or

(B) connected to a groundwater well used by the property owner for domestic use.

§344.22. Proficiency in the Field of Irrigation; Representation of Qualifications.

(a) All irrigators, [~~installers,~~] irrigation technicians, and inspectors shall be knowledgeable of the current industry standards regarding selling, designing, providing consulting services, installing, maintaining, altering, repairing, or servicing irrigation systems, including the connection of such a system to any source of water and water conservation. All irrigators, [~~installers,~~] irrigation technicians, and inspectors shall conform to the current adopted version of these rules and any local rules that do not conflict with these rules, or that are more stringent than these rules, when performing these activities.

(b) All irrigators, [~~installers,~~] irrigation technicians, irrigation inspectors, and exempt business owners shall accurately and truthfully represent to prospective clients their qualifications to perform the services requested and shall not perform services for which they are not qualified by experience, knowledge, or license in the technical field involved.

(c) All irrigators, [~~installers,~~] irrigation technicians, and inspectors shall be knowledgeable of local requirements related to landscape irrigation systems.

§344.24. Local Regulation and Inspection.

(a) Where any city, town, county, water [~~special purpose~~] district, other political subdivision of the state, or public water supplier requires licensed irrigators, [~~installers,~~] irrigation technicians, or irrigation inspectors to comply with reasonable inspection requirements, ordinances, or regulations designed to protect the public water supply, any of which relates to work performed or to be performed within such political subdivision's territory the licensed irrigator, [~~installer,~~] irrigation technician, or irrigation inspector shall [~~must~~] comply with such requirements, ordinances, and regulations.

(b) Any city, town, county, water district, other political subdivision of the state, or public water supplier that is not required to adopt rules or ordinances regulating landscape irrigation may adopt a landscape irrigation program by ordinance or rule and may be responsible for inspection of irrigation systems on sites that are connected [~~connections~~] to its public water supply system. Any rule or ordinance adopted to regulate landscape irrigation shall be at least as stringent as the requirements in this chapter. [~~up to and including the backflow prevention device.~~]

(c) Municipalities with a population of 20,000 or more shall [~~and a water district that chooses to implement a landscape irrigation program must~~] verify that the irrigator that designs and installs an irrigation system holds a valid irrigator's license and has obtained a permit before installing a system within its territorial limits or if a municipality, its extraterritorial jurisdiction. Inspectors must verify that the design and installation meet the requirements of this chapter and local ordinances or rules that do not conflict with this chapter, or that are more stringent than this chapter.

(d) A water district that chooses to implement a landscape irrigation program shall meet the program requirements in subsection (c) of this section.

[~~(d) Each inspector shall maintain a log of all irrigation systems inspected that includes, but is not limited to, the system location, property owner, irrigator responsible for installation, permit status, problems noted during the inspection, and date of the inspection. The log must be kept for three years. The log shall be available for review within two business days of the request by authorized representatives of the commission or any regulatory authority with jurisdiction over landscape irrigation issues in the area the inspector is employed to inspect.~~]

[~~(e) An inspector may not inspect a landscape irrigation system that is an on-site sewage disposal system, as defined by Texas Health and Safety Code, §366.002.~~]

[~~(f) An inspector may not inspect an irrigation system that is used on or by an agricultural operation as defined by Texas Agricultural Code, §251.002; or is connected to a groundwater well that is used by the property owner for domestic use.~~]

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SUBCHAPTER C. REQUIREMENTS FOR LICENSED IRRIGATORS, [~~INSTALLERS,~~] IRRIGATION TECHNICIANS, AND IRRIGATION INSPECTORS

30 TAC §§344.30, 344.31, 344.33 - 344.38

Statutory Authority

These amendments are proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001-37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning Irrigation Systems. These amendments are also proposed under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; and Texas Occupations Code, §1903.251, concerning License Required. These amendments are proposed under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, these amendments are also proposed under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These proposed amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015 and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.30. License Required.

(a) An irrigator is an individual who:

(1) performs irrigation services including [~~sells, designs, provides consultation services, installs, maintains, alters, repairs, or services an irrigation system, including~~] the connection of such system to any water supply;

(2) is not an exempt business owner and advertises or represents to anyone that the individual can perform irrigation services [~~any or all of these functions~~]; and

(3) is required to hold a valid irrigator license issued under Chapter 30 of this title (relating to Occupational Licenses and Registrations).

[~~(b) Through December 31, 2009, an installer is an individual who connects an irrigation system to any water supply.~~]

(b) [(c)] An [Beginning January 1, 2009, an] irrigation technician is an individual who:

(1) connects an irrigation system to a water supply;

(2) under the supervision of a licensed irrigator, installs, maintains, alters, repairs, or services a landscape irrigation system;

(3) represents to anyone that the individual can perform any or all of these functions; and

(4) is required to hold a valid irrigation technician license issued under Chapter 30 of this title.

(c) [(d)] All irrigators[, installers,] and irrigation technicians shall comply with the rules contained in this chapter when performing any or all of the functions listed in this section.

(d) [(e)] An individual who inspects irrigation systems and enforces a municipality's landscape irrigation ordinance must:

(1) hold a valid irrigation inspector license issued according to Chapter 30 of this title; or

(2) hold a valid plumbing inspector license.

(e) [(f)] An individual who inspects irrigation systems and enforces a water district's rules related to landscape irrigation systems must:

(1) hold a valid irrigation inspector license issued according to Chapter 30 of this title; or

(2) hold a valid plumbing inspector license; or

(3) be the district's operator; or

(4) be employed by another regulatory authority with jurisdiction over landscape irrigation and hold the appropriate license.

(f) [(g)] An inspector shall comply with the rules contained in this chapter when performing any [or all] of the functions listed in this section.

(g) [(h)] A property owner is not required to be licensed in accordance with Texas Occupations Code, Title 12, §1903.002(c)(1) if he or she is performing irrigation work in a building or on a premise [premises] owned or occupied by the person as the person's home. A home or property owner who installs an irrigation system must meet the standards contained in §344.62(b), (c), (g), (j), and (k) of this title (relating to Minimum Design and Installation Requirements) concerning spacing; water pressure; spraying water over impervious materials; rain or moisture shut-off devices or other technology; and isolation valve [§344.62(b) Spacing, §344.62(c) Water pressure, §344.62(g) related to spraying water over impervious materials, §344.62(j) Rain or moisture shut-off devices or other technology, and §344.62(k) Isolation valve]. Municipalities or water districts may adopt more stringent requirements for a home or property owner who installs an irrigation system.

§344.31. Responsibilities of a [Exemption for] Business Owner Who Provides Irrigation Services.

(a) Under Chapter 30 of this title (relating to Occupational Licenses and Registrations), a business owner who employs a licensed irrigator as an irrigator-in-charge to provide consulting services, [or] to supervise, or conduct [the exempt business's] operations relating to irrigation services [the design, installation, maintenance, alteration, repairing, and servicing of irrigation systems] is exempt from the licensing requirements of Texas Occupations Code, Chapter 1903.

(b) An exempt business owner who provides landscape irrigation services shall ensure that all irrigation services are supervised by a licensed irrigator, according to the requirements of this subchapter. An exempt business owner who engages in landscape irrigation is responsible for verifying the validity of the license belonging to all irrigators and irrigation technicians performing irrigation services for the business. An exempt business owner who engages in landscape irrigation is responsible for designating an irrigator-in-charge.

§344.33. Display of License.

(a) Irrigators[, installers,] and irrigation technicians shall prominently display their license certificate at the place of irrigation business or employment and shall present their license upon request by any regulatory authority, irrigation system's owner, or prospective owner.

(b) Irrigation inspectors shall present their license, when requested by any entity that is regulated under this chapter, and when that request is made while an irrigation inspector is conducting business.

§344.34. Use of License.

(a) No one other than the irrigator, [installer,] irrigation technician, or irrigation inspector to whom a license is issued shall use or attempt to use the license, which includes the license number.

(b) An individual or entity who uses or attempts to use the license or license number of someone else who is a licensed irrigator, [licensed installer,] licensed irrigation technician, or licensed irrigation inspector is in violation of Texas Occupations Code, Chapter 1903, and this chapter.

(c) An irrigator's license or license number may be used at only one entity as the irrigator-in-charge. An irrigator may work for other entities, but not as the irrigator-in-charge.

(d) It is a violation of this chapter for an irrigator, [installer,] irrigation technician or irrigation inspector to authorize or allow another person or entity to use the irrigator's, [installer's,] irrigation technician's, or irrigation inspector's license or license number in a manner inconsistent with this chapter.

§344.35. Duties and Responsibilities of Irrigators.

(a) An irrigator shall comply with the rules contained in this chapter when performing any or all of the functions described in this section.

(b) An irrigator who performs work for an entity or for an exempt business owner who performs or offers to perform irrigation services shall be knowledgeable of and responsible for all permits, contracts, agreements, advertising, and other irrigation services secured and performed using the irrigator's license.

(c) A licensed irrigator who is employed by an exempt business owner and designated as the irrigator-in-charge [as defined by §344.31 of this title (relating to Exemption for Business Owner Who Provides Irrigation Services)] shall supervise all irrigation services of the business, in accordance with this chapter.

(d) A licensed irrigator is responsible for:

(1) using the [stamp or rubber] seal in accordance with this chapter;

(2) obtaining all permits and inspections required to install an irrigation system;

(3) complying with local regulations;

(4) determining the appropriate backflow prevention method for each irrigation system installation and installing the backflow prevention device correctly;

(5) maintaining landscape irrigation systems records;

(6) conserving water;

(7) developing and following an irrigation plan for each new irrigation system;

(8) designing an irrigation system that complies with the requirements of this chapter;

(9) providing on-site supervision of the installation of [an] irrigation systems [system beginning January 1, 2010];

(10) providing supervision to an irrigation technician who is conducting irrigation services [while connecting an irrigation system to a water supply, installing, maintaining, altering, repairing, or servicing an irrigation system];

[(11) providing supervision to an installer connecting an irrigation system through December 31, 2009;]

(11) [(12)] completing the irrigation system including the final "walk through," completing the maintenance checklist, placing a permanent sticker on the controller or on the maintenance checklist if the irrigation system does not have an automatic controller, and providing a copy of the design plan;

(12) [(13)] conducting irrigation services in compliance [selling, consulting, performing maintenance, alteration, repair, and service of irrigation systems that complies] with the requirements of this chapter;

(13) [(14)] providing advertisements, contracts, and warranties that comply with the requirements of this chapter; and

(14) [(15)] installing an irrigation system that complies with the requirements of this chapter.

§344.36. Duties and Responsibilities of [Installers and] Irrigation Technicians.

(a) A licensed irrigation technician under the supervision of a licensed irrigator, is responsible for: [licensed installer may connect an irrigation system to a water supply through December 31, 2009. This includes installing an approved backflow prevention method pursuant to §344.50 of this title (relating to Backflow Prevention Methods) when connecting an irrigation system to a potable water supply. Beginning January 1, 2009, a licensed irrigation technician may connect an irrigation system to a water supply, including installing an approved backflow prevention method pursuant to §344.50 of this title and may maintain, alter, repair, service, or direct the installation of irrigation systems under the supervision of an irrigator.]

(1) connecting an irrigation system to a water supply;

(2) installing an approved backflow prevention assembly pursuant to §344.50 of this title (relating to Backflow Prevention Methods);

(3) conducting irrigation services including maintaining, altering, repairing, servicing, or directing the installation of irrigation systems; and

(4) conducting the final walk through in compliance with the requirements §344.63 of this title (relating to Completion of Irrigation System Installation).

(b) If an [installer or] irrigation technician connects an irrigation system to a potable water supply, the connection and installation of the backflow prevention assembly [method] must be as indicated on the site irrigation plan or as directed by the licensed irrigator and documented on the site irrigation plan.

[(c) Through December 31, 2009, an installer is responsible for the connection of an irrigation system to a water supply under the supervision of a licensed irrigator.]

(c) [(d)] An [Beginning January 1, 2009, an] irrigation technician, under the supervision of a licensed irrigator, is responsible for:

(1) connecting an irrigation system to a water supply; and

(2) providing on-site supervision of the installation, maintenance, alteration, repair, service of an irrigation system including the final walk through with the irrigation system owner or owner's representative to explain the maintenance and operation of the irrigation system.

(d) An irrigation technician shall not act as an irrigator nor advertise or offer to perform irrigation services.

§344.37. Duties and Responsibilities of Irrigation Inspectors.

(a) A licensed irrigation inspector or licensed plumbing inspector shall enforce the applicable irrigation rules or ordinance of the employing governmental entity and, at a minimum, is responsible for:[.]

(1) verifying that the appropriate permits have been obtained for an irrigation system;

(2) verifying that the irrigator, irrigation technician, or water operator is licensed;

(3) inspecting the irrigation system;

(4) determining that the irrigation system complies with the requirements of this chapter;

(5) determining that the appropriate backflow prevention assembly was installed, tested, and the test results were provided to the water purveyor;

(6) investigating complaints related to irrigation systems including the advertisement of irrigation services; and

(7) maintaining records according to this chapter. Each inspector shall maintain a log of all irrigation systems inspected that includes, but is not limited to, the system location, property owner, irrigator responsible for installation, permit status, problems noted during the inspection, and date of the inspection. The log must be kept for three years. The log shall be available for review within two business days of the request by authorized representatives of the commission or any regulatory authority with jurisdiction over landscape irrigation issues in the area the inspector is employed to inspect.

(b) A licensed irrigation inspector, licensed plumbing inspector, a water district's operator or other appropriately licensed individual employed by a governmental entity shall be responsible for:

(1) verifying that the appropriate permits have been obtained for an irrigation system [and that the irrigator and installer or irrigation technician, if applicable, are licensed];

(2) verifying that the irrigator, irrigation technician, or water district operator is licensed;

(3) [(2)] inspecting the irrigation system;

(4) [(3)] determining that the irrigation system complies with the requirements of this chapter;

(5) [(4)] determining that the appropriate backflow prevention assembly [device] was installed, tested, and the test results were provided to the water purveyor;

(6) [(5)] investigating complaints related to irrigation systems including the [system installation, maintenance, alteration,

~~repairs,~~ or ~~service~~ of an ~~irrigation~~ system ~~and~~] advertisement of irrigation services; and

[~~(6) maintaining records according to this chapter.~~]

(7) each inspector shall maintain a log of all irrigation systems inspected that includes, but is not limited to, the system location, property owner, irrigator responsible for installation, permit status, problems noted during the inspection, and date of the inspection. The log must be kept for three years. The log shall be available for review within two business days of the request by authorized representatives of the commission or any regulatory authority with jurisdiction over landscape irrigation issues in the area the inspector is employed to inspect.

§344.38. Irrigator[~~, Installer, and Irrigation Technician~~] Records.

Upon the licensed irrigator obtaining the seal [~~or rubber stamp~~], in accordance with this chapter, an impression of the seal shall [~~or rubber stamp will~~] be made on letterhead, or other business stationary, and maintained on file for review by the commission. Archival copies of all records given to the irrigation system's owner or owner's representative shall be maintained by the irrigator. Records will be maintained by the irrigator for a period of three years from the date installation, maintenance, alteration, repair or service was completed. Irrigators [~~installers, and irrigation technicians~~] shall make all records of landscape irrigation services available within ten business days of any request made by authorized representatives of the commission or the local regulatory authority with jurisdiction over landscape irrigation [~~issues~~].

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SUBCHAPTER C. REQUIREMENTS FOR LICENSED IRRIGATORS, INSTALLERS, IRRIGATION TECHNICIANS, AND IRRIGATION INSPECTORS

30 TAC §344.32

Statutory Authority

The repealed section is proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC §49.238, concerning Irrigation Systems. The repealed section is also proposed under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; and Texas Occupations Code, §1903.251, concerning License Required. The repealed section proposed under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, the repealed section is also proposed under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

The proposed repealed section implements TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015 and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.32. Responsibilities of a Business Owner Who Provides Irrigation Services.

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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SUBCHAPTER D. LICENSED IRRIGATOR SEAL

30 TAC §§344.40, 344.42, 344.43

Statutory Authority

These amendments are proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC §49.238, concerning Irrigation Systems. These amendments are also proposed under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; and Texas Occupations Code, §1903.251, concerning License Required. These amendments are proposed under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, these amendments are also proposed under Texas

Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These proposed amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015 and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.40. Seal Required.

Each irrigator, upon being licensed with the commission, shall obtain a seal, as described in §344.41 of this title (relating to Seal Design). Licensed irrigators shall not engage in any landscape irrigation services without physical possession of the seal and the license. The irrigator is responsible for the security of the seal and for ensuring that it shall not be used in a manner that does not meet the requirements of this chapter.

§344.42. Seal Display.

(a) On every document requiring an irrigator's seal, the seal shall be clearly visible and legible on the original document and all copies or reproductions of the original document.

(b) An irrigator may use an alternative media (electronic, rubber stamp, embossing, etc.) to use their [~~or other format~~] seal and signature if the seal, signature, and date are clearly visible and legible on the original document and all copies or reproductions of the original document.

§344.43. Seal Use.

(a) Irrigators shall:

(1) sign their legal name;

(2) affix the seal above the irrigator's signature; and

(3) include the date of signing (month, day, and year) of each document to which the seal is affixed.

(b) The presence of the irrigator's seal displayed above the irrigator's signature and date on any document constitutes the acceptance of all professional responsibility for the document and the irrigation services performed in accordance with that document.

(c) The irrigator will maintain, for three years, a copy of each document bearing the irrigator's seal.

(d) Once a document containing a seal is issued, the seal may not be altered.

(e) Irrigators shall not change [~~use or authorize the use of a seal on~~] any plan or specification created by another irrigator unless [~~the irrigator~~]:

(1) the change is made to [~~Reviews and makes changes to~~] adapt the plan or specification to the specific site conditions and to address state and local requirements; [~~and~~]

(2) the irrigator accepts [~~Accepts~~] full responsibility for any changes the irrigator makes [~~alterations~~] to the original plan or specification; and [~~and any downstream consequences.~~]

(3) the irrigator seals and dates the changes made to the original irrigation plan.

(f) If an irrigator prepares only a portion of a plan or specification, that portion of the plan [~~design~~] or specification must be sealed [~~prepared~~] by the irrigator [~~or under the irrigator's supervision~~] and [~~seal, should be~~] clearly identified.

(g) Irrigators shall sign, seal and date the irrigation plan and specifications, contract, addenda or change orders, warranty, and the maintenance checklist.

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SUBCHAPTER E. BACKFLOW PREVENTION AND CROSS-CONNECTIONS

30 TAC §§344.50 - 344.52

Statutory Authority

These amendments are proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning Irrigation Systems. These amendments are also proposed under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; and Texas Occupations Code, §1903.251, concerning License Required. These amendments are proposed under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, these amendments are also proposed under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These proposed amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015 and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.50. Backflow Prevention Methods.

(a) All backflow prevention assemblies installed per this chapter shall be installed according to manufacturer's recommendations and provided with sufficient clearance to facilitate testing.

[~~(a) Any irrigation system that is connected to a public or private potable water supply must be connected through a commission-approved backflow prevention method. The backflow prevention device~~

must be approved by the American Society of Sanitary Engineers; or the Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California; or the Uniform Plumbing Code; or any other laboratory that has equivalent capabilities for both the laboratory and field evaluation of backflow prevention assemblies. The backflow prevention device must be installed in accordance with the laboratory approval standards or if the approval does not include specific installation information, the manufacturer's current published recommendations.]

(b) If conditions that present a health hazard exist, one of the following types of backflow prevention shall [methods must] be used. [to prevent backflow;]

(1) An air gap may be used if installed per the definition of air gap in §344.1 of this title (relating to Definitions). [:]

[(A) there is an unobstructed physical separation; and]

[(B) the distance from the lowest point of the water supply outlet to the flood rim of the fixture or assembly into which the outlet discharges is at least one inch or twice the diameter of the water supply outlet, whichever is greater.]

(2) Reduced pressure principle backflow prevention assemblies may be used if installed per subsection (a) of this section and:

(A) the assembly [device] is installed at a minimum of 12 inches above ground in a location that will ensure that the assembly will not be submerged; and

(B) drainage is provided for any water that may be discharged through the [assembly] relief valve.

(3) Pressure vacuum breakers may be used if installed per subsection (a) of this section and:

(A) there is no actual or potential for a back-pressure condition [will occur]; and

(B) the assembly [device] is installed at a minimum of 12 inches above any downstream piping and the highest downstream opening. Pop-up sprinklers are measured from the retracted position from the top of the sprinkler.

(4) Spill-resistant pressure vacuum breakers may be used if in installed per subsection (a) of this section and:

(A) there is no actual or potential for a back-pressure condition; and

(B) the assembly is installed at a minimum of 12 inches above any downstream piping and the highest downstream opening. Pop-up sprinklers are measured from the retracted position from the top of the sprinkler.

[(4) Atmospheric vacuum breakers may be used if:]

[(A) no back-pressure will be present;]

[(B) there are no shutoff valves downstream from the atmospheric vacuum breaker;]

[(C) the device is installed at a minimum of six inches above any downstream piping and the highest downstream opening. Pop-up sprinklers are measured from the retracted position from the top of the sprinkler;]

[(D) there is no continuous pressure on the supply side of the atmospheric vacuum breaker for more than 12 hours in any 24-hour period; and]

[(E) a separate atmospheric vacuum breaker is installed on the discharge side of each irrigation control valve, between the valve and all the emission devices that the valve controls.]

[(c) Backflow prevention devices used in applications designated as health hazards must be tested upon installation and annually thereafter.]

(c) [(d)] If there are no conditions that present a health hazard, double check valve backflow prevention assemblies may be used to prevent backflow if the assembly [device] is tested upon installation and:

(1) a local regulatory authority does not prohibit the use of a double check valve; and

[(2) backpressure caused by an elevation of pressure in the discharge piping by pump or elevation of piping above the supply pressure which could cause a reversal of the normal flow of water or backsiphonage conditions caused by a reduced or negative pressure in the irrigation system exist; and]

(2) [(3)] test cocks are used for testing only.

(d) [(e)] Double [If a double] check valve assemblies [is] installed below ground shall meet the following installation requirements:

(1) test cocks shall [must] be plugged, except when the double check valve is being tested;

(2) test cock plugs shall [must] be threaded, water-tight, and made of non-ferrous material; and

[(3) a y-type strainer is installed on the inlet side of the double check valve;]

(3) [(4)] there shall [must] be a clearance all the way around the assembly [between any fill material and the bottom of the double check valve] to allow space for testing and repair. [; and]

[(5) there must be space on the side of the double check valve to test and repair the double check valve.]

(e) At a minimum, all backflow prevention assemblies shall be tested by a licensed backflow prevention assembly tester upon installation, repair, replacement, or relocation. Those backflow prevention assemblies used in irrigation systems designated as health hazards shall be tested annually.

§344.51. Specific Conditions and Cross-Connection Control.

(a) Before any chemical is added by any method (aspiration, injection, etc.) to an irrigation system which is connected to any potable water supply, the irrigation system shall [must] be connected through a reduced pressure principle backflow prevention assembly or air gap.

(b) Irrigation system components treated with chemical additives and connected to any potable water supply shall be connected through a reduced pressure principle backflow prevention assembly.

(c) [(b)] Connection of more than one water source to an irrigation system presents the potential for contamination of the potable water supply if backflow occurs. Therefore, connection of any additional water source to an irrigation system that is connected to the potable water supply can only be made [done] if the irrigation system is connected to the potable water supply through a reduced-pressure principle backflow prevention assembly or an air gap.

[(c) Irrigation system components with chemical additives induced by aspiration, injection, or emission system connected to any

potable water supply must be connected through a reduced pressure principle backflow device.]

(d) If an irrigation system is designed or installed on a property that is served by an on-site sewage facility, as defined in Chapter 285 of this title (relating to On-Site Sewage Facilities), then:

(1) all irrigation piping and valves shall [must] meet the separation distances from the On-Site Sewage Facilities system as required for a private water line in §285.91(10) of this title (relating to Tables), concerning the minimum required separation distances for on-site sewage facilities [Minimum Required Separation Distances for On-Site Sewage Facilities)];

(2) the irrigation system is designated a health hazard and any connections using a private or public potable water source shall [must] be connected to the water source through a reduced pressure principle backflow prevention assembly as defined in §344.50 of this title (relating to Backflow Prevention Methods); and

(3) any water from the irrigation system that is applied to the surface of the area utilized by the On-Site Sewage Facility system shall [must] be controlled on a separate irrigation zone or zones so as to allow complete control of any irrigation to that area so that there will not be excess water that would prevent the On-Site Sewage Facilities system from operating effectively.

§344.52. Installation of Backflow Prevention Assembly [Device].

(a) If an irrigation system is connected to a potable water supply and requires major maintenance, alteration, repair, or service, the system shall [must] be connected to the potable water supply through an approved, properly installed backflow prevention method as defined in this title before any major maintenance, alteration, repair, or service is performed.

(b) If an irrigation system is connected to a potable water supply through a double check valve, pressure vacuum breaker, or reduced pressure principle backflow prevention assembly and includes an automatic master valve on the system, the automatic master valve shall [must] be installed on the discharge side of the backflow prevention assembly.

(c) The irrigator shall ensure the backflow prevention assembly [device] is tested prior to being placed in service and the test results provided to the local water purveyor [and the irrigation system's owner or owner's representative] within ten business days of testing [of] the backflow prevention assembly [device].

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SUBCHAPTER F. STANDARDS FOR DESIGNING, INSTALLING, AND MAINTAINING LANDSCAPE IRRIGATION SYSTEMS

30 TAC §§344.60 - 344.66

Statutory Authority

These amendments and new section are proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning Irrigation Systems. These amendments and new section are also proposed under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; and Texas Occupations Code, §1903.251, concerning License Required. These amendments and new section are proposed under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, these amendments and new section are also proposed under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These proposed amendments and new section implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015 and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.60. Water Conservation.

All irrigation systems shall be designed, installed, maintained, altered, repaired, serviced, and operated in a manner that will promote water conservation as defined in §344.1(45) [§344.1(44)] of this title (relating to Definitions).

§344.61. Minimum Standards for the Design of the Irrigation Plan.

(a) An irrigator shall prepare a site-specific [an] irrigation plan for each new irrigation system. The [site where a new irrigation system will be installed. A paper or electronic copy of the] irrigation plan must be on the job site [at all times] during the installation of the irrigation system and must be consulted for installation requirements. [A drawing showing the actual installation of the system is due to each irrigation system owner after all new irrigation system installations. During the installation of the irrigation system, variances from the original plan may be authorized by the licensed irrigator if the variance from the plan does not:]

[(1) diminish the operational integrity of the irrigation system;]

[(2) violate any requirements of this chapter; and]

[(3) go unnoted in red on the irrigation plan.]

(b) The irrigation plan must show that the irrigation system provides [include] complete coverage of all areas [the area] to be irrigated. If there are areas on the site that are not to be irrigated, they must be clearly identified on the irrigation plan [a system does not provide

complete coverage of the area to be irrigated, it must be noted on the irrigation plan].

(c) All irrigation plans used for construction must be drawn to scale. The plan must include, at a minimum, the following information:

(1) the irrigator's seal, signature, and date of signing;

(2) all major physical features in accordance with subsection (b) of this section including, but not limited to, property lines, streets, sidewalks, buildings, fences, flower bed lines, and the boundaries of the areas to be watered;

(3) a North arrow;

(4) a legend showing the symbols used in the irrigation plan and an accurate description of what the symbol represents;

(5) the zone flow measurement for each zone which includes the zone/controller station number and the zone valve size;

(6) location and type of each:

(A) controller;

(B) sensor (for example, but not limited to, rain, moisture, wind, flow, or freeze);

(7) specifications for all irrigation system components to include, but not limited to, location, type, size, manufacturer, model number, operating pressure, flow range, radius of throw;

[(7) location, type, and size of each:]

[(A) water source, such as, but not limited to a water meter and point(s) of connection;]

[(B) backflow prevention device;]

[(C) water emission device, including, but not limited to, spray heads, rotary sprinkler heads, quick-couplers, bubblers, drip, or micro-sprays;]

[(D) valve, including, but not limited to, zone valves, master valves, and isolation valves;]

[(E) pressure regulation component; and]

[(F) main line and lateral piping.]

(8) the scale used; and

(9) the design pressure.

(d) During the installation of the irrigation system, changes from the original plan may be authorized by the licensed irrigator if they are clearly documented in red ink on the irrigation plan and the change does not:

(1) diminish the operational integrity of the irrigation system; and

(2) violate any requirements of this chapter.

(e) All changes to the irrigation plan shall be documented as an as-built drawing.

§344.62. Minimum Design and Installation Requirements.

(a) No irrigation design or installation shall require the use of any component, including the water meter, in a way which exceeds the manufacturer's published performance limitations for the component.

(b) Spacing.

(1) The maximum spacing between emission devices must not exceed the manufacturer's published radius or spacing of the device(s). The radius or spacing is determined by referring to the manufacturer's published specifications for a specific emission device at a specific operating pressure. In no instance shall the spacing exceed plus or minus 10% of the manufacturer's published radius or spacing of the device(s).

(2) New irrigation systems shall not utilize above-ground spray emission devices in landscapes that are less than 48 inches not including the impervious surfaces in either length or width and which contain impervious pedestrian or vehicular traffic surfaces along two or more perimeters. [If pop-up sprays or rotary sprinkler heads are used in a new irrigation system, the sprinkler heads must direct flow away from any adjacent surface and shall not be installed closer than four inches from a hardscape, such as, but not limited to, a building foundation, fence, concrete, asphalt, pavers, or stones set with mortar.]

(3) Pop-up spray heads or rotary sprinkler heads must direct flow away from any adjacent surface and shall not be installed closer than four inches from a hardscape, such as, but not limited to, a building foundation, fence, concrete, asphalt, pavers, or stones set with mortar. Narrow paved walkways, jogging paths, golf cart paths or other small areas located in cemeteries, parks, golf courses or other public areas may be exempted from this requirement if the runoff drains into a landscaped area.

(c) Water pressure. Emission devices must be installed to operate at the optimum or recommended sprinkler head pressure as published by the manufacturer for the nozzle and head spacing that is used. If an optimum or recommended pressure is not published, then the emission devices must be installed to operate at not below the minimum and not above the maximum sprinkler head pressure as published by the manufacturer for the nozzle and head spacing that is used. Methods to achieve the water pressure requirements include, but are not limited to, flow control valves, a pressure regulator, or pressure compensating spray heads.

(d) Piping. Polyvinyl chloride (PVC) piping [Piping] in irrigation systems must be designed and installed so that the flow of water in the pipe will not exceed a velocity of five feet per second [for polyvinyl chloride (PVC) pipe].

(e) Irrigation Zones. Irrigation systems shall have separate zones based on plant material type, microclimate factors, topographic features, soil conditions, and hydrological requirements.

(f) Matched precipitation rate. Zones must be designed and installed so that all of the emission devices in that zone irrigate at the same precipitation rate.

(g) Irrigation systems shall not spray water on or over any surfaces made of impervious material including but not limited to concrete, asphalt, brick, wood, stones set with mortar, [or any other impervious material, such as, but not limited to,] walls, fences, sidewalks, and streets[, etc].

(h) Master valve. When provided, a master valve shall be installed on the discharge side of the backflow prevention device on all new installations.

(i) PVC pipe primer solvent. All new irrigation systems that are installed using PVC pipe and fittings shall be primed with a colored primer prior to applying the PVC cement in accordance with the Uniform Plumbing Code (Section 316) or the International Plumbing Code (Section 605).

(j) Rain or moisture shut-off devices or other technology. All new automatically controlled irrigation systems must include sensors or other technology designed to inhibit or interrupt operation of the irrigation system during periods of moisture or rainfall. Rain or moisture shut-off technology must be installed according to the manufacturer's

published recommendations. Repairs to existing automatic irrigation systems that require replacement of an existing controller must include a sensor or other technology designed to inhibit or interrupt operation of the irrigation system during periods of moisture or rainfall. El Paso, Hudspeth, Culberson, Jeff Davis, Presidio, Brewster, Terrell, Loving, Winkler, Ward, Reeves, Ector, Crane and Pecos Counties are excluded from this requirement.

(k) Isolation valve. All new irrigation systems must include an isolation valve between the water meter and the backflow prevention device.

(l) Depth coverage of piping. Piping in all irrigation systems must be installed according to the manufacturer's published specifications for depth coverage of piping.

(1) If the manufacturer has not published specifications for depth coverage of piping, the piping must be installed to provide minimum depth coverage of six inches of select backfill, between the top of the topmost pipe and the natural grade of the topsoil. All portions of the irrigation system that fail to meet this standard must be noted on the irrigation plan/as-built drawing [plan]. If the area being irrigated has rock at a depth of six inches or less, select backfill may be mounded over the pipe. Mounding must be noted on the irrigation plan/as-built drawing [irrigation plan] and discussed with the irrigation system owner or owner's representative to address any safety issues.

(2) If a utility, man-made structure, or roots create an unavoidable obstacle, which makes the six-inch depth coverage requirement impractical, the piping shall be installed to provide a minimum of two inches of select backfill between the top of the topmost pipe and the natural grade of the topsoil.

(3) All trenches and holes created during installation of an irrigation system must be backfilled and compacted to the original grade.

(m) Wiring irrigation systems.

(1) Underground electrical wiring used to connect an automatic controller to any electrical component of the irrigation system must be listed by Underwriters Laboratories as acceptable for burial underground.

(2) Electrical wiring that connects any electrical components of an irrigation system must be sized according to the manufacturer's recommendation.

(3) Electrical wire splices which may be exposed to moisture must be waterproof as certified by the wire splice manufacturer.

(4) Underground electrical wiring that connects an automatic controller to any electrical component of the irrigation system must be buried with a minimum of six inches of select backfill.

(n) Water contained within the piping of an irrigation system is deemed to be non-potable. No drinking or domestic water usage, such as, but not limited to, filling swimming pools or decorative fountains, shall be connected to an irrigation system. If a hose bib (an outdoor water faucet that has hose threads on the spout) is connected to an irrigation system for the purpose of providing supplemental water to an area, the hose bib must be installed using a quick coupler key on a quick coupler installed in a [covered purple] valve box with a colored-coded purple lid or cover and the hose bib and any hoses connected to the bib must be labeled "non-potable, not safe for drinking." An isolation valve must be installed upstream of a quick coupler connecting a hose bib to an irrigation system.

(o) A [Beginning January 1, 2010, either a] licensed irrigator or [a] licensed irrigation technician shall be on-site at all times while the landscape irrigation system is being installed. When an irrigator is not on-site, the irrigator shall be responsible for ensuring that a licensed irrigation technician is on-site to supervise the installation of the irrigation system.

(p) Valve boxes. A valve box shall be used as a durable, rigid enclosure for valves and/or any other irrigation system components that require subsurface protection.

§344.63. Completion of Irrigation System Installation.

Upon completion of the irrigation system, the irrigator or irrigation technician who provided the on-site supervision for the [on-site] installation shall be required to provide [complete] four items:

(1) a final "walk through" with the irrigation system's owner or the owner's representative to explain the operation of the system;

(2) The completed maintenance checklist on which the irrigator or irrigation technician shall obtain the signature of the irrigation system's owner or owner's representative and shall sign, date, and seal the checklist. If the irrigation system's owner or owner's representative is unwilling or unable to sign the maintenance checklist, the irrigator shall note the time and date of the refusal on the irrigation system's owner or owner's representative's signature line. The irrigation system owner or owner's representative will be given the original maintenance checklist and a duplicate copy of the maintenance checklist shall be maintained by the irrigator. The items on the maintenance checklist shall include but are not limited to:

(A) the manufacturer's manual for the automatic controller, if one is used [the system is automatic];

(B) a seasonal (spring, summer, fall, winter) watering schedule based on either current/real time evapotranspiration data or monthly historical [reference] evapotranspiration [(historical ET)] data, monthly effective rainfall estimates, plant landscape coefficient factors, and site factors;

(C) a list of irrigation system components[, such as the] (nozzle, [or] pump filters, etc.) [and other such components;] that require maintenance and the recommended frequency for the service; and

(D) the statement, "This irrigation system has been installed in accordance with all applicable state regulations as well as applicable [and] local laws, ordinances, rules, [regulations] or orders. I have tested the system and determined that it has been installed according to the Irrigation Plan/As-built drawing [Irrigation Plan] and is properly adjusted for the most efficient application of water at this time."

(3) A permanent sticker printed with waterproof ink which contains the irrigator's name, license number, company name, telephone number and the dates of the warranty period shall be affixed to each automatic controller installed by the irrigator or irrigation technician. If the irrigation system is manual, the sticker shall be affixed to the original maintenance checklist. [The information contained on the sticker must be printed with waterproof ink and include:]

(4) The irrigation plan/as-built drawing [irrigation plan] indicating the actual installation of the system must be provided to the irrigation system's owner or owner's [owner] representative.

§344.64. Maintenance, Alteration, Repair, or Service of Irrigation Systems.

[(a) The irrigator is responsible for all work that the irrigator performed during the maintenance, alteration, repair, or service of an irrigation system during the warranty period. The irrigator or business owner is not responsible for the professional negligence of any other

~~irrigator who subsequently conducts any irrigation service on the same irrigation system.~~]

(a) [~~(b)~~] All trenches and holes created during the maintenance, alteration, repair, or service of an irrigation system must be backfilled and returned to the original grade with suitable soil free of any objects that could damage the plumbing of the irrigation system. The backfill must be compacted such that a depression does not develop [~~select backfill~~].

(b) [~~(c)~~] Colored polyvinyl chloride (PVC) pipe primer solvent must be used on all PVC pipes and fittings used in the maintenance, alteration, repair, or service of an irrigation system in accordance with the Uniform Plumbing Code (Section 316) or the International Plumbing Code (Section 605).

(c) [~~(d)~~] When maintenance, alteration, repair or service of an irrigation system involves excavation work at the water meter or at a point upstream of the backflow prevention assembly [~~device~~], an isolation valve shall be installed, if an isolation valve is not currently installed per §344.62(k) of this title (relating to Minimum Design and Installation Requirements) [~~present~~].

§344.65. Reclaimed Water.

Reclaimed water may be utilized in landscape irrigation systems if:

(1) there is no direct contact with edible crops, unless the crop is pasteurized before consumption;

(2) the irrigation system does not spray water across property lines that do not belong to the irrigation system's owner;

(3) the irrigation system is installed using purple components;

(4) the domestic potable water line providing water to the site is connected using an air gap or a reduced pressure principle backflow prevention device, in accordance with §290.47(f) [~~§290.47(i)~~] of this title (relating to Appendices);

(5) a minimum of an eight-inch [~~eight inch~~] by eight-inch [~~eight inch~~] sign, in English and Spanish, is prominently posted on/in the area that is being irrigated, that reads, "RECLAIMED WATER - DO NOT DRINK" and "AGUA DE RECUPERACIÓN - NO BEBER"; and

(6) backflow prevention on the reclaimed water supply line shall be in accordance with the regulations of the water purveyor.

§344.66. Temporary Irrigation Systems.

(a) Temporary irrigation systems must be installed by a licensed irrigator or an irrigation technician under the supervision of a licensed irrigator.

(b) Temporary irrigation systems must meet the backflow prevention requirements in Subchapter E of this chapter (relating to Backflow Prevention and Cross-Connections).

(c) Temporary irrigation systems must be installed in accordance with §344.1(45) of this title (relating to Definitions).

(d) Temporary irrigation systems must have established a definite end date at which time the temporary irrigation system must be removed.

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 January 16, 2020.

TRD-202000179
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 1, 2020
For further information, please call: (512) 239-1806

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SUBCHAPTER G. ADVERTISING, CONTRACT, AND WARRANTY

30 TAC §§344.70 - 344.72

Statutory Authority

These amendments are proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning Irrigation Systems. These amendments are also proposed under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; and Texas Occupations Code, §1903.251, concerning License Required. These amendments are proposed under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, these amendments are also proposed under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These proposed amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015 and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.70. Advertisement.

(a) All vehicles used in the performance of irrigation services [~~installation, maintenance, alteration, repair, or service~~] must display the irrigator's license number in the form of "LI________" in a contrasting color of block letters at least two inches high, visible on both outward sides of the vehicle.

(b) All forms of advertisement [~~written and electronic advertisements~~] for irrigation services, regardless of the type of media, must display the irrigator's license number in the form of "LI___________." Any form of advertisement[~~, including business cards, and estimates~~] which displays an entity's or individual's name other than that of the licensed irrigator must also display the name of the licensed irrigator and the licensed irrigator's license number. Trailers that advertise irrigation services must display the irrigator's license number.

(c) At the location of the permanent structure where the irrigation business is primarily conducted and irrigation records are kept,

the [~~The~~] name, mailing address, and telephone number of the commission must be prominently displayed on a legible sign [~~and displayed~~] in plain view for the purpose of addressing complaints [~~at the permanent structure where irrigation business is primarily conducted and irrigation records are kept~~].

§344.71. Contracts.

(a) All contracts to install an irrigation system must be in writing and signed by each party and must specify the irrigator's name, license number, business address, current business telephone numbers, the date that each party signed the agreement, the total agreed price, and must contain the statement, "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ), MC-235 [~~MC-178~~], P.O. Box 13087, Austin, Texas 78711-3087. TCEQ's website is: *www.tceq.texas.gov* [~~www.tceq.state.tx.us~~]." All contracts must include the irrigator's seal, signature, and date.

(b) All written estimates, proposals, bids, and invoices relating to the installation or repair of an irrigation system(s) must include the irrigator's name, license number, business address, current business telephone number(s), and the statement: "Irrigation in Texas is regulated by the Texas Commission on [~~On~~] Environmental Quality (TCEQ) (MC-235 [~~MC-178~~]), P.O. Box 13087, Austin, Texas 78711-3087. TCEQ's website [~~web site~~] is: *www.tceq.texas.gov* [~~www.tceq.state.tx.us~~]."

(c) An individual who agrees by contract to provide irrigation services as defined in §344.30 of this title (relating to License Required) shall hold an irrigator license issued under Chapter 30 of this title (relating to Occupational Licenses and Registrations) unless the contract is a pass-through contract as defined in §344.1(36) of this title (relating to Definitions). If a pass-through contract includes irrigation services, then the irrigation portion of the contract can only be performed by a licensed irrigator. If an irrigator installs a system pursuant to a pass-through contract, [~~the irrigator shall still be responsible for providing the irrigation system's owner or through contract,~~] the irrigator shall still be responsible for providing the irrigation system's owner or owner's representative a copy of the warranty and all other documents required under this chapter. A pass-through contract must identify by name and license number the irrigator that will perform the work and must provide a mechanism for contacting the irrigator for irrigation system warranty work.

(d) The contract must include the dates that the warranty is valid.

§344.72. Warranties.

(a) On all installations of new irrigation systems, an irrigator shall present the irrigation system's owner or owner's representative with a written warranty covering materials and labor furnished in the new installation of the irrigation system. The irrigator shall be responsible for adhering to terms of the warranty. If the irrigator's warranty is less than the manufacturer's warranty for the system components, then the irrigator shall provide the irrigation system's owner or the owner's representative with applicable information regarding the manufacturer's warranty period. The warranty must include the irrigator's seal, signature, and date. If the warranty is part of an irrigator's contract, a separate warranty document is not required.

(b) An irrigator's written warranty on new irrigation systems must specify the irrigator's name, business address, and business telephone number(s), must contain the signature of the irrigation system's owner or owner's representative confirming receipt of the warranty and must include the statement: "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ), MC-235 [~~MC-178~~], P.O. Box 130897, Austin, Texas 78711-3087. TCEQ's website is: *www.tceq.texas.gov* [~~www.tceq.state.tx.us~~]."

(c) On all maintenance, alterations, repairs, or service to existing irrigation systems, an irrigator shall present the irrigation system's owner or owner's representative a written and sealed document that details the work performed and identifies the materials furnished [~~in the maintenance, alteration, repair, or service~~]. If a warranty is provided, the irrigator shall abide by the terms. The warranty document must include the irrigator's name and business contact information. The irrigator is responsible for all work that is performed by the irrigator or that is performed under the irrigator's direction on an irrigation system installed by the irrigator during the warranty period. The irrigator is not responsible for any work performed by any other individual on the same irrigation 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.

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Robert Martinez
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Texas Commission on Environmental Quality
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For further information, please call: (512) 239-1806

SUBCHAPTER H. IRRIGATOR ADVISORY COUNCIL

30 TAC §344.80

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning Irrigation Systems. The amendment is also proposed under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; Texas Occupations Code, §1903.151, concerning Council Membership; Texas Occupations Code, §1903.152, concerning Eligibility of Public Members; Texas Occupations Code, §1903.155, concerning Presiding Officer; Texas Occupations Code, §1903.157, concerning Meetings; Texas Occupations Code, §1903.158, concerning Per Diem; Reimbursement; Texas Occupations Code, §1903.159, concerning Council Duties; and Texas Occupations Code, §1903.251, concerning License Required. The amendment is proposed under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, the amendment is also proposed under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and

THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

The proposed amendment implements TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015 and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, 1903.151, 1903.152, 1903.155, 1903.157, 1903.158, 1903.159, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.80. Irrigator Advisory Council.

(a) The Irrigator Advisory Council is composed of nine members that are appointed by the commission. Appointments to the council will be made without regard to race, creed, sex, religion, or national origin of the appointees. The purpose of the council is to give the commission the benefit of the members' collective business, environmental, and technical expertise and experience with respect to matters relating to landscape irrigation. The council has no executive or administrative powers or duties with respect to the operation of the commission, and all such powers and duties rest solely with the commission.

(b) Six members of the council must be licensed irrigators who are residents of the State of Texas, experienced in the irrigation business, and familiar with irrigation methods and techniques.

(c) Three members must be representatives of the public. A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of irrigation; or

(2) is employed by, participates in the management of, or has, other than as a consumer, a financial interest in a business entity or other organization related to the field of irrigation.

(d) It is grounds for removal from the council by the commission if a member:

(1) does not meet, at the time of the appointment, the qualifications that are required by subsection (b) or (c) of this section for appointment to the council;

(2) does not maintain, during service on the council, the qualifications that are required by subsection (b) or (c) of this section for appointment to the council; or

(3) misses three consecutive regularly scheduled meetings or more than half of all the regularly scheduled meetings in a one-year period.

(e) The members of the council serve staggered six-year terms, with the terms expiring February 1 of each odd-numbered year. For cases where a council member cannot finish their term, the replacement member will serve the remainder of the term.

(f) A member of the council is entitled to per diem as appropriated by the Texas Legislature for each day that the member engages in the business of the council. A member is entitled to reimbursement for travel expenses, including expenses for meals and lodging, as provided for in the General Appropriations Act.

(g) The council shall hold meetings at the call of the commission or chairman.

(h) A majority of the council constitutes a quorum for conducting business.

(i) The council will elect a chairman by a majority vote.

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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Robert Martinez
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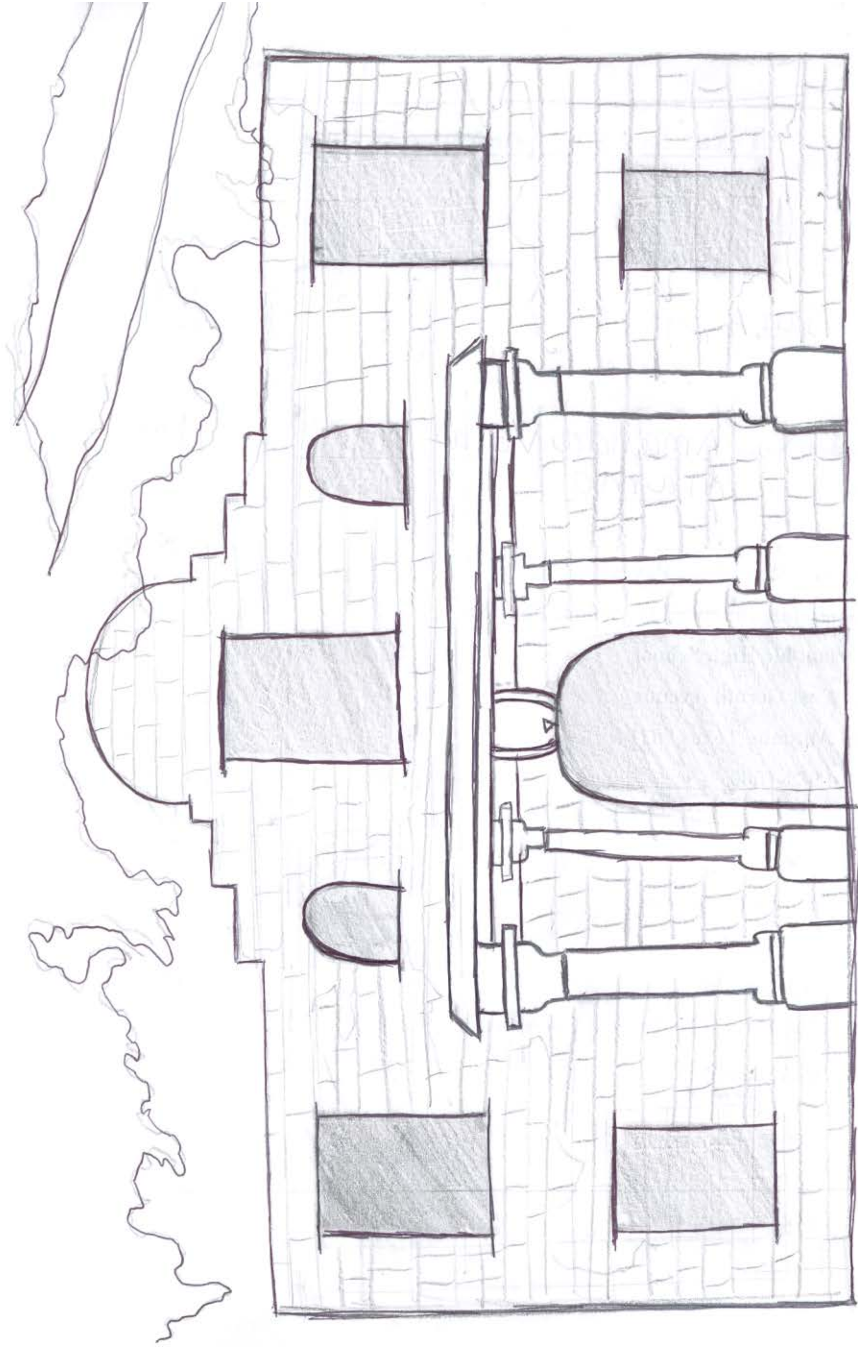


WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 80. COMPLAINTS

22 TAC §80.2

Proposed repeal of §80.2, published in the July 12, 2019, issue of the *Texas Register* (44 TexReg 3506), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on January 14, 2020.

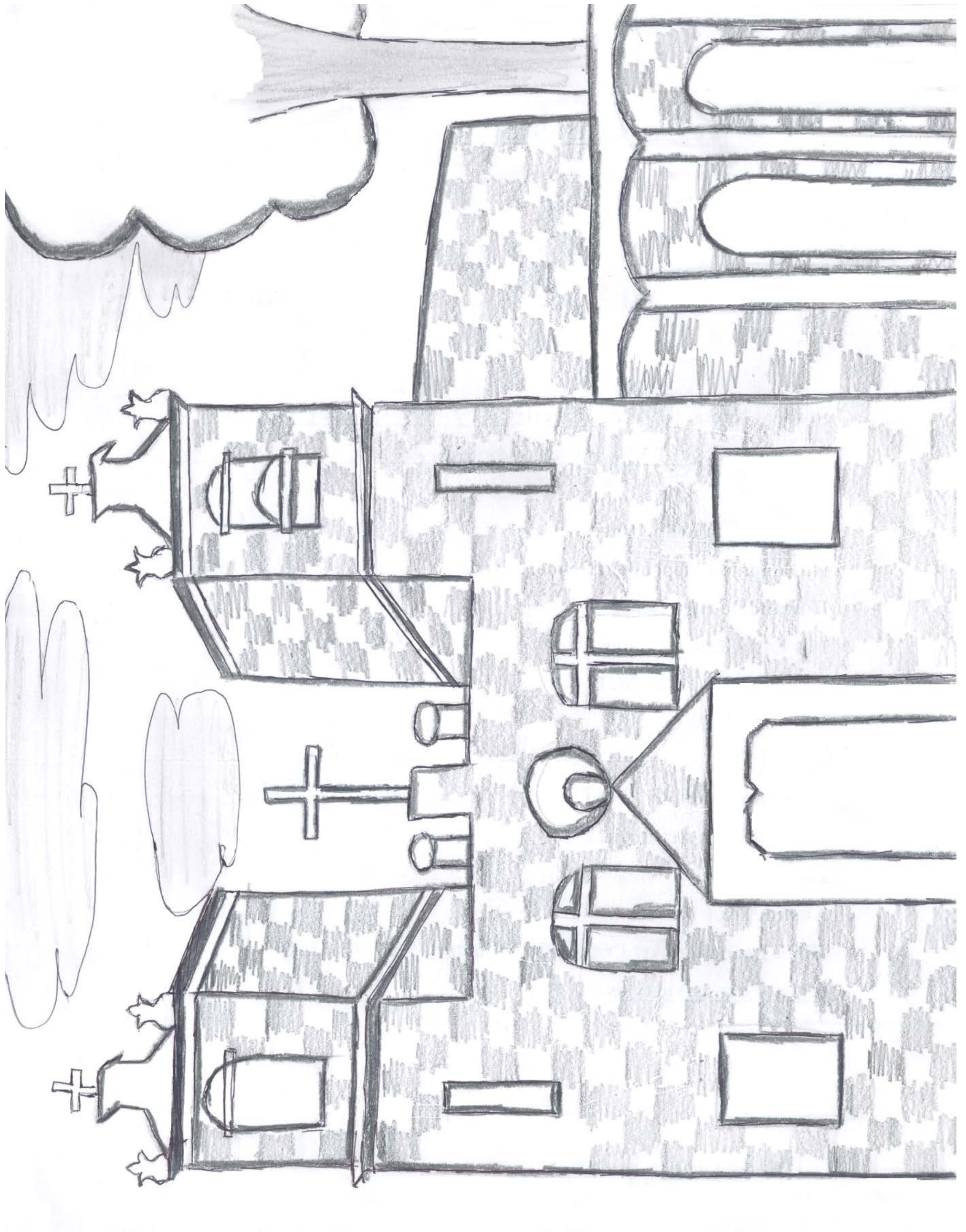
TRD-202000132

22 TAC §80.2

Proposed new §80.2, published in the July 12, 2019, issue of the *Texas Register* (44 TexReg 3507), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on January 14, 2020.

TRD-202000133



Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER E. POST AWARD AND ASSET MANAGEMENT REQUIREMENTS

10 TAC §§10.400 - 10.408

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 10, Subchapter E, §§10.400 - 10.408, Post Award and Asset Management Requirements without changes as published in the October 25, 2019, issue of the *Texas Register* (44 TexReg 6091). The repeal will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

The Department has analyzed this 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.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous re-adoption making changes to an existing activity, concerning the post award activities of Low Income Housing Tax Credit (LIHTC) and other Department-funded multifamily Developments.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does 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 action will repeal an existing regulation but is associated with the simultaneous re-adoption making changes to an existing activity: Post Award and Asset Management Requirements.

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

8. The repeal will not negatively or positively affect this 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.

1. The Department has evaluated this rulemaking and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rulemaking relates to the procedures for the handling of post award and asset management activities of multifamily developments awarded funds through various Department programs. Other than in the case of a small or micro-business that is an owner or a party to one of the Department's properties, no small or micro-businesses are subject to the repeal. If a small or micro-business is such an owner or participant, the new rule provides for a more clear, transparent process for doing so and do not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the rulemaking because this rulemaking is applicable only to the owners or operators of properties in the Department's portfolio, not municipalities.

3. The Department has determined that because this rulemaking relates only to the process in use for the post award and asset management activities of the Department's portfolio, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The 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 repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment, as the repealed rule will be replaced with a similar rule; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..."

Considering that no impact is expected on a statewide basis, there are also no "probable" effects of the new rule on particular geographic regions.

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 repeal is in effect, the public benefit anticipated as a result of the repealed sections will be unaffected as the repealed rule will be replaced with a similar 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 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, as the repealed rule will be replaced with a similar rule.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between October 25, 2019, and November 8, 2019. No comments were received regarding the proposed repeal.

The Board adopted the final order authorizing the repeal on January 16, 2020.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 16, 2020.

TRD-202000159
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 5, 2020
Proposal publication date: October 25, 2019
For further information, please call: (512) 475-1762

10 TAC §§10.400 - 10.408

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 10, Subchapter E, §§10.400 - 10.408, Post Award and Asset Management Requirements, with one technical citation update to the proposed text as published in the October 25, 2019, issue of the *Texas Register* (44 TexReg 6092). The purpose of the new section is to assist in reviewing and ensuring the long-term affordability and safety of multifamily rental housing Developments in the Department's portfolio as required under Tex. Gov't Code §§2306.185 and 2306.186, perform the functions of processing amendments and ownership transfers as required under §§2306.6712 and 2306.6713, and perform essential functions required under various federal program (HOME, NSP, NHTF, Exchange, TCAP) rules and under Section 42 of the Internal Revenue Code. The rules are being republished.

The updating of the rules through the new sections will further clarify language and requirements on which questions are often received, correct references to processes, other rules, forms, or attachments that have been updated, reduce stakeholder reporting burdens of duplicative materials at 10% Test and cost certification submission, implement internal audit recommendations and federal requirements for the cost certification process, create more efficiency in the creation of Special Reserve Account Agreements and release of Special Reserve funds, reduce the number of notification and non-material amendments related to changes in guarantors, revise requirements for annual rent reviews and Community Housing Development Organization (CHDO) certifications to clarify current Department practice and meet federal requirements, add additional notification requirements to Right of First Refusal documentation based on previous public comment and stakeholder input at roundtables, and remove requirements regulating broker fees and Department approvals of brokers under Qualified Contract requirements.

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

The Department has analyzed this 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.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rules are in effect, the new rules do not create or eliminate a government program, but relate to the re-adoption making changes to an existing activity, concerning the post award activities of Low Income Housing Tax Credit (LIHTC) and other Department-funded multifamily Developments.

2. The new rules do not require a change in work that would require the creation of new employee positions. While some additional work by the Department will be required associated with the additional annual rent reviews of TCAP-RF funded Developments, review of CHDO packages for any new CHDO or CHDO certified prior to 2016, review of NHTF cost certification forms, and review of additional documentation requested as part of ROFR notification requirements, the Department anticipates handling this additional work with existing staff resources. The rule changes do not reduce work load such that any existing employee positions could be eliminated.

3. The new rule changes do not require additional future legislative appropriations.

4. The new rule changes do not result in an increase in fees paid to the Department. However, the Department does anticipate a nominal decrease in fees paid to the Department through the reduction of requests for non-material amendments to add guarantors where guarantors are also the General Contractors or are only providing guaranties during the construction period.

5. The new rules do not create new regulations, but replace rules being repealed simultaneously to provide for revisions. The new rules can be considered to "expand" certain existing regulations related to Cost Certifications in §10.402(j)(3)(B), Review of Annual Rent Approvals in §10.403, Ownership Transfers in §10.406(f)(2), Right of First Refusal documentation in §10.407(c)(3), and Preliminary Qualified Contract Requests in §10.408(c)(2)(D). All of these additions, other than those made

in the Right of First Refusal documentation, are necessary in order to observe and clarify requirements from the Department's Internal Auditor, certain federal programs, and Tex. Gov't Code. In the case of the additional items added to required documentation under Right of First Refusal, the Department is responding to external comment and input requesting that these items be added in order to further the Department's directive under Tex. Gov't Code §2306.256 of developing policies and implementing a program to preserve affordable housing in the state of Texas. Specifically, external comment was received during the 2019 rules cycle that communicated the concern that ROFR was not being successfully applied and that without robust notification and advertising, TDHCA's notifications of ROFR postings were not adequately reaching prospective, qualified buyers interested in preserving affordable housing that might otherwise terminate its affordability through the Qualified Contract process.

6. The new rules do not repeal an existing regulation but do limit notifications to the Department and the submission of non-amendments for guarantors where guarantors are not long-term parties to the transaction, do remove certain requirements related to broker approvals and fees under Qualified Contract rules, and do revise and update processes and required documentation to remove unnecessary redundancies and promote efficiency for stakeholders and internal staff related to Special Reserve, 10% Test, and Cost Certification requirements.

7. The new rules do not increase or decrease the number of individuals subject to the rule's applicability. Though the new rule in §10.403, Review of Annual HOME/NSP and National Housing Trust Fund Rents, has been revised to specifically include TCAP-RF recipients, TCAP recipients were already previously included in the rule's applicability through the reference to Multifamily Direct Loan funds used as HOME match.

8. The new rules do not negatively or positively affect this 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.

1. The Department has evaluated these rules and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. These rules relate to the procedures for the handling of post award and asset management activities of multifamily Developments awarded funds through various Department programs. Other than in the case of a small or micro-business that is an owner or a party to one of the Department's properties, no small or micro-businesses are subject to the rules. If a small or micro-business is such an owner or participant, the new rules provide for a more clear, transparent process and do not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the new rules because these rules are applicable only to the owners or operators of properties in the Department's portfolio, not municipalities.

3. The Department has determined that because these rules relate only to the process in use for the post award and asset management activities of the Department's portfolio, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rules do not contemplate nor 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 new rules as to their possible effect on local economies and has determined that for the first five years the new rules are is in effect there will be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule. Additionally, because these rules only provide for administrative processes required of properties in the Department's portfolio, no activities under this rule will support additional local employment opportunities. Alternatively, the rules also do not cause any negative impact on employment.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that no impact is expected on a statewide basis, there are also no "probable" effects of the new rules on particular geographic regions.

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 new sections are in effect, the public benefit anticipated as a result of the new rule sections will be increased efficiency and clarity in post award requirements as well as more robust notifications to local governments, housing authorities, and tenant associations when Owners of Developments with a LURA including a Right of First Refusal requirement submit a notice of intent to sell and post for ROFR. The possible economic cost to individuals required to comply with the new sections will be the nominal difference in the cost of materials and/or staff time between providing a letter or emailed notice of intent to tenants at the Development and the Department (along with its list of qualified buyers) and providing additional letters or emailed notices of intent under the new rules to additional tenant organizations, mayors or elected members of the governing body of the municipalities in which the Development is located as applicable, the presiding officer of the governing body of the county in which the Development is located, and the local housing authority.

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 new sections are in effect, enforcing or administering the new rules does not have any foreseeable implications related to costs or revenues of the state or local government, as the costs to administer any additional requirements will potentially be offset by efficiency gains in other revised processes and will otherwise be absorbed by current Department resources.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between October 25, 2019, and November 8, 2019. Comments regarding the proposed new rules were accepted in writing and e-mail with comments received from: (1) Lauren Loney, Advocacy Co-Director for Texas Housers, (2) Sandy Hoy, General Counsel for the Texas Apartment Association (TAA), and (3) Tillie Croxdale, Real Estate Project Manager for Foundation Communities. Comments were only received on §10.402(b) - Housing Tax Credit and Tax Exempt Bond Developments,

Determination Notices, §10.402(e)(1) - Post Bond Closing Documentation Requirements, §10.404(d)(4) - Special Reserve Accounts, §10.406(f)(2) - Ownership Transfers, Nonprofit Organizations, and §10.407(c) - Right of First Refusal, Required Documentation. One internal technical correction was made, which relates to the correction of a citation reference in §10.403 - Review of HOME, NSP, TCAP-RF, and National Housing Trust Fund Rents, Applicability.

§10.402(b) - Housing Tax Credit and Tax Exempt Bond Developments, Determination Notices

COMMENT SUMMARY: Commenter (2) stated that TAA had concerns about the Board's ability to extend the expiration date of the notice for good cause which could result in a Development Owner missing out on participation in the program through a delay that was no fault of their own. The Commenter proposed the following change to the language:

"The Determination Notice expiration date may not be extended unless the Board determines that any delay was due to circumstances beyond the control of the Development Owner. The Determination Notice will be rescinded if the Tax Exempt Bonds are not closed within the timeframe provided for by the Board on its approval of the Determination Notice, by the expiration of the Certificate of Reservation associated with the Determination Notice, or if there are material changes to the financing or Development as determined by the Department pursuant to its rules and any conditions of approval included in the Board approval or underwriting report...."

STAFF RESPONSE: To provide an extension of the Determination Notice expiration date would be to extend the 30-day timeframe by which an Applicant has to return the required fees and documentation due with the Determination Notice. Staff removed the language regarding the ability for the Board to extend such date in part to be consistent with the treatment of Commitment Notices for Competitive HTC awards and because it would be difficult, if not impossible, to present such an item to the Board before the expiration date in the Determination Notice. Should an Applicant not meet the requirements of the Determination Notice within the 30-day timeframe, then it would likely result in the Applicant's ability to appeal which would ultimately be brought before the Board. The change is considered a technical correction related to updating how the consideration of an extension would take place and therefore staff recommends no change to the rule section.

§10.402(e)(1) - Post Bond Closing Documentation Requirements

COMMENT SUMMARY: Commenter (3) asked whether Fair Housing Trainers will be able to update their training certificates to conform with TDHCA requirements and, if not, whether the change in language will present an issue during Asset Management review.

STAFF RESPONSE: Staff added the specific language "attended and passed" in response to questions received last year during the 10% test reviews, at which point staff was asked by an external party whether a statement or certification from the fair housing training provider would be accepted if the training had been taken but had not been passed. However, the RFQ for acceptable training providers requires that a certificate be provided only in the event that a class is passed by a training participant. Therefore, Asset Management staff will continue to assume that the provision of such a certificate will demonstrate a passing score on required material. Although trainers may wish to make such changes to their provided certificates and the Department generally supports this idea, the Department is not currently requiring such changes and will continue to enforce its RFQ criteria for review and approval of Fair Housing training providers. Staff recommends no change to the rule section.

§10.403 - Review of HOME, NSP, TCAP-RF, and National Housing Trust Fund Rents, Applicability

COMMENT SUMMARY: Staff noticed prior to routing the rule for adoption that this section of rule refers to an inaccurate citation reference. It references a citation as 24 CFR §92.252(d)(4), but it appears that it should be 24 CFR §92.252(d)(2). The section previously read: "The Department is also required by 24 CFR §92.219 and §92.252(d)(4) to approve rents where Multifamily Direct Loan funds are used as HOME match." The second citation has been updated as stated above.

STAFF RESPONSE: Staff recommends the above technical correction to the rule section.

§10.404(d)(4) - Special Reserve Account

COMMENT SUMMARY: Commenter (1) made comments in support of staff's rule change to the Special Reserve Account section as a minimum for what a property should be required to do to connect residents to the underused source of special reserve funding. The commenter requested that the issue be made the subject of future roundtables or Committee Meetings in order to make funds more readily available to tenants.

STAFF RESPONSE: Staff thanks the Commenter for support of the rule change and will look forward to bringing this topic forward for discussion and consideration during next year's rule cycle. Staff recommends no change to the rule section.

§10.406(f)(2) - Ownership Transfers, Nonprofit Organizations

COMMENT SUMMARY: Commenter (3) stated that after an investor exits the ownership structure at the end of 15 years, Foundation Communities (FC) will typically transfer ownership of a property to an FC affiliate nonprofit entity with a tax exempt status under Foundation Communities with a common board of directors and believes that the Community Housing Development Organization (CHDO) exemption should extend to these affiliates. The commenter suggested the below language:

(2) If the LURA requires ownership or material participation in ownership by a nonprofit organization or CHDO, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA. If the transferee has been certified as a CHDO by TDHCA prior to 2016 or has not previously been certified as a CHDO by TDHCA, a new CHDO certification package must be submitted for review. If the transferee was certified as a CHDO by TDHCA after 2016, provided no new federal guidance or rules concerning CHDO have been released and the proposed ownership structure at the time of review meets the requirements in 24 CFR Part 92, the CHDO may instead submit a CHDO Self-Certification form with the Ownership Transfer package. A nonprofit affiliate of a certified CHDO with a common board of directors and similar exempt purpose will be considered a certified CHDO.

STAFF RESPONSE: While staff understands the nature of the request, the HOME Final Rule Definitions in 24 CFR §§92.2 and 92.300 contain specific provisions that must be met in order for an entity to qualify as a CHDO (including but not limited to items such as meeting specific requirements for financial accountability, having paid staff, and having a history of community service

over a specific period of time). As a recipient of Federal funds, TDHCA reviews entities on a case by case basis to determine whether these requirements are met by an entity, and cannot make the blanket statement recommended by the commenter. Staff recommends no change to the rule section.

§10.407(c) - Right of First Refusal, Required Documentation

COMMENT SUMMARY: Commenters (1) and (3) made comments in support of staff's changes to include a more robust notification requirement for the Development's offering a Right of First Refusal (ROFR) under their Land Use Restriction Agreements (LURAs). Commenter (1) stated that such comprehensive notice requirements as those proposed have been critical to state and local affordable housing preservation efforts across the country. Commenter (3) stated that the additional notification requirements are a critical aspect of an effective preservation strategy. Alternatively, Commenter (2) was not in support of these changes and raised concerns about the revisions to the notice requirements and stated that the rule dramatically increases the scope and volume of people and parties that must be contacted in the event of a sale and provided information about a ROFR purchase. In addition the Commenter stated that having to research such various parties and send emails would be a significant amount of work and there is no way to know whether any such parties will have an interest or the funds necessary to purchase a property. The Commenter stated that it makes more sense for TDHCA to rely upon its existing systems to notify potential buyers such as their website and email subscriber list.

STAFF RESPONSE: While Staff does not disagree with the fact that the new notice requirements may add a small amount of one-time additional work and effort to the process of submitting a ROFR package for review (as described in the proposed rule preamble), it also seems apparent based on community feedback during the rules cycle and the Asset Management round table discussions that while Commenter (2) finds the current practice acceptable, other community members and external stakeholders (including Commenters 1 and 3) do not. Because the Right of First Refusal is a provision that largely depends on qualified entities having an awareness of an Owner's intent to sell, staff believes it is prudent to widen the scope of parties to be notified to ensure that the right of first refusal extended under IRS Code can be adequately accessed by intended parties. Staff also considers that providing a notice to external parties rather than assuming all external stakeholders and community members know where to access listings on the TDHCA website and how to join the appropriate TDHCA listserv will assist in limiting potential unintended barriers to the negotiation process. Staff recommends no change to the rule section.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted new sections affect no other code, article, or statute.

§10.400. Purpose.

(a) The purpose of this subchapter is to establish the requirements governing the post award and asset management activities associated with awards of multifamily Development assistance pursuant to Tex. Gov't Code, Chapter 2306 and its regulation of multifamily funding provided through the Texas Department of Housing and Community Affairs (the "Department") as authorized by the legislature. This subchapter is designed to ensure that Developers and Development Owners of low-income Developments that are financed or otherwise funded through the Department maintain safe, decent and affordable housing for the term of the affordability period. Therefore, unless otherwise indicated in the specific section of this subchapter, any uncorrected issues of noncompliance outside of the corrective action period or outstanding fees (related to the Development subject to the request) owed to the Department, must be resolved to the satisfaction of the Department before a request for any post award activity described in this subchapter will be acted upon.

(b) The capitalized terms in this subchapter shall have the meaning as defined in this title in Chapter 1 relating to Administration, Chapter 2 relating to Enforcement, Chapter 10 relating to Uniform Multifamily Rules, Chapter 11 relating to the Qualified Action Plan, Chapter 12 relating to the Multifamily Housing Revenue Bond Rules, Chapter 13 relating to the Multifamily Direct Loan Rule, Tex. Gov't Code Chapter 2306, Internal Revenue Code (the Code) §42, the HOME Final Rule, the NHTF Interim Rule, and other federal or Department rules, as applicable.

§10.401. General Commitment or Determination Notice Requirements and Documentation.

(a) A Commitment or Determination Notice shall not be issued with respect to any Development for an unnecessary amount in accordance with §42(m)(2)(A) or where the cost for the total development, acquisition, construction or rehabilitation exceeds the limitations established by the Department and the Board.

(b) All Commitments or Determination Notices, whether reflected in the Commitment or Determination Notice or not, are made subject to full compliance with all applicable provisions of law and the Department's rules, all provisions of Commitment and Contract, satisfactory completion of underwriting, and satisfactory resolution of any conditions of underwriting, award, and administrative deficiencies.

(c) The Department shall notify, in writing, the mayor, county judge, or other appropriate official of the municipality or county, as applicable, in which the Development is located informing him/her of the Board's issuance of a Commitment Notice, as applicable.

(d) The Department may cancel a Commitment, Determination Notice or Carryover Allocation prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or completion of construction with respect to a Development and/or apply administrative penalties if:

(1) The Applicant, Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure, to meet any of the conditions of such Commitment, Determination Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Application process for the Development;

(2) Any material statement or representation made by the Development Owner or made with respect to the Development Owner or the Development is untrue or misleading;

(3) An event occurs with respect to the Applicant or the Development Owner which would have made the Application ineligible for funding pursuant to Subchapter C of Chapter 11 of this title (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules) if such event had occurred prior to issuance of the Commitment, Determination Notice or Carryover Allocation; or

(4) The Applicant, Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure, to comply with this chapter or other applicable Department rules, procedures, or requirements of the Department.

§10.402. Housing Tax Credit and Tax Exempt Bond Developments.

(a) Commitment. For Competitive HTC Developments, the Department shall issue a Commitment to the Development Owner which shall confirm that the Board has approved the Application and state the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) and the determination that the Development satisfies the requirements of this chapter and other applicable Department rules. The Commitment shall expire on the date specified therein, which shall be 30 calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §11.901 of this title (relating to Fee Schedule, Appeals, and other Provisions), and satisfies any conditions set forth therein by the Department. The Commitment expiration date may not be extended.

(b) Determination Notices. For Tax Exempt Bond Developments, the Department shall issue a Determination Notice which shall confirm the Board's determination that the Development satisfies the requirements of this chapter as applicable and other applicable Department rules in accordance with the §42(m)(1)(D) of the Internal Revenue Code (the Code). The Determination Notice shall also state the Department's determination of a specific amount of housing tax credits that the Development may be eligible for, subject to the requirements set forth in the Department's rules, as applicable. The Determination Notice shall expire on the date specified therein, which shall be 30 calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Determination Notice, pays the required fee specified in Chapter 11, Subchapter E of this title, and satisfies any conditions set forth therein by the Department. The Determination Notice expiration date may not be extended. The Determination Notice will be rescinded if the Tax Exempt Bonds are not closed within the timeframe provided for by the Board on its approval of the Determination Notice, by the expiration of the Certificate of Reservation associated with the Determination Notice, or if there are material changes to the financing or Development as determined by the Department pursuant to its rules and any conditions of approval included in the Board approval or underwriting report.

(c) Tax Credit Amount. The amount of tax credits reflected in the IRS Form(s) 8609 may be greater or less than the amount set forth in the Determination Notice based upon the Department's determination as of each building's placement in service. Any increase of tax credits will only be permitted if it is determined necessary by the Department, as required by §42(m)(2)(D) of the Code through the submission of the Cost Certification package. Increases to the amount of tax credits that exceed 110% of the amount of credits reflected in the Determination Notice must be approved by the Board. Increases to the amount of tax credits that do not exceed 110% of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director or designee and are subject to the Credit Increase Fee as described in Chapter 11, Subchapter E of this title (relating to Fee Schedule, Appeals, and other Provisions).

(d) Documentation Submission Requirements at Commitment of Funds. No later than the expiration date of the Commitment (or no later than December 31 for Competitive HTC Applications, whichever is earlier) or Determination Notice, the documentation described in paragraphs (1) - (6) of this subsection must be provided. Failure to provide these documents may cause the Commitment or Determination Notice to be rescinded:

(1) For entities formed outside the state of Texas, evidence that the entity filed a Certificate of Application for foreign qualification in Texas, a Franchise Tax Account Status from the Texas Comptroller of Public Accounts, and a Certificate of Fact from the Office of the Secretary of State. If the entity is newly registered in Texas and the Franchise Tax Account Status or Certificate of Fact are not available, a statement can be provided to that effect;

(2) For Texas entities, a copy of the Certificate of Filing for the Certificate of Formation from the Office of the Secretary of State; a Certificate of Fact from the Secretary of State, and a Franchise Tax Account Status from the Texas Comptroller of Public Accounts. If the entity is newly registered and the Certificate of Fact and the Franchise Tax Account Status are not available, a statement can be provided to that effect;

(3) Evidence that the signer(s) of the Commitment or Determination Notice have sufficient authority to sign on behalf of the Applicant in the form of a corporate resolution which indicates the sub-entity in Control consistent with the entity contemplated and described in the Application;

(4) Evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan;

(5) Evidence of satisfaction of any conditions identified in the Credit Underwriting Analysis Report, any conditions from the Executive Award Review and Advisory Committee as provided for in 10 TAC Chapter 1, Subchapter C (relating to Previous Participation and Executive Award Review and Advisory Committee), or any other conditions of the award required to be met at Commitment or Determination Notice; and

(6) Documentation of any changes to representations made in the Application subject to §10.405 of this subchapter (relating to Amendments and Extensions).

(7) For Applications underwritten with a property tax exemption, documentation must be submitted in the form of a letter from an attorney identifying the statutory basis for the exemption and indicating that the exemption is reasonably achievable, subject to appraisal district review. Additionally, any Development with a proposed Payment in Lieu of Taxes (PILOT) agreement must provide evidence regarding the statutory basis for the PILOT and its terms.

(e) Post Bond Closing Documentation Requirements. Regardless of the issuer of the bonds, no later than 60 calendar days following closing on the bonds, the Development Owner must submit the documentation in paragraphs (1) - (5) of this subsection.

(1) Training certificate(s) from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager has attended and passed at least five hours of Fair Housing training. The certificate(s) must not be older than two years from the date of submission and must verify that all parts or phases of the offered training have been completed; two certificates supplied for the same part or phase of an offered training will not be counted towards the five hour required minimum, even if they were attended on different dates;

(2) A training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineer responsible for certifying compliance with the Department's accessibility and construction standards has attended and passed at least five hours of Fair Housing training. The certificate must not be older than two years from the date of submission and must verify that all parts or phases of the offered training have been completed; two certificates supplied for the same part or phase of an offered training will not be counted towards the five hour required minimum, even if they were attended on different dates;

(3) Evidence that the financing has closed, such as an executed settlement statement;

(4) A confirmation from the Compliance Division evidencing receipt of the CMTS Filing Agreement form pursuant to §10.607(a) of this chapter; and

(5) An initial construction status report consisting of items (1) - (5) of §10.402(h) of this subchapter (relating to Construction Status Reports).

(f) Carryover (Competitive HTC Only). All Developments which received a Commitment, and will not be placed in service and receive IRS Form(s) 8609 in the year the Commitment was issued, must submit the Carryover documentation, in the form prescribed by the Department in the Carryover Manual, no later than the Carryover Documentation Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) of the year in which the Commitment is issued pursuant to §42(h)(1)(C) of the Code.

(1) Commitments for credits will be terminated if the Carryover documentation has not been received by this deadline, unless an extension has been approved. This termination is subject to right of appeal directly to the Board, and if so determined by the Board, immediately upon final termination by the Board, staff is directed to award the credits to other qualified Applicants on the approved waiting list.

(2) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be re-evaluated by the Department for a reduction of credit or change in conditions.

(3) All Carryover Allocations will be contingent upon the Development Owner providing evidence that they have and will maintain Site Control through the 10% Test or through the anticipated closing date, whichever is earlier. For purposes of this paragraph, any changes to the Development Site acreage between Application and Carryover must be addressed by written explanation or, as appropriate, in accordance with §10.405 of this subchapter (relating to Amendments and Extensions).

(4) Confirmation of the right to transact business in Texas, as evidenced by the Franchise Tax Account Status (the equivalent of the prior Certificate of Account Status) from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State must be submitted with the Carryover Allocation.

(g) 10% Test (Competitive HTC Only). No later than July 1 of the year following the submission of the Carryover Allocation Agreement or as otherwise specified in the applicable year's Qualified Allocation Plan, documentation must be submitted to the Department verifying that the Development Owner has expended more than 10% of the Development Owner's reasonably expected basis, pursuant to §42(h)(1)(E)(i) and (ii) of the Code and Treasury Regulations, 26 CFR §1.42-6. The Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - (7) of this subsection, along with all information outlined in the Post Award Activities Manual. Satisfaction of the 10% Test will be contingent upon the submission of the items described in paragraphs (1) - (7) of this subsection as well as all other conditions placed upon the Application in the Commitment. Requests for an extension will be reviewed on a case by case basis as addressed in §10.405(c) of this subchapter and §11.2 of this title, as applicable, and a point deduction evaluation will be completed in accordance with Tex. Gov't Code §2306.6710(b)(2) and §11.9(f) of this title. Documentation to be submitted for the 10% Test includes:

(1) An Independent Accountant's Report and Taxpayer's Basis Schedule form. The report must be prepared on the accounting firm's letterhead and addressed to the Development Owner or an Affiliate of the Development Owner. The Independent Accountant's Report and Taxpayers Basis Schedule form must be signed by the Development Owner. If, at the time the accountant is reviewing and preparing their report, the accountant has concluded that the taxpayer's reasonably expected basis is different from the amount reflected in the Carryover Allocation agreement, then the accountant's report should reflect the taxpayer's reasonably expected basis as of the time the report is being prepared;

(2) Any conditions of the Commitment or Real Estate Analysis underwriting report due at the time of 10% Test submission;

(3) Evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site. The Development Site must be identical to the Development Site that was submitted at the time of Application submission. For purposes of this paragraph, any changes to the Development Site acreage between Application and 10% Test must be addressed by written explanation or, as appropriate, in accordance with §10.405 of this subchapter (relating to Amendments and Extensions);

(4) A current survey or plat of the Development Site, prepared and certified by a duly licensed Texas Registered Professional Land Surveyor. The survey or plat must clearly delineate the flood plain boundary lines and show all easements and encroachments;

(5) For New Construction, Reconstruction, and Adaptive Reuse Developments, a certification from a Third Party civil engineer or architect stating that all necessary utilities will be available at the Development Site and that there are no easements, licenses, royalties, or other conditions on or affecting the Development that would materially or adversely impact the ability to acquire, develop, and operate as set forth in the Application. Copies of supporting documents may be required by the Department;

(6) For the Development Owner and on-site or regional property manager, training certificate(s) from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager attended and passed at least five hours of Fair Housing training. For architects and engineers, training certificate(s) from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineers responsible for certifying compliance with the Department's accessibility and construction standards has attended and passed at least five hours of Fair Housing training. Certifications required under this paragraph must not be older than two years from the date of submission of the 10% Test Documentation, and must verify that all parts or phases of the offered training have been completed; two certificates supplied for the same part or phase of an offered training will not be counted towards the five hour required minimum, even if they were attended on different dates; and

(7) A Certification from the lender and syndicator identifying all known Guarantors. If identified Guarantors have changed from the Guarantors or Principals identified at the time of Application, a non-material amendment may be required in accordance with §10.405 of this subchapter (relating to Amendments and Extensions), and the new Guarantors or Principals must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(h) Construction Status Report (All Multifamily Developments). All multifamily developments must submit a construction status report. Construction status reports shall be due by the tenth day of the month following each reporting quarter's end (January, April, July, and October) and continue on a quarterly basis until the entire Development is complete as evidenced by one of the following: Cer-

tificates of occupancy for each building, the Architect's Certificate(s) of Substantial Completion (AIA Document G704 or equivalent form) for the entire Development, the final Application and Certificate for Payment (AIA Document G702 and G703), or an equivalent form approved for submission by the construction lender and/or investor. For Competitive Housing Tax Credit Developments, the initial report must be submitted no later than October 10th following the year of award (this includes Developments funded with HTC and TDHCA Multifamily Direct Loans), and for Developments awarded under the Department's Multifamily Direct Loan programs only, the initial report must be submitted 90 calendar days after loan closing. For Tax Exempt Bond Developments, the initial construction status report must be submitted as part of the Post Bond Closing Documentation due no later than 60 calendar days following closing on the bonds as described in §10.402(e) of this section (relating to Post Bond Closing Documentation Requirements). The initial report for all multifamily Developments shall consist of the items identified in paragraphs (1) - (6) of this subsection, unless stated otherwise. All subsequent reports shall contain items identified in paragraphs (4) - (6) of this paragraph and must include any changes or amendments to items in paragraphs (1) - (3) if applicable:

(1) The executed partnership agreement with the investor or, for Developments receiving an award only from the Department's Direct Loan Programs, other documents setting forth the legal structure and ownership. If identified Guarantors or Principals of a Guarantor entity were not already identified as a Principal of the Owner, Developer, or Guarantor at the time of Application, a non-material amendment must be requested in accordance with §10.405 of this subchapter, and the new Guarantors and all of its Principals, as applicable, must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee);

(2) The executed construction contract for the General Contractor, prime subcontractor(s) and Affiliates or Related Party subcontractor(s);

(3) The construction loan agreement. If the loan has not closed, the anticipated closing date must be provided and, upon closing, the agreement must be provided to the Department;

(4) The most recent Application and Certificate for Payment (AIA Document G702 and G703) certified by the Architect of Record (or equivalent form approved for submission by the construction lender and/or investor) for the General Contractor, prime subcontractor(s) and Affiliates or Related Party subcontractor(s); and

(5) All Third Party construction inspection reports not previously submitted. If the lender and/or investor does not require third party construction inspection reports, the Development Owner must hire a third party inspector to perform these inspections on a quarterly basis and submit the reports to the Department. Third Party construction inspection reports must include, at a minimum, a discussion of site conditions as of the date of the site visit, current photographs of the construction site and exterior and interior of buildings, an estimated percentage of construction completion as of the date of the site visit, identification of construction delays and other relevant progress issues, if any, and the anticipated construction completion date;

(6) Minority Owned Business Report (HTC only) showing the attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as required and further described in Tex. Gov't Code §2306.6734.

(i) LURA Origination.

(1) The Development Owner must request origination of the HTC LURA as directed in the Post Award Activities Manual. The Department will draft a LURA for the Development Owner that will impose the income and rent restrictions identified in the Development's final underwriting report and other representations made in the Application, including but not limited to specific commitments to provide tenant services, to lease to Persons with Disabilities, and/or to provide specific amenities. After origination, the Department executed LURA and all exhibits and addendums will be sent to the Development Owner to execute and record in the real property records for the county in which the Development is located. A copy of the fully executed, recorded LURA must be returned to the Department no later than the end of the first year of the Credit Period. In general, no Housing Tax Credits are allowed to be issued for a building unless there is a properly executed and recorded LURA in effect at the end of the first year of the Credit Period. Nothing in this section negates a Development Owner's responsibility for full compliance with §42(h)(6) of the Code. The Department will not issue IRS Form(s) 8609 until it receives a copy of the fully executed, recorded LURA.

(2) LURAs for Direct Loan awardees will be prepared by the Department's Legal Division and executed at loan closing.

(j) Cost Certification (Competitive and Non-Competitive HTC, and related activities only). The Department conducts a feasibility analysis in accordance with §42(m)(2)(C)(i)(III) of the Code and Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) to make a final determination on the allocation of Housing Tax Credits. The requirements for cost certification include those identified in paragraphs (1) - (3) of this subsection.

(1) Development Owners must file cost certification documentation no later than January 15 following the first year of the Credit Period, as defined in §42(f)(1) of the Code.

(2) The Department will evaluate the cost certification documentation and notify the Development Owner of any additional required documentation needed to complete the review. The Department reserves the right to request additional documents or certifications as it deems necessary or useful in the determination of the Development's eligibility for a final Housing Tax Credit allocation amount. Any communication issued to the Development Owner pertaining to the cost certification documentation may also be sent to the syndicator.

(3) IRS Form(s) 8609 will not be issued until the conditions as stated in subparagraphs (A) - (G) of this paragraph have been met. The Development Owner has:

(A) Provided evidence that all buildings in the Development have been placed in service by:

(i) December 31 of the year the Commitment was issued;

(ii) December 31 of the second year following the year the Carryover Allocation Agreement was executed; or

(iii) the approved Placed in Service deadline;

(B) Provided a complete final cost certification package in the format prescribed by the Department. As used herein, a complete final cost certification package means a package that meets all of the Department's criteria with all required information and exhibits listed in clauses (i) - (xxxv) of this subparagraph, and pursuant to the Post Award Activities Manual. If any item on this list is determined to be unclear, deficient, or inconsistent with the cost certification review completed by the Department, a Request for Information (RFI) will be sent to the Development Owner.

(i) Owner's signed and notarized Statement of Certification verifying the CPA firm's licenses and validity, including any restrictions;

(ii) Owner Summary & Organization Charts for the Owner, Developer, and Guarantors;

(iii) Evidence of Qualified Nonprofit or CHDO Participation;

(iv) Certification and evidence of Historically Underutilized Business (HUB) Participation;

(v) Development Team List;

(vi) Development Summary with Architect's Certification;

(vii) Development Change Documentation;

(viii) As Built Survey;

(ix) A copy of the fully executed Closing Statement for each parcel of land and/or buildings purchased and included in the Development;

(x) Development Owner's Title Policy for the Development;

(xi) Title Policy Update;

(xii) Placement in Service;

(xiii) Evidence of Placement in Service;

(xiv) Architect's Certification of Completion Date and Date Ready for Occupancy (for Developments located in areas where Certificates of Occupancy (COs) are not issued by a local government or rehabilitation Developments that cannot provide COs);

(xv) Auditor's Certification of Acquisition/Rehabilitation Placement in Service Election;

(xvi) Independent Auditor's Report;

(xvii) Independent Auditor's Report of Bond Financing;

(xviii) Development Cost Schedule;

(xix) Contractor's Application for Final Payment (G702/G703) for the General Contractor, all prime subcontractors, Affiliated Contractors, and Related Party Contractors;

(xx) Additional Documentation of Offsite Costs;

(xxi) Rent Schedule;

(xxii) Utility Allowances;

(xxiii) Annual Operating Expenses;

(xxiv) 30 Year Rental Housing Operating Pro Forma;

(xxv) Current Operating Statement in the form of a trailing twelve month statement;

(xxvi) Current Rent Roll;

(xxvii) Summary of Sources and Uses of Funds;

(xxviii) Final Limited Partnership Agreement with all amendments and exhibits;

(xxix) All Loan Agreements and Promissory Notes (except for Agreements and Notes issued directly by the Department);

(xxx) Architect's Certification of Accessibility Requirements;

(xxxi) Development Owner Assignment of Individual to Compliance Training;

(xxxii) TDHCA Compliance Training Certificate (not older than two years from the date of cost certification submission);

(xxxiii) TDHCA Final Inspection Clearance Letter or evidence of submitted final inspection request to the Compliance Division (IRS Form(s) 8609 will not be issued without a TDHCA Final Inspection Clearance Letter);

(xxxiv) As required by 24 CFR §93.406(b) and the Multifamily Direct Loan Rule §13.11 (relating to Post-Award Requirements), for NHTF Developments layered with HTCs, a separate, additional cost certification form completed by an independent, licensed, certified public accountant of all Development costs (including project costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract; and

(xxxv) Other Documentation as Required, including but not limited to conditions to be satisfied at cost certification as reflected in the Development's latest Underwriting Report;

(C) Informed the Department of and received written approval for all amendments, extensions, and changes in ownership relating to the Development in accordance with §10.405 of this subchapter (relating to Amendments and Extensions) and §10.406 of this subchapter (relating to Ownership Transfers (§2306.6713));

(D) Paid all applicable Department fees, including any past due fees;

(E) Met all conditions noted in the Department underwriting report, Determination Notice, and Commitment;

(F) Corrected all issues of noncompliance, including but not limited to noncompliance status with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject Development, as described in this chapter. Developments in the corrective action period and/or with any uncorrected issues of noncompliance outside of the corrective action period will not be issued IRS Form(s) 8609s until all events of noncompliance are corrected or otherwise approved by the Executive Director or designee;

(G) Completed an updated underwriting evaluation in accordance with Chapter 11, Subchapter D of this title based on the most current information at the time of the review.

§10.403. Review of Annual HOME, NSP, TCAP-RF, and National Housing Trust Fund Rents.

(a) Applicability. For participants of the Department's Multifamily HOME and NSP Direct Loan program, where Commitment of Funds occurred on or after August 23, 2013, the Department is required by 24 CFR §92.252(f) and for all National Housing Trust Fund (NHTF) participants by 24 CFR §93.302(c)(2), to review and approve or disapprove HOME/NSP/NHTF rents on an annual basis. The Department is also required by 24 CFR §92.219 and §92.252(d)(2) to approve rents where Multifamily Direct Loan funds (including TCAP-RF) are used as HOME match. Development Owners must submit documentation for the review of HOME/NSP/NHTF/TCAP-RF rents by no later than July 1st of each year as further described in the Post Award Activities Manual.

(b) Documentation for Review. The Department will furnish a rent approval request packet for this purpose that will include a request

for Development information and an Owner's proposed rent schedule and will require submission of a current rent roll or unit status report, a copy of information used to determine gross Direct Loan rents, and utility allowance information. The Department may request additional documentation to perform a determination, as needed, including but not limited to annual operating statements, market surveys, or other information related to determining whether rents are sufficient to maintain the financial viability of a project or are in compliance with maximum rent limits.

(c) Review Process. Rents will be approved or disapproved within 30 days of receipt of all items required to be submitted by the Development Owner, and will be issued in the form of a signed letter from the Asset Management Division. Development Owners must keep copies of all approval letters on file at the Development site to be reviewed at the time of Compliance Monitoring reviews.

(d) Compliance. Development Owners for whom this section is applicable are subject to compliance under §10.622 of this chapter (relating to Special Rules Regarding Rents and Limit Violations) and may be subject to penalties under §10.625 of this chapter (relating to Events of Noncompliance). Approval of rents by the Asset Management Division will be limited to a review of the documentation submitted and will not guarantee compliance with the Department's rules or otherwise absolve an Owner of any past, current, or future non-compliance related to Department rules, guidance, Compliance Monitoring visits, or any other rules or guidance to which the Development or its Owner may be subject.

§10.404. Reserve Accounts.

(a) Replacement Reserve Account (§2306.186). The Department will require Development Owners to provide regular maintenance to keep housing sanitary, safe and decent by establishing and maintaining a reserve for replacement account for the Development in accordance with Tex. Gov't Code, §2306.186. The reserve account must be established, in accordance with paragraphs (3) - (6) of this subsection, and maintained through annual or more frequent regularly scheduled deposits, for each Unit in a Development of 25 or more rental Units regardless of the amount of rent charged for the Unit. If the Department is processing a request for loan modification or other request under this subchapter and the Development does not have an existing replacement reserve account or sufficient funds in the reserve to meet future capital expenditure needs of the Development as determined by a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in this section, or as indicated by the number or cost of repairs included in a third party Physical Needs Assessment (PNA), the Development Owner will be required to establish and maintain a replacement reserve account or review whether the amount of regular deposits to the replacement reserve account can be increased, regardless of the number of Units at the Development. The Department shall, through cooperation of its divisions responsible for asset management and compliance, ensure compliance with this section. The duties of the Development Owner under this section cease on the date of a change in ownership of the Development; however, the subsequent Development Owner of the Development is subject to the requirements of this section and any additional or revised requirements the Department may impose after reviewing a Development's compliance history, a PNA submitted by the Owner, or the amount of reserves that will be transferred at the time of any property sale.

(1) The LURA requires the Development Owner to begin making annual deposits to the replacement reserve account on the later of the:

(A) Date that occupancy of the Development stabilizes as defined by the First Lien Lender or, in the absence of a First Lien Lender other than the Department, the date the Property is at least 90% occupied; or

(B) The date when the permanent loan is executed and funded.

(2) The Development Owner shall continue making deposits into the replacement reserve account until the earliest of the:

(A) Date on which the owner suffers a total casualty loss with respect to the Development or the date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored;

(B) Date on which the Development is demolished;

(C) Date on which the Development ceases to be used as a multifamily rental property; or

(D) End of the Affordability Period specified by the LURA, or if an Affordability Period is not specified and the Department is the First Lien Lender, then when the Department's loan has been fully repaid or as otherwise agreed by the Owner and Department.

(3) If the Department is the First Lien Lender with respect to the Development or if the establishment of a Reserve Account for repairs has not been required by the First Lien Lender or Bank Trustee, each Development Owner receiving Department assistance for multifamily rental housing shall deposit annually into a separate, Development-specific Reserve Account through the date described in paragraph (2) of this subsection:

(A) For New Construction Developments, not less than $250 per Unit. Withdrawals from such account will be restricted for up to five years following the date of award except in cases in which written approval from the Department is obtained relating to casualty loss, natural disaster, reasonable accommodations, or demonstrated financial hardship (but not for the construction standards required by the NOFA or program regulations); or

(B) For Adaptive Reuse, Rehabilitation and Reconstruction Developments, the greater of the amount per Unit per year either established by the information presented in a Scope and Cost Review in conformance with Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) or $300 per Unit per year.

(4) For all Developments, a PNA must be conducted at intervals that are consistent with requirements of the First Lien Lender, other than the Department. If the Department is the First Lien Lender, or the First Lien Lender does not require a Third Party PNA, a PNA must be conducted at least once during each five year period beginning with the 11th year after the awarding of any financial assistance from the Department. PNAs conducted by the Owner at any time or for any reason other than as required by the Department in the year beginning with the 11th year of award must be submitted to the Department for review within 30 days of receipt by the Owner.

(5) Where there is a First Lien Lender other than the Department or a Bank Trustee as a result of a bond trust indenture or tax credit syndication, the Development Owner shall comply with the lesser of the replacement reserve requirements of the First Lien Lender or the requirements in paragraph (3) of this subsection. In addition, the Department should be listed as a party to receive notice under any replacement reserve agreement entered into by the Development Owner. The Development Owner shall submit on an annual basis, within the Department's required Development Owner's Financial Certification packet, requested information regarding:

(A) The reserve for replacement requirements under the first lien loan agreement (if applicable) referencing where those requirements are contained within the loan documents;

(B) Compliance with the first lien lender requirements outlined in subparagraph (A) of this paragraph;

(C) If the Owner is not in compliance with the lender requirements, the Development Owner's plan of action to bring the Development in compliance with all established reserve for replacement requirements; and

(D) Whether a PNA has been ordered and the Owner's plans for any subsequent capital expenditures, renovations, repairs, or improvements.

(6) Where there is no First Lien Lender but the allocation of funds by the Department and Tex. Gov't Code, §2306.186 requires that the Department oversee a Reserve Account, the Development Owner shall provide at their sole expense an escrow agent acceptable to the Department to act as Bank Trustee as necessary under this section. The Department shall retain the right to replace the escrow agent with another Bank Trustee or act as escrow agent at a cost plus fee payable by the Development Owner due to breach of the escrow agent's responsibilities or otherwise with 30 days prior notice of all parties to the escrow agreement.

(7) Penalties and Non-Compliance. If the Development Owner fails to comply with the replacement reserve account requirements stated herein, and request for extension or waiver of these requirements is not approved by the Department, then a penalty of up to $200 per dwelling Unit in the Development and/or characterization of the Development as being in default with this requirement, may be imposed:

(A) A Reserve Account, as described in this section, has not been established for the Development;

(B) The Department is not a party to the escrow agreement for the Reserve Account, if required;

(C) Money in the Reserve Account:

(i) is used for expenses other than necessary repairs, including property taxes or insurance; or

(ii) falls below mandatory annual, monthly, or Department approved deposit levels;

(D) Development Owner fails to make any required deposits;

(E) Development Owner fails to obtain a Third-Party PNA as required under this section or submit a copy of a PNA to the Department within 30 days of receipt; or

(F) Development Owner fails to make necessary repairs in accordance with the Third Party PNA or §10.621 of this chapter (relating to Property Condition Standards).

(8) Department-Initiated Repairs. The Department or its agent may make repairs to the Development within 30 calendar days of written notice from the Department if the Development Owner fails to complete necessary repairs indicated in the submitted PNA or identified by Department physical inspection. Repairs may be deemed necessary if the Development Owner fails to comply with federal, state, and/or local health, safety, or building code requirements. Payment for necessary repairs must be made directly by the Development Owner or through a replacement Reserve Account established for the Development under this section. The Department or its agent will be allowed to produce a Request for Bids to hire a contractor to complete and oversee necessary repairs. On a case-by-case basis, the Department may determine that the money in the Reserve Account may be used for expenses other than necessary repairs, including property taxes or insurance, if:

(A) Development income before payment of return to Development Owner or deferred Developer Fee is insufficient to meet operating expense and debt service requirements; or

(B) Development income after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is insufficient to fund the mandatory deposit levels.

(C) In the event of subparagraph (A) or (B) of this paragraph, funds withdrawn must be replaced from Cash Flow after payment of Operating Expenses but before return to Development Owner or deferred Developer Fee until the mandatory deposit level is replenished. The Department reserves the right to re-evaluate payments to the reserve, increase such payments or require a lump sum deposit to the reserve, or require the Owner to enter into a separate Reserve Agreement if necessary to protect the long term feasibility of the Development.

(9) Exceptions to Replacement Reserve Account. This section does not apply to a Development for which the Development Owner is required to maintain a Reserve Account under any other provision of federal or state law.

(10) In the event of paragraph (7) or (8) of this subsection, the Department reserves the right to require by separate Reserve Agreement a revised annual deposit amount and/or require Department concurrence for withdrawals from the Reserve Account to bring the Development back into compliance. Establishment of a new Bank Trustee or transfer of reserve funds to a new, separate and distinct account may be required if necessary to meet the requirements of such Agreement. The Agreement will be executed by the Department, Development Owner, and financial institution representative.

(b) Lease-up Reserve Account. A lease-up reserve funds start-up expenses in excess of the revenue produced by the Development prior to stabilization. The Department will consider a reasonable lease-up reserve account based on the documented requirements from a third-party lender, third-party syndicator, or the Department. During the underwriting at the point of the Cost Certification review, the lease-up reserve may be counted as a use of funds only to the extent that it represents operating shortfalls net of escrows for property taxes and property insurance. Funds from the lease-up reserve used to satisfy the funding requirements for other reserve accounts may not be included as a use of funds for the lease-up reserve. Funds from the lease-up reserve distributed or distributable as cash flow to the Development Owner will be considered and restricted as developer fee.

(c) Operating Reserve Account. At various stages during the application, award process, and during the operating life of a Development, the Department will conduct a financial analysis of the Development's total development costs and operating budgets, including the estimated operating reserve account deposit required. For example, this analysis typically occurs at application and cost certification review. The Department will consider a reasonable operating reserve account deposit in this analysis based on the needs of the Development and requirements of third-party lenders or investors. The amount used in the analysis will be the amount described in the project cost schedule or balance sheet, if it is within the range of two to six months of stabilized operating expenses plus debt service. The Department may consider a greater amount proposed or required by the Department, any superior lien lender, or syndicator, if the detail for such greater amount is reasonable and well documented. Reasonable operating reserves in this chapter do not include capitalized asset management fees, guaranty

reserves, or other similar costs. In no instance will operating reserves exceed 12 months of stabilized operating expenses plus debt service (exclusive of transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Operating reserves are generally for the term of the permanent loan. In no instance will operating reserves released within five years be included as a cost.

(d) Special Reserve Account. If the funding program requires or allows for the establishment and maintenance of a Special Reserve Account for the purpose of assisting residents at the Development with expenses associated with their tenancy, this will be established in accordance with a written agreement with the Development Owner.

(1) The Special Reserve Account is funded through a one-time payment or annually through an agreed upon percentage of net cash flow generated by the Development, excess development funds at completion as determined by the Department, or as otherwise set forth in the written agreement. For the purpose of this account, net cash flow is defined as funds available from operations after all expenses and debt service required to be paid have been considered. This does not include a deduction for depreciation and amortization expense, deferred developer fee payment, or other payments made to Related Parties or Affiliates, except as allowed by the Department for property management. Proceeds from any refinancing or other fund raising from the Development will be considered net cash flow for purposes of funding the Special Reserve Account unless otherwise approved by the Department. The account will be structured to require Department concurrence for withdrawals.

(2) All disbursements from the account must be approved by the Department.

(3) The Development Owner will be responsible for setting up a separate and distinct account with a financial institution acceptable to the Department. A Special Reserve Account Agreement will be drafted by the Department and executed by the Department and the Development Owner.

(4) The Development Owner must make reasonable efforts to notify tenants of the existence of the Special Reserve Account and how to submit an application to access funds from the Special Reserve. Documentation of such efforts must be kept onsite and made available to the Department upon request.

(e) Other Reserve Accounts. Additional reserve accounts may be recognized by the Department as necessary and required by the Department, superior lien lender, or syndicator.

§10.405. Amendments and Extensions.

(a) Amendments to Housing Tax Credit (HTC) Application or Award Prior to Land Use Restriction Agreement (LURA) recording or amendments that do not result in a change to the LURA (§2306.6712). The Department expects the Development Owner to construct or rehabilitate, operate, and own the Development consistent with the representations in the Application. The Department must receive notification of any amendments to the Application. Regardless of development stage, the Board shall re-evaluate a Development that undergoes a material change, as identified in paragraph (3) of this subsection at any time after the initial Board approval of the Development (§2306.6731(b)). The Board may deny an amendment request and subsequently may rescind any Commitment or Determination Notice issued for an Application, and may reallocate the credits to other Applicants on the waiting list.

(1) Requesting an amendment. The Department shall require the Applicant to file a formal, written request for an amendment to the Application. Such request must include a detailed explanation of the amendment request and other information as determined to be necessary by the Department, and the applicable fee as identified in Chapter 11, Subchapter E of this title (relating to Fee Schedule) in order to be received and processed by the Department. Department staff will evaluate the amendment request to determine if the change would affect an allocation of Housing Tax Credits by changing any item that received points, by significantly affecting the most recent underwriting analysis, or by materially altering the Development as further described in this subsection.

(2) Notification Items. The Department must be notified of the changes described in subparagraphs (A) - (F) of this paragraph. The changes identified are subject to staff agreement based on a review of the amendment request and any additional information or documentation requested. Notification items will be considered satisfied when an acknowledgment of the specific change(s) is received from the Department.

(A) Changes to Development Site acreage required by the City or other local governmental authority, or changes resulting from survey discrepancies, as long as such change does not also result in a modification to the residential density of more than 5%;

(B) Minor modifications to the site plan that will not significantly impact development costs, including, but not limited to, relocation or rearrangement of buildings on the site (as long as the number of residential and non-residential buildings remains the same), and movement, addition, or deletion of ingress/egress to the site;

(C) Increases or decreases in net rentable square footage or common areas that do not result in a material amendment under paragraph (4) of this subsection;

(D) Changes in amenities that do not require a change to the recorded LURA and do not negatively impact scoring, including changes to outdated amenities that could be replaced by an amenity with equal benefit to the resident community;

(E) Changes in Developers or Guarantors (notifications for changes in Guarantors that are also the General Contractor or are only providing guaranties during the construction period are not required) with no new Principals (who were not previously checked by Previous Participation review that retain the natural person(s) used to meet the experience requirement in Chapter 11 of this title (relating to Qualified Allocation Plan)); and

(F) Any other amendment not identified in paragraphs (3) and (4) of this subsection.

(3) Non-material amendments. The Executive Director or designee may administratively approve all non-material amendments, including, but not limited to:

(A) Any amendment that is determined by staff to exceed the scope of notification acknowledgement, as identified in paragraph (2) of this subsection but not to rise to a material alteration, as identified in paragraph (4) of this subsection;

(B) Changes in the natural person(s) used to meet the experience requirement in Chapter 11, §11.204(6) of this title provided that an appropriate substitute has been approved by the Multifamily Division prior to receipt of the amendment request (relating to Required Documentation for Application Submission);

(C) Changes in Developers or Guarantors (excluding changes in Guarantors that are also the General Contractor or are only providing guaranties during the construction period) not addressed in §10.405(a)(2)(E). Changes in Developers or Guarantors will be subject to Previous Participation requirements as further described in Chapter 11 of this title and the credit limitation described in §11.4(a) of this title; and

(D) For Exchange Developments only, requests to change elections made on line 8(b) of the IRS Form(s) 8609 to group buildings together into one or more multiple building projects. The request must include an attached statement identifying the buildings in the project. The change to the election may only be made once during the Compliance Period.

(4) Material amendments. Amendments considered material pursuant to paragraph (4) of this subsection must be approved by the Board. When an amendment request requires Board approval, the Development Owner must submit the request and all required documentation necessary for staff's review of the request to the Department at least 45 calendar days prior to the Board meeting in which the amendment is anticipated to be considered. Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting (§2306.6717(a)(4)). Material Amendment requests may be denied if the Board determines that the modification proposed in the amendment would materially alter the Development in a negative manner or would have adversely affected the selection of the Application in the Application Round. Material alteration of a Development includes, but is not limited to:

(A) A significant modification of the site plan;

(B) A modification of the number of Units or bedroom mix of units;

(C) A substantive modification of the scope of tenant services;

(D) A reduction of 3% or more in the square footage of the Units or common areas;

(E) A significant modification of the architectural design of the Development;

(F) A modification of the residential density of at least 5%;

(G) A request to implement a revised election under §42(g) of the Code prior to filing of IRS Form(s) 8609;

(H) Exclusion of any requirements as identified in Chapter 11, Subchapter B of this title (relating to Site and Development Requirements and Restrictions) and Chapter 11, Subchapter C of this title (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules); or

(I) Any other modification considered material by the staff and therefore required to be presented to the Board as such.

(5) Amendment requests will be denied if the Department finds that the request would have changed the scoring of an Application in the competitive process such that the Application would not have received a funding award or if the need for the proposed modification was reasonably foreseeable or preventable by the Applicant at the time the Application was submitted, unless good cause is found for the approval of the amendment.

(6) This section shall be administered in a manner that is consistent with §42 of the Code. If a Development has any uncorrected issues of noncompliance outside of the corrective action period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department before a request for amendment will be acted upon.

(7) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants identified in the Application and Credit Underwriting Analysis Report at the time of award and as approved by the Board, the procedure described in subparagraphs (A) and (B) of this paragraph will apply to the extent such request is not prohibited based on statutory and/or regulatory provisions:

(A) For amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence noted in either clause (i) or (ii) of this subparagraph must be presented to the Department to support the amendment.

(i) In the event of a request to implement (rent to a household at an income or rent level that exceeds the approved AMI limits established by the minimum election within the Development's Application or LURA) a revised election under §42(g) of the Code prior to an Owner's submission of IRS Forms 8609 to the IRS, Owners must submit updated information and exhibits to the Application as required by the Department and all lenders and the syndicator must submit written acknowledgement that they are aware of the changes being requested and confirm any changes in terms as a result of the new election; or

(ii) For all other requests for reductions in the total number of Low-Income Units or reductions in the number of Low-Income Units at any rent or income level, prior to issuance of IRS Forms 8609 by the Department, the lender and syndicator must submit written confirmation that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request; however, any affirmative recommendation to the Board is contingent upon concurrence from Department staff that the Unit adjustment is necessary for the continued financial feasibility of the Development; and

(B) If it is determined by the Department that the loss of low-income targeting points would have resulted in the Application not receiving an award in the year of allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for 24 months from the time that the amendment is approved.

(b) Amendments to the LURA. Department approval shall be required for any amendment to a LURA in accordance with this section. An amendment request shall be submitted in writing, containing a detailed explanation of the request, the reason the change is necessary, the good cause for the change, financial information related to any financial impact on the development, information related to whether the necessity of the amendment was reasonably foreseeable at the time of application, and other information as determined to be necessary by the Department, along with any applicable fee as identified in Chapter 11, Subchapter E of this title (relating to Fee Schedule, Appeals, and other Provisions). The Department may order or require the Development Owner to order a Market Study or appraisal at the Development Owner's expense. If a Development has any uncorrected issues of non-compliance outside of the corrective action period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department, before a request for amendment will be acted upon. The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), 24 CFR Part 93 (NHTF Interim Rule), Chapter 1 of this title (relating to Administrative Requirements), Chapter 11 of this title (relating to Qualified Allocation Plan), Chapter

12 of this title (relating to Multifamily Housing Revenue Bond Rules), Chapter 13 of this title (relating to Multifamily Direct Loan Rule), Tex. Gov't Code, Chapter 2306, and the Fair Housing Act. For Tax-Exempt Bond Developments, compliance with their Regulatory Agreement and corresponding bond financing documents. Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraph (3) of this subsection must be followed.

(1) Non-Material LURA Amendments. The Executive Director or designee may administratively approve all LURA amendments not defined as Material LURA Amendments pursuant to paragraph (2) of this subsection. A non-material LURA amendment may include but is not limited to:

(A) HUB participation removal. Removal of a HUB participation requirement will only be processed as a non-material LURA amendment after the issuance of 8609s and requires that the Department find that:

(i) the HUB is requesting removal of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(ii) the participation by the HUB has been substantive and meaningful, or would have been substantive or meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operating of affordable housing; and

(iii) where the HUB will be replaced as a general partner or special limited partner that is not a HUB and will sell its ownership interest, an ownership transfer request must be submitted as described in §10.406 of this subchapter;

(B) A change resulting from a Department work out arrangement as recommended by the Department's Asset Management Division; or

(C) A correction of error.

(2) Material LURA Amendments. Development Owners seeking LURA amendment requests that require Board approval must submit the request and all required documentation necessary for staff's review of the request to the Department at least 45 calendar days prior to the Board meeting at which the amendment is anticipated to be considered. Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. (§2306.6717(a)(4)). The Board must consider the following material LURA amendments:

(A) Reductions to the number of Low-Income Units;

(B) Changes to the income or rent restrictions;

(C) Changes to the Target Population;

(D) The removal of material participation by a Nonprofit Organization as further described in §10.406 of this subchapter;

(E) A change in the Right of First Refusal period as described in amended §2306.6726 of the Tex. Gov't Code;

(F) Any amendment that affects a right enforceable by a tenant or other third party under the LURA; or

(G) Any LURA amendment deemed material by the Executive Director.

(3) Prior to staff taking a recommendation to the Board for consideration, the Development Owner must provide notice and hold a public hearing regarding the requested amendment(s) at least 15 business days prior to the scheduled Board meeting where the request will be considered. Development Owners will be required to submit a copy of the notification with the amendment request. If a LURA amendment is requested prior to issuance of IRS Forms 8609 by the Department, notification must be provided to the recipients described in subparagraphs (A) - (E) of this paragraph. If an amendment is requested after issuance of IRS Forms 8609 by the Department, notification must be provided to the recipients described in subparagraph (A) - (B) of this paragraph.

(A) Each tenant of the Development;

(B) The current lender(s) and investor(s);

(C) The State Senator and State Representative of the districts whose boundaries include the Development Site;

(D) The chief elected official for the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction); and

(E) The county commissioners of the county in which the Development Site is located (if the Development Site is located outside of a municipality).

(4) Contents of Notification. The notification must include, at a minimum, all of the information described in subparagraphs (A) - (D) of this paragraph.

(A) The Development Owner's name, address and an individual contact name and phone number;

(B) The Development's name, address, and city;

(C) The change(s) requested; and

(D) The date, time and location of the public hearing where the change(s) will be discussed.

(5) Verification of public hearing. Minutes of the public hearing and attendance sheet must be submitted to the Department within three business days after the date of the public hearing.

(6) Approval. Once the LURA Amendment has been approved administratively or by the Board, as applicable, Department staff will provide the Development Owner with a LURA amendment for execution and recording in the county where the Development is located.

(c) HTC Extensions. Extensions must be requested if the original deadline associated with Carryover, the 10% Test (including submission and expenditure deadlines), construction status reports, or cost certification requirements will not be met. Extension requests submitted at least 30 calendar days in advance of the applicable deadline will not be required to submit an extension fee as described in §11.901 of this title. Any extension request submitted fewer than 30 days in advance of the applicable deadline or after the applicable deadline will not be processed unless accompanied by the applicable fee. Extension requests will be approved by the Executive Director or designee, unless, at staff's discretion it warrants Board approval due to extenuating circumstances stated in the request. The extension request must specify a requested extension date and the reason why such an extension is required. If the Development Owner is requesting an extension to the Carryover submission or 10% Test deadline(s), a point deduction evaluation will be completed in accordance with Tex. Gov't Code, §2306.6710(b)(2), and §11.9(f) of this title (relating to Factors Affecting Scoring and Eligibility in current and future Application Rounds). Therefore, the Development Owner must clearly describe in their re-

quest for an extension how the need for the extension was beyond the reasonable control of the Applicant/Development Owner and could not have been reasonably anticipated. Carryover extension requests will not be granted an extended deadline later than December 1st of the year the Commitment was issued.

§10.406. Ownership Transfers (§2306.6713).

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice and a completed Ownership Transfer packet, if applicable, to the Department at least 45 calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Except as otherwise provided herein, the Executive Director's prior written approval of any such transfer is required. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section.

(b) Exceptions. The following exceptions to the ownership transfer process outlined herein apply:

(1) A Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new Principals or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval but must be reported to the Department as soon as possible due to the sensitive timing and nature of this decision. In the event the investment limited partner has proposed a new general partner or will permanently replace the general partner, a full Ownership Transfer packet must be submitted.

(3) Changes to the investment limited partner, non-Controlling limited partner, or other non-Controlling partners affiliated with the investment limited partner do not require Executive Director approval. A General Partner's acquisition of the interest of the investment limited partner does not require Executive Director approval, unless some other change in ownership is occurring as part of the same overall transaction.

(4) Changes resulting from foreclosure do not require advance approval but acquiring parties must notify the Department as soon as possible of the revised ownership structure and ownership contact information.

(c) General Requirements.

(1) Any new Principal in the ownership of a Development must be eligible under §11.202 of Subchapter C (relating to Ineligible Applicants and Applications). In addition, Principals will be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(2) Changes in Developers or Guarantors must be addressed as non-material amendments to the application under §10.405 of this subchapter.

(3) To the extent an investment limited partner or its Affiliate assumes a Controlling interest in a Development Owner, such acquisition shall be subject to the Ownership Transfer requirements set forth herein. Principals of the investment limited partner or Affiliate will be considered new Principals and will be reviewed as stated under paragraph (1) of this subsection.

(4) Simultaneous transfer or concurrent offering for sale of the General Partner's and Limited Partner's control and interest will be subject to the Ownership Transfer requirements set forth herein and will trigger a Right of First Refusal, if applicable.

(d) Transfer Actions Warranting Debarment. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure or the Department at risk for financial exposure as a result of non-compliance, staff will refer the matter to the Enforcement Committee for debarment consideration pursuant to §2.401 of this title (relating to Enforcement, Debarment from Participation in Programs Administered by the Department). In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), prior to recommending any new financing or allocation of credits.

(e) Transfers Prior to 8609 Issuance or Construction Completion. Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) an Applicant may request an amendment to its ownership structure to add Principals. The party(ies) reflected in the Application as having Control must remain in the ownership structure and retain Control, unless approved otherwise by the Executive Director. A development sponsor, General Partner or Development Owner may not sell the Development in whole or voluntarily end their Control prior to the issuance of 8609s.

(f) Nonprofit Organizations. If the ownership transfer request is to replace a nonprofit organization within the Development ownership entity, the replacement nonprofit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Nonprofit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Nonprofit Organization that meets the requirements of §42(h)(5) of the Code and Tex. Gov't Code §2306.6706, if applicable, and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) If the LURA requires ownership or material participation in ownership by a nonprofit organization or CHDO, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA. If the transferee has been certified as a CHDO by TDHCA prior to 2016 or has not previously been certified as a CHDO by TDHCA, a new CHDO certification package must be submitted for review. If the transferee was certified as a CHDO by TDHCA after 2016, provided no new federal guidance or rules concerning CHDO have been released and the proposed ownership structure at the time of review meets the requirements in 24 CFR Part 92, the CHDO may instead submit a CHDO Self-Certification form with the Ownership Transfer package.

(3) Exceptions to paragraphs (1) and (2) of this subsection may be made on a case by case basis if the Development (for MFDL) is past its Federal Affordability Period or (for HTC Developments) is past its Compliance Period, was not reported to the IRS as part of the Department's Nonprofit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1) - (5) of this subchapter. The Board must find that:

(A) The selling nonprofit is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(B) The participation by the nonprofit was substantive and meaningful during the full term of the Compliance Period but is no longer substantive or meaningful to the operations of the Development; and

(C) The proposed purchaser is an affiliate of the current Owner or otherwise meets the Department's standards for ownership transfers.

(g) Historically Underutilized Business (HUB) Organizations. If a HUB is the general partner or special limited partner of a Development Owner and it determines to sell its ownership interest, after the issuance of 8609's, the purchaser of that partnership interest or the general or special limited partner is not required to be a HUB as long as the procedure described in §10.405(b)(1) of this chapter (relating to Non-Material LURA Amendments) has been followed and approved.

(h) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances pertaining to the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

(1) A written explanation outlining the reason for the request;

(2) Ownership transfer information, including but not limited to the type of sale, terms of any new financing introduced as a result of the transfer, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

(3) Pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §11.204(13)(A) of Subchapter C of this title (relating to Required Documentation for Application Submission);

(4) A list of the names and contact information for transferees and Related Parties;

(5) Previous Participation information for any new Principal as described in §11.204(13)(B) of this title (relating to Required Documentation for Application Submission);

(6) Agreements among parties associated with the transfer;

(7) Owners Certifications with regard to materials submitted as further described in the Post Award Activities Manual;

(8) Detailed information describing the organizational structure, experience, and financial capacity of any party holding a controlling interest in any Principal or Controlling entity of the prospective Development Owner;

(9) Evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least 30 calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired;

(10) Any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.

(i) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §11.202 of this title (relating to Ineligible Applicants and Applications).

(j) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) In cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) In cases where the general partner is being replaced if the award of credits was made at least five years prior to the transfer request date.

(k) Penalties, Past Due Fees and Underfunded Reserves. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring) and Subchapter G of this chapter (relating to Affirmative Marketing Requirements and Written Policies and Procedures). The Development Owner on record with the Department will be liable for any penalties or fees imposed by the Department (even if such penalty can be attributable to the new Development Owner) unless an ownership transfer has been approved by the Department. In the event a transferring Development has a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PNA or SCR, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer. A PNA or SCR may be requested if one has not already been received under §10.404 of this section (relating to Reserve Accounts).

(l) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by the corresponding ownership transfer fee as outlined in §11.901 of this title (relating to Fee Schedule, Appeals, and other Provisions).

§10.407. Right of First Refusal.

(a) General. This section applies to Development Owners that agreed to offer a Right of First Refusal (ROFR) to a Qualified Entity or as applicable a Qualified Nonprofit Organization, as memorialized in the applicable LURA. For the purposes of this section a Qualified Nonprofit Organization also includes an entity 100% owned by a Qualified Nonprofit Organization pursuant to §42(h)(5)(C) of the Code and operated in a similar manner. The purpose of this section is to provide administrative procedures and guidance on the process and valuation of properties under the LURA. All requests for ROFR submitted to the Department, regardless of existing regulations, must adhere to this process.

(1) The Development Owner may market the Property for sale and sell the Property to a Qualified Entity, or as applicable a Qualified Nonprofit Organization without going through the ROFR process outlined in this section unless otherwise restricted or prohibited and only in the following circumstances:

(A) The LURA includes a 90-day ROFR and the Development Owner is selling to a Qualified Nonprofit Organization;

(B) The LURA includes a two year ROFR and the Development Owner is selling to a Qualified Nonprofit Organization that meets the definition of a Community Housing Development Organization (CHDO) under 24 CFR Part 92, as approved by the Department; or

(C) The LURA includes a 180-day ROFR, and the Development Owner is selling to a Qualified Entity that meets the definition of a CHDO under 24 CFR Part 92, or that is controlled by a CHDO, as approved by the Department. Where the Development Owner is not required to go through the ROFR process, it must go through the ownership transfer process in accordance with §10.406 of this subchapter.

(2) A ROFR request must be made in accordance with the LURA for the Development. If there is a conflict between the Development's LURA and this subchapter, every effort will be made to harmonize the provisions. If the conflict cannot be resolved, requirements in the LURA will supersede this subchapter. If there is a conflict between the Development's LURA and Tex. Gov't Code Chapter 2306, every effort will be made to harmonize the provisions. A Development Owner may request a LURA amendment to make the ROFR provisions in the LURA consistent with Tex. Gov't Code Chapter 2306 at any time.

(3) If a LURA includes the ROFR provision, the Development Owner may not request a Preliminary Qualified Contract (if such opportunity is available under the applicable LURA and §10.408) until the requirements outlined in this section have been satisfied.

(4) The Department reviews and approves all ownership transfers pursuant to §10.406 of this subchapter. Thus, if a proposed purchaser is identified in the ROFR process, the Development Owner and proposed purchaser must complete the ownership transfer process. A Development Owner may not transfer a Development to a Qualified Nonprofit Organization or Qualified Entity that is considered an ineligible entity under the Department's rules. In addition, ownership transfers to a Qualified Entity or as applicable a Qualified Nonprofit Organization pursuant to the ROFR process are subject to Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(5) Satisfying the ROFR requirement does not terminate the LURA or the ongoing application of the ROFR requirement to any subsequent Development Owner.

(6) If there are multiple buildings in the Development, the end of the 15th year of the Compliance Period will be based upon the date the last building(s) began their credit period(s). For example, if five buildings in the Development began their credit periods in 2005 and one in 2006, the 15th year would be 2020. The ROFR process is triggered upon:

(A) The Development Owner's determination to sell the Development to an entity other than as permitted in paragraph (1) of this subsection; or

(B) The simultaneous transfer or concurrent offering for sale of a General Partner's and limited partner's interest in the Development Owner's ownership structure.

(7) The ROFR process is not triggered if a Development Owner seeks to transfer the Development to a newly formed entity:

(A) That is under common control with the Development Owner; and

(B) The primary purpose of the formation of which is to facilitate the financing of the rehabilitation of the Development using assistance administered through a state financing program.

(8) This section applies only to a Right of First Refusal memorialized in the Department's LURA. This section does not authorize a modification of any other agreement between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity. The enforceability of a contractual agreement between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity may be impacted by the Development Owner's commitments at Application and recorded LURA.

(b) Right of First Refusal Offer Price. There are two general expectations of the ROFR offer price identified in the outstanding LURAs. The descriptions in paragraphs (1) and (2) of this subsection do not alter the requirements or definitions included in the LURA but provide further clarification as applicable:

(1) Fair Market Value is established using either a current appraisal (completed within three months prior to the ROFR request and in accordance with §11.304 of this title (relating to Appraisal Rules and Guidelines)) of the Property or an executed purchase offer that the Development Owner would like to accept. In either case the documentation used to establish Fair Market Value will be part of the ROFR property listing on the Department's website. The purchase offer must contain specific language that the offer is conditioned upon satisfaction of the ROFR requirement. If a subsequent ROFR request is made within six months of the previously approved ROFR posting, the lesser of the prior ROFR posted value or new appraisal/purchase contract amount must be used in establishing Fair Market Value;

(2) Minimum Purchase Price, pursuant to §42(i)(7)(B) of the Code, is the sum of the categories listed in (A) and (B) of this paragraph:

(A) The principal amount of outstanding indebtedness secured by the project (other than indebtedness incurred within the five year period immediately preceding the date of said notice); and

(B) All federal, state, and local taxes incurred or payable by the Development Owner as a consequence of such sale. If the Property has a minimum Applicable Fraction of less than one, the offer must take this into account by multiplying the purchase price by the applicable fraction and the fair market value of the non-Low-Income Units. Documentation submitted to verify the Minimum Purchase Price calculation will be part of the ROFR property listing on the Department's website.

(c) Required Documentation. Upon establishing the ROFR offer price, the ROFR process is the same for all types of LURAs. To proceed with the ROFR request, documentation must be submitted as directed in the Post Award Activities Manual, which includes:

(1) ROFR fee as identified in §11.901 of this title (relating to Fee Schedule, Appeals, and other Provisions);

(2) A notice of intent to the Department;

(3) Certification that the Development Owner has provided, to the best of their knowledge and ability, a notice of intent to all additional required persons and entities in subparagraph (A) of this paragraph and that such notice includes, at a minimum the information in subparagraph (B) of this paragraph;

(A) Copies of the letters or emailed notices provided to all persons and entities listed in clauses (i) to (vi) of this subparagraph as described above and applicable to the Development at the time of the submission of the ROFR documentation must be attached to the Certification:

(i) All tenants and tenant organizations, if any, of the Development;

(ii) Mayor of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);

(iii) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(iv) Presiding officer of the Governing Body of the county in which the Development is located;

(v) The local housing authority, if any; and

(vi) All qualified buyers maintained on the Department's list of qualified buyers.

(B) Letters must include, at a minimum, all of the information required in clauses (i) to (vii) of this subparagraph and must not contain any statement that violates Department rules, statute, Code, or federal requirements:

(i) The Development's name, address, city, and county;

(ii) The Development Owner's name, address, individual contact name, phone number, and email address;

(iii) Information about tenants' rights to purchase the Development through the ROFR;

(iv) The date that the ROFR notice period expires;

(v) The ROFR offer price;

(vi) A physical description of the Development, including the total number of Units and total number of Low-Income Units; and

(vii) Contact information for the Department staff overseeing the Development's ROFR application.

(4) Documentation evidencing any contractual ROFR between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity, along with evidence that such Qualified Nonprofit Organization or Qualified Entity is in good standing in the state of its organization;

(5) Documentation verifying the ROFR offer price of the Property:

(A) If the Development Owner receives an offer to purchase the Property from any buyer other than a Qualified Entity or Qualified Nonprofit Organization that the Development Owner would like to accept, the Development Owner may execute a sales contract, conditioned upon satisfaction of the ROFR requirement, and submit the executed sales contract to establish fair market value; or

(B) If the Development Owner of the Property chooses to establish fair market value using an appraisal, the Development Owner must submit an appraisal of the Property completed during the last three months prior to the date of submission of the ROFR request, establishing a value for the Property in compliance with Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) in effect at the time of the request. The appraisal should take into account the existing and continuing requirements to operate the Property under the LURA and any other restrictions that may exist. Department staff will review all materials within 30 calendar days of receipt. If, after the review, the Department does not agree with the fair market value proposed in the Development Owner's appraisal, the Department may order another appraisal at the Development Owner's expense; or

(C) If the LURA requires valuation through the Minimum Purchase Price calculation, submit documentation verifying the calculation of the Minimum Purchase Price as described in subsection (b)(2) of this section regardless of any existing offer or appraised value;

(6) Description of the Property, including all amenities and current zoning requirements;

(7) Copies of all documents imposing income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Property;

(8) A current title commitment or policy not older than six months prior to the date of submission of the ROFR request;

(9) The most recent Physical Needs Assessment, pursuant to Tex. Gov't Code §2306.186(e) conducted by a Third-Party. If the PNA/SCR identifies the need for critical repairs that significantly impact habitability and tenant safety, the identified repairs and replacements must be resolved to the satisfaction of the Department before the Development will be considered eligible to proceed with a Right of First Refusal Request;

(10) Copy of the monthly operating statements, including income statements and balance sheets for the Property for the most recent 12 consecutive months (financial statements should identify amounts held in reserves);

(11) The three most recent consecutive annual operating statements (audited would be preferred);

(12) Detailed set of photographs of the Property, including interior and exterior of representative units and buildings, and the Property's grounds;

(13) Current and complete rent roll for the entire Property; and

(14) If any portion of the land or improvements is leased for other than residential purposes, copies of the commercial leases.

(d) Posting and offers. Within 30 business days of receipt of all required documentation, the Department will review the submitted documents and notify the Development Owner of any deficiencies. During that time, the Department will notify any Qualified Entity or as applicable any Qualified Nonprofit Organization identified by the Development Owner as having a contractual ROFR of the Development Owner's intent to sell. Once any deficiencies are resolved and the Development Owner and Department come to an agreement on the ROFR offer price of the Property, the Department will list the Property for sale on the Department's website and contact entities on the buyer list maintained by the Department to inform them of the availability of the Property at a price as determined under this section. The Department will notify the Development Owner when the Property has been listed. The ROFR posting period commences on the date the Property is posted for sale on the Department's website. During the ROFR posting period, a Qualified Nonprofit Organization or Qualified Entity can submit an offer to purchase as follows:

(1) if the LURA requires a 90 day ROFR posting period with no priority for any particular kind of Qualified Nonprofit Organization or tenant organization, any Qualified Nonprofit Organization or tenant organization may submit an offer to purchase the property.

(2) If the LURA requires a two year ROFR posting period, a Qualified Nonprofit Organization may submit an offer to purchase the Property as follows:

(A) During the first six months of the ROFR posting period, only a Qualified Nonprofit Organization that is a Community Housing Development Organization (CHDO) under 24 CFR Part 92, or that is 100% owned by a CHDO, as approved by the Department, may submit an offer;

(B) During the next six months of the ROFR posting period, only a Qualified Nonprofit Organization as described by Tex. Gov't Code §2306.6706, or that is 100% owned by Qualified Nonprofit Organization as described by Tex. Gov't Code §2306.6706, or a tenant organization may submit an offer; and

(C) During the final 12 months of the ROFR posting period, any Qualified Nonprofit Organization may submit an offer.

(3) If the LURA requires a 180-day ROFR posting period a Qualified Entity may submit an offer to purchase the Property as follows:

(A) During the first 60 days of the ROFR posting period, only a Qualified Entity that is a CHDO under 24 CFR Part 92, or that is controlled by CHDO, as approved by the Department, may submit an offer;

(B) During the second 60 days of the ROFR posting period, only a Qualified Entity as described by Tex. Gov't Code §2306.6706, or that is controlled by Qualified Entity as described by Tex. Gov't Code §2306.6706, or a tenant organization such may submit an offer;

(C) During the final 60 days of the ROFR posting period, any Qualified Entity may submit an offer.

(4) If the LURA does not specify a required ROFR posting timeframe, or, is unclear on the required ROFR posting timeframe, and the required ROFR value is determined by the Minimum Purchase Price method, any Development that received a tax credit allocation prior to September 1, 1997, is required to post for a 90-day ROFR period and any Development that received a tax credit allocation on or after September 1, 1997, and until September 1, 2015, is required to post for a two year ROFR, unless the LURA is amended under §10.405(b), or after September 1, 2015 is required to post for a 180-day ROFR period as described in Tex. Gov't Code, §2306.6726.

(e) Acceptance of offers. A Development Owner may accept or reject any offer received during the ROFR posting period; provided however, that to the extent the LURA gives priority to certain classifications of Qualified Nonprofit Organizations or Qualified Entities to make offers during certain portions of the ROFR posting period, the Development Owner can only negotiate a purchase contract with such classifications of entities during their respective periods. For example, during the CHDO priority period, the Development Owner may only accept an offer from and enter into negotiations with a Qualified Nonprofit Organization or Qualified Entity in that classification. A property may not be transferred under the ROFR process for less than the Minimum Purchase Price, but if the sequential negotiation created by statute yields a higher price, the higher price is permitted.

(f) Satisfaction of ROFR.

(1) A Development Owner that has posted a Property under the ROFR process is deemed to have satisfied the ROFR requirements in the following circumstances:

(A) The Development Owner does not receive any bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(B) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, the failure is determined to not be the fault of the Development Owner, and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(C) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Qualified Nonprofit Organization or Qualified Entity is not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation Review process pursuant to Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(D) An offer from a Qualified Nonprofit Organization or Qualified Entity is received at a price below the posted ROFR offer price, and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period at or above the posted ROFR offer price; or

(2) A Development Owner with a LURA that identifies a specific Qualified Nonprofit Organization or Qualified Entity to be the beneficiary of the ROFR will satisfy the ROFR if:

(A) The identified beneficiary is in existence and conducting business;

(B) The Development Owner offers the Development to the identified beneficiary pursuant to the terms of the ROFR;

(C) If the ROFR includes a priority for a certain type of Qualified Entity (such as a CHDO) to have the first opportunity make an offer to acquire the Development, the identified beneficiary meets such classification; and

(D) The identified entity declines to purchase the Development in writing, and such evidence is submitted to and approved by the Department.

(g) Non-Satisfaction of ROFR. A Development Owner that has posted a Property under the ROFR process does not satisfy the ROFR requirements in the following circumstances:

(1) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), and the Development Owner does not accept the offer;

(2) The LURA identifies a specific Qualified Nonprofit Organization or Qualified Entity to be the beneficiary of the ROFR, and such entity no longer exists or is no longer conducting business and the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and fails to accept any of such other offers;

(3) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, the failure is determined to not be the fault of the Development Owner, the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and then fails to accept any of such other offers;

(4) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, and such failure is determined to be the fault of the Development Owner;

(5) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Qualified Nonprofit Organization or Qualified Entity is not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation Review process pursuant to Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and fails to accept any of such other offers; or

(6) An offer from a Qualified Nonprofit Organization or Qualified Entity is received at a price below the posted ROFR offer price, the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation in), and the Development Owner fails to accept any of such offers.

(h) Activities Following ROFR.

(1) If a Development Owner satisfies the ROFR requirement pursuant to subsection (f)(1) - (2) of this section, it may request a Preliminary Qualified Contract (if such opportunity is available under §10.408) or proceed with the sale to an entity that is not a Qualified Nonprofit Organization or Qualified Entity at or above the ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation).

(2) Following notice that the ROFR requirement has been met, if the Development Owner does not post the Property for Qualified Contract in accordance with §10.408 or sell the Property to an entity that is not a Qualified Nonprofit Organization or Qualified Entity within 24 months of the Department's written indication that the ROFR has been satisfied, the Development Owner must follow the ROFR process for any subsequent transfer.

(3) If the Department determines that the ROFR requirement has not been met during the ROFR posting period, the Owner may not re-post under this provision at a ROFR offer price that is higher than the originally posted ROFR offer price until 24 months has expired from the Department's written indication that the ROFR has not been satisfied. The Development Owner may market the Property for sale and sell the Property to a Qualified Nonprofit Organization or Qualified Entity during this 24 month period in accordance with subsection (a)(1) of this section.

(i) Sale and closing.

(1) Prior to closing a sale of the Property, the Development Owner must obtain Department approval of the transfer through the ownership transfer process in accordance with §10.406 of this chapter (relating to Ownership Transfers (§2306.6713)). The request should include, among other required transfer documents outlined in the Post Award Activities Manual, the final settlement statement and final sales contract with all amendments.

(2) If the closing price is materially less than the ROFR offering price or the terms and conditions of the sale change materially from what was submitted in the ROFR posting, in the Department's sole determination, the Development Owner must go through the ROFR process again with a revised ROFR offering price equal to the reduced closing price or adjusted terms and conditions based upon the revised terms, before disposing of the Property.

(j) Appeals. A Development Owner may appeal a staff decision in accordance with §11.902 of this title (relating to Appeals Process).

§10.408. Qualified Contract Requirements.

(a) General. Pursuant to §42(h)(6) of the Code, after the end of the 14th year of the Compliance Period, the Development Owner of a Development utilizing Housing Tax Credits can request that the allocating agency find a buyer at the Qualified Contract Price. If a buyer cannot be located within one year, the Extended Use Period will expire. This section provides the procedures for the submittal and review of a Qualified Contract Request.

(b) Eligibility. Development Owners who received an award of credits on or after January 1, 2002, are not eligible to request a Qualified Contract prior to the 30 year anniversary of the date the property was placed in service (§2306.185); if the property's LURA indicates a commitment to an Extended Use Period beyond 30 years, the Development Owner is not eligible to request a Qualified Contract until the expiration of the Extended Use Period. Development Owners awarded credits prior to 2002 may submit a Qualified Contract Request at any time after the end of the year preceding the last year of the Initial Affordability Period, provided it is not precluded by the terms of the LURA, following the Department's determination that the Development Owner is eligible. The Initial Affordability Period starts concurrently with the credit period, which begins at placement-in-service or is deferred until the beginning of the next tax year, if there is an election. Unless the Development Owner has elected an Initial Affordability Period longer than the Compliance Period, as described in the LURA, this can commence at any time after the end of the 14th year of the Compliance Period. References in this section to actions which can occur after the 14th year of the Compliance Period shall refer, as applicable, to the year preceding the last year of the Initial Affordability Period, if the Development Owner elected an Initial Affordability Period longer than the Compliance Period.

(1) If there are multiple buildings placed in service in different years, the end of the Initial Affordability Period will be based upon the date the last building placed in service. For example, if five buildings in the Development began their credit periods in 2005 and one began in 2006, the 15th year would be 2020.

(2) If a Development received an allocation in multiple years, the end of the Initial Affordability Period will be based upon the last year of a multiple allocation. For example, if a Development received its first allocation in 2004 and a subsequent allocation and began the credit period in 2006, the 15th year would be 2020.

(c) Preliminary Qualified Contract Request. All eligible Development Owners must file a Preliminary Qualified Contract Request.

(1) In addition to determining the basic eligibility described in subsection (b) of this section, the pre-request will be used to determine that:

(A) The Development does not have any uncorrected issues of noncompliance outside the corrective action period;

(B) There is a Right of First Refusal (ROFR) connected to the Development that has been satisfied;

(C) The Compliance Period under the LURA has expired; and

(2) In order to assess the validity of the pre-request, the Development Owner must submit:

(A) Preliminary Request Form;

(B) Qualified Contract Pre-Request fee as outlined in §11.901 of this title (relating to Fee Schedule);

(C) Copy of all regulatory agreements or LURAs associated with the Property (non-TDHCA);

(D) Copy of a Physical Needs Assessment, conducted by a Third Party, that is no more than 12 months older than the request date. If the PNA identifies the need for critical repairs that significantly impact habitability and tenant safety, the identified repairs and replacements must be resolved to the satisfaction of the Department before the Development will be considered eligible to submit a Qualified Contract Request.

(3) The pre-request will not bind the Development Owner to submit a Request and does not start the One Year Period (1YP). A review of the pre-request will be conducted by the Department within 90 days of receipt of all documents and fees described in paragraph (2) of this subsection. If the Department determines that this stage is satisfied, a letter will be sent to the Development Owner stating that they are eligible to submit a Qualified Contract (QC) Request.

(d) Qualified Contract Request. A Development Owner may file a QC Request any time after written approval is received from the Department verifying that the Development Owner is eligible to submit the Request.

(1) Documentation that must be submitted with a Request is outlined in subparagraphs (A) - (P) of this paragraph:

(A) A completed application and certification;

(B) The Qualified Contract price calculation worksheets completed by a licensed Third-Party certified public accountant (CPA). The CPA shall certify that they have reviewed annual partnership tax returns for all years of operation, loan documents for all secured debt, and partnership agreements. They shall also certify that they are not being compensated for the assignment based upon a predetermined outcome;

(C) A thorough description of the Development, including all amenities;

(D) A description of all income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Development;

(E) A current title report;

(F) A current appraisal with the effective date within six months of the date of the QC Request and consistent with Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy);

(G) A current Phase I Environmental Site Assessment (and Phase II, if necessary) with the effective date within six months of the date of the QC Request and consistent with Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy);

(H) A copy of the most recent Physical Needs Assessment of the property conducted by a Third Party, if different from the assessment submitted during the preliminary qualified contract request, consistent with Chapter 11, Subchapter D of this title;

(I) A copy of the monthly operating statements for the Development for the most recent 12 consecutive months;

(J) The three most recent consecutive annual operating statements (audited would be preferred) for the Development;

(K) A detailed set of photographs of the Development, including interior and exterior of representative units and buildings, and the property's grounds;

(L) A current and complete rent roll for the entire Development;

(M) A certification that all tenants in the Development have been notified in writing of the request for a Qualified Contract. A copy of the letter used for the notification must also be included;

(N) If any portion of the land or improvements is leased, copies of the leases;

(O) The Qualified Contract Fee as identified in §11.901 of this title (relating to Fee Schedule); and

(P) Additional information deemed necessary by the Department.

(2) Unless otherwise directed by the Department pursuant to subsection (g) of this section, the Development Owner shall contract with a broker to market and sell the Property. The Department may, at its sole discretion, notify the Owner that the selected Broker is not approved by the Department. The fee for this service will be paid by the seller, not to exceed 6% of the QC Price.

(3) Within 90 days of the submission of a complete Request, the Department will notify the Development Owner in writing of the acceptance or rejection of the Development Owner's QC Price calculation. The Department will have one year from the date of the acceptance letter to find a Qualified Purchaser and present a QC. The Department's rejection of the Development Owner's QC Price calculation will be processed in accordance with subsection (e) of this section and the 1YP will commence as provided therein.

(e) Determination of Qualified Contract Price. The QC Price calculation is not the same as the Minimum Purchase Price calculation for the ROFR. The CPA contracted by the Development Owner will determine the QC Price in accordance with §42(h)(6)(F) of the Code taking the following into account:

(1) Outstanding indebtedness secured by, or with respect to, the building;

(2) Distributions to the Development Owner of any and all cash flow, including incentive management fees, capital contributions not reflected in outstanding indebtedness or adjusted investor equity, and reserve balance distributions or future anticipated distributions, but excluding payments of any eligible deferred developer fee. These distributions can only be confirmed by a review of all prior year tax returns for the Development;

(3) All equity contributions will be adjusted based upon the lesser of the consumer price index or 5% for each year, from the end of the year of the contribution to the end of year fourteen or the end of the year of the request for a QC Price if requested at the end of the year or the year prior if the request is made earlier than the last year of the month; and

(4) These guidelines are subject to change based upon future IRS Rulings and/or guidance on the determination of Development Owner distributions, equity contributions and/or any other element of the QC Price.

(f) Appeal of Qualified Contract Price. The Department reserves the right, at any time, to request additional information to document the QC Price calculation or other information submitted. If the

documentation does not support the price indicated by the CPA hired by the Development Owner, the Department may engage its own CPA to perform a QC Price calculation and the cost of such service will be paid for by the Development Owner. If a Development Owner disagrees with the QC Price calculated by the Department, a Development Owner may appeal in writing in accordance with §11.901(5) of this title (relating to Fee Schedule). A meeting will be arranged with representatives of the Development Owner, the Department and the CPA contracted by the Department to attempt to resolve the discrepancy. The 1YP will not begin until the Department and Development Owner have agreed to the QC Price in writing. Further appeals can be submitted in accordance with §11.902 of this title (relating to Appeals Process) and Tex. Gov't Code §2306.0321 and §2306.6715.

(g) Marketing of Property. By submitting a Request, the Development Owner grants the Department the authority to market the Development and provide Development information to interested parties. Development information will consist of pictures of the Development, location, amenities, number of Units, age of building, etc. Development Owner or broker contact information will also be provided to interested parties. The Development Owner is responsible for providing staff any requested information to assist with site visits and inspections. Marketing of the Development will continue until such time that a Qualified Contract is presented or the 1YP has expired. Notwithstanding subsection (d)(2) of this section, the Department reserves the right to contract directly with a Third Party in marketing the Development. Cost of such service, including a broker's fee, will be paid for by the existing Development Owner. The Department must have continuous cooperation from the Development Owner. Lack of cooperation will cause the process to cease and the Development Owner will be required to comply with requirements of the LURA for the remainder of the Extended Use Period. Responsibilities of the Development Owner include but are not limited to the items described in paragraphs (1) - (3) of this subsection. The Development Owner must:

(1) Allow access to the Property and tenant files;

(2) Keep the Department informed of potential purchasers; and

(3) Notify the Department of any offers to purchase.

(h) Presentation of a Qualified Contract. If the Department finds a Qualified Purchaser willing to present an offer to purchase the property for an amount at or above the QC Price, the Development Owner may accept the offer and enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property and provide a reasonable time for necessary due diligence and closing of the purchase. If the Development Owner chooses not to accept the QC offer that the Department presents, the QC request will be closed and the possibility of terminating the Extended Use Period through the Qualified Contract process is eliminated; the Property remains bound by the provisions of the LURA for the remainder of the Extended Use Period. If the Development Owner decides to sell the development for the QC Price pursuant to a QC, the purchaser must complete all requirements of an ownership transfer request and be approved by the Department prior to closing on the purchase, but the consummation of such a sale is not required for the LURA to continue to bind the Development for the remainder of the Extended Use Period.

(1) The Department will attempt to procure a QC only once during the Extended Use Period. If the transaction closes under the contract, the new Development Owner will be required to fulfill the requirements of the LURA for the remainder of the Extended Use Period.

(2) If the Department fails to present a QC before the end of the 1YP, the Department will file a release of the LURA and the Development will no longer be restricted to low-income requirements and compliance. However, in accordance with §42(h)(6)(E)(ii) of the Code, for a three year period commencing on the termination of the Extended Use Period, the Development Owner may not evict or displace tenants of Low-Income Units for reasons other than good cause and will not be permitted to increase rents beyond the maximum tax credit rents. Additionally, the Development Owner should submit to the Department a request to terminate the LURA and evidence, in the form of a signed certification and a copy of the letter, to be approved by the Department, that the tenants in the Development have been notified in writing that the LURA will be terminated and have been informed of their protections during the three year time frame.

(3) Prior to the Department filing a release of the LURA, the Development Owner must correct all instances of noncompliance at the Development.

(i) Compliance Monitoring during Extended Use Period. For Developments that continue to be bound by the LURA and remain affordable after the end of the Compliance Period, the Department will monitor in accordance with the applicable requirements in Subchapters F and G of this chapter (relating to Uniform Multifamily Rules).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 16, 2020.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-1762

CHAPTER 27. TEXAS FIRST TIME HOMEBUYER PROGRAM RULE

10 TAC §§27.1 - 27.10

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule without changes to the proposed text as published in the November 22, 2019, issue of the *Texas Register* (44 TexReg 7108). The repeal will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this 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.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the rule governing the Texas First Time Homebuyer Program Rule.

2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does 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 action will repeal an existing regulation, but is associated with a simultaneous re-adoption making changes to the existing procedures for the Texas First time Homebuyer Program.

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

8. The repeal will not negatively or positively affect this 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 this repeal and determined that the 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 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 repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will 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 repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will be no 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 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.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between October 25, 2019, and November 25, 2019. No comments were received regarding the proposed repeal.

The Board adopted the final order authorizing the repeal on January 16, 2020.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed sections affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 16, 2020.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-1762

10 TAC §§27.1 - 27.9

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule with only technical citation changes to the proposed text as published in the November 22, 2019, issue of the *Texas Register* (44 TexReg 7109). The rules will be republished. The purpose of the new sections is to make changes that clarify that 10 TAC Chapter 20, the Single Family Programs Umbrella Rule, does not apply to this program and rule; revise several definitions; remove §27.3, Procedures for Submitting Requests or Inviting Proposals, because the section had referenced the Department releasing requests for proposals for the purchase and sale of Mortgage Loans, which the Department does not do; add Residential Property Standards; clarify that borrower's receiving down payment assistance must repay all or a portion of the assistance no later than upon repayment of the associated first Mortgage Loan, whether due to sale of the property, refinance, or otherwise; clarify that federal income tax recapture provisions are only applicable for Mortgage Loans that are financed with the proceeds of tax-exempt bonds or for which a Mortgage Credit Certificate has been or will be issued; and make other minor technical corrections.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted, because it meets the exceptions described under items (c)(4) and (9) of that section. The rules relate to a program through which the Department accesses federal bond authority to provide affordable housing opportunities to low income Texans under Treasury Regulations §143. The rule also ensures compliance with Tex. Gov't Code, Subchapter MM, Texas First-Time Homebuyer Program. Despite these exceptions, it should be noted that no costs are associated with this action that would have prompted a need to be offset.

The Department has analyzed this 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, Executive Director, has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the re-adoption of this rule which makes changes to the rules that govern the Texas First Time Homebuyer Program.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor will it reduce

work load to a degree that eliminates any existing employee positions.

3. The new rule does not require additional future legislative appropriations.

4. The new rule 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 rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The rule will not limit, expand or repeal an existing regulation but merely revises a rule.

7. The new rule does not increase or decrease the number of individuals to whom this rule applies; and

8. The new rule 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.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the general program guidelines for the First Time Homebuyer Program. The beneficiaries of this program are individual households, therefore no small or micro-businesses are subject to the rule.

3. The Department has determined that because this rule relates only to a revision to a rule that applies to a program for which individual households are the beneficiaries, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor 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 rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates to homebuyer assistance to individual households, not limited to any given community or area within the state; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule relates only to the continuation of the rules in place there are no "probable" effects of the new rule on particular geographic regions.

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 new sections are in effect, the public benefit anticipated as a result of the new rule will be a more updated rule reflecting transparent compliant regulations. There will be no economic cost to any individuals required to comply with the new rule because the activities described by the rule has already been in existence.

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 new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to a process that already exists and is not being significantly revised.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between October 25, 2019, and November 25, 2019. No comments were received regarding the proposed rule and the rule is being adopted with only technical citation changes.

The Board adopted the final order authorizing the rule adoption on January 16, 2020.

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

§27.1. Purpose.

(a) The purpose of the Texas First Time Homebuyer Program is to facilitate the origination of single-family Mortgage Loans for eligible first time homebuyers, and to provide to qualifying homebuyers down payment and closing cost assistance. The Texas First Time Homebuyer Program is administered in accordance with Texas Government Code, Chapter 2306. Chapter 20 of this title (relating to the Single Family Programs Umbrella Rule) does not apply to the activities under this chapter, except if these activities are combined with activities subject to Chapter 20 of this title.

(b) Assistance under this Program is dependent, in part, on the availability of funds. The Department may cease offering all or a part of the assistance available under the program at any time and in its sole discretion.

§27.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context or the Participation Packet indicates otherwise. Other definitions may be found in Texas Government Code, Chapter 2306; Chapter 1 of this title (relating to Administration); and Chapter 2 of this title (relating to Enforcement).

(1) Applicable Median Family Income--The Department's determination, as permitted by Texas Government Code, §2306.123, of the median income of an individual or family for an area using a source or methodology acceptable under federal law or rule. The Applicable Median Family Income, as updated from time to time, may be found on the Department's website (www.tdhca.state.tx.us) in the "Combined Income and Purchase Price Limits Table."

(2) Applicant--A person or persons applying for financing of a Mortgage Loan under the Program.

(3) Areas of Chronic Economic Distress--Those areas in the state, whether one or more, designated from time to time as areas of chronic economic distress by the state and approved by the U.S. Secretaries of Treasury and Housing and Urban Development, respectively, pursuant to §143(j) of the Code.

(4) Average Area Purchase Price--With respect to a Residence financed under the Program, the average purchase price of single-family residences in the statistical area in which the Residence is located which were purchased during the most recent twelve (12) month

period for which statistical information is available, as determined in accordance with §143(e) of the Code.

(5) Code--The Internal Revenue Code of 1986, as amended from time to time.

(6) Contract for Deed Exception--The exception for certain Mortgage Loan eligibility requirements, as provided in the Master Mortgage Origination Agreement, available with respect to a principal residence owned under a contract for deed by a person whose family income is not more than 50% of the area's Applicable Median Family Income.

(7) Federal Housing Administration--A division of the U.S. Department of Housing and Urban Development, also known as FHA.

(8) First Time Homebuyer--A person who has not owned a home during the three (3) years preceding the date on which an application under this program is filed. A person will be considered to have owned a home if the person had a present ownership interest in a home during the three (3) years preceding the date on which the application was filed. In the event there is more than one person applying with respect to a home, each applicant must separately meet this three year requirement.

(9) Master Mortgage Origination Agreement--The contract between the Department and a Mortgage Lender, together with any amendments thereto, setting forth certain terms and conditions relating to the origination and sale of Mortgage Loans by the Mortgage Lender and the financing of such Mortgage Loans by the Department.

(10) Mortgage Lender--the entity, as defined in §2306.004 of the Tex. Gov't Code, that is participating in the Program and signatory to the Master Mortgage Origination Agreement.

(11) Participation Packet--The application submitted to the Department by the proposed Mortgage Lender to participate in the Program.

(12) Program--The Texas First Time Homebuyer Program.

(13) Purchase Price Limit--The Purchase Price Limits published and updated from time to time in the "Combined Income and Purchase Price Limits Table" found on the Department's website equal to 90% of the Average Area Purchase Price, subject to certain exceptions for Targeted Area Loans.

(14) Qualified Veteran Exemption to First Time Homebuyer Requirement--A qualified veteran who has not previously received financing as a first time homebuyer through a single family mortgage revenue bond program is exempt from the requirement to be a first time homebuyer. The veteran must certify that he or she has not previously obtained a Mortgage Loan financed by single family mortgage revenue bonds and is utilizing the veteran exception set forth in §143(d)(2)(D) of the IRS Code. Qualified veterans must also complete a worksheet evidencing qualification as a veteran and provide copies of discharge papers.

(15) Residence--A dwelling in Texas in which an Applicant intends to reside as the Applicant's principal living space. This is intended to have the same meaning as Home as defined in §2306.1071 of the Tex. Gov't Code.

(16) Rural Housing Service--A division of the United States Department of Agriculture, also known as RHS.

(17) Targeted Area--A qualified census tract, as determined in accordance with §6(a)103A-(2)(b)(4) of the Regulations or any successor regulations thereto, an Area of Chronic Economic Distress. Applicants purchasing in Targeted Areas may have higher income and purchase price limits as set forth in the "Combined Income and Purchase Price Limits Table" found on the Department's website.

(18) Targeted area exemption to first time homebuyer requirement--Borrower's purchasing homes in targeted areas financed through the program are exempt from the requirement to be a first time homebuyer and income and purchase price limits may be higher as found in the "Combined Income and Purchase Price Limits Table" located on the Department's website.

(19) United States Department of Veterans Affairs--Also known as VA.

§27.3. Restrictions on Residences Financed and Applicant.

(a) Type of Residence and Number of Units. To be eligible for assistance under the Program an Applicant must apply with respect to a home that is either a new or existing single family residence, new or existing condominium or townhome, or manufactured housing that has been converted to real property in accordance with the Texas Occupations Code, Chapter 1201 or FHA guidelines, as required by the Department. A duplex may be financed under the Program as long as one unit of the duplex is occupied by the Applicant as his or her Residence, and the duplex was first occupied for residential purposes at least five years prior to the closing of the Mortgage Loan.

(b) Homebuyer Education. Each Applicant must complete a Department approved pre-purchase homebuyer education course.

(c) Income Limits. An Applicant applying for a Mortgage Loan must meet Applicable Median Family Income requirements.

(d) Down Payment Assistance. An Applicant meeting the Applicable Median Family Income requirements in subsection (c) of this section may qualify for down payment and closing cost assistance in connection with the Mortgage Loan on a first come, first served basis, subject to availability of funds.

(e) Residential Property Standards. The Residence must meet all standards required by the State of Texas, local jurisdiction, and as required by the Federal Mortgage Lender.

§27.4. Occupancy and Use Requirements.

(a) Occupancy requirement. The Applicant must occupy the property within 60 days after the date of closing as his or her Residence. Borrower's receiving down payment assistance must repay all or a portion of the assistance no later than upon repayment of the associated first Mortgage Loan, whether due to sale of the property, refinance, or otherwise.

(b) Use for a business. Homebuyer may not use more than 15% of the residence in a trade or business (including childcare services) on a regular basis for compensation. If the residence is to be used, in part, for a trade or business, a schematic drawing from an appraiser must be provided.

(c) Borrower may not use the Residence, or any part thereof, as an investment property, rental property, vacation or second home, or recreational home, and shall continue to occupy the Residence as Borrower's principal living space, unless waived by the Executive Director or their designee, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

§27.5. Application Procedure and Requirements for Commitments by Mortgage Lenders.

(a) An Applicant seeking assistance under the Program must first contact a participating Mortgage Lender. A list of participating Mortgage Lenders may be obtained on the Department's website or by contacting the Department.

(b) Applicant shall complete an application with a participating Mortgage Lender.

(c) Application Fees. Fees that may be collected by the Mortgage Lender from the Applicant relating to a Mortgage Loan include:

(1) an appropriate, as determined by the Department, origination fee and/or buyer/seller points; and

(2) all usual and reasonable settlement or financing costs that are permitted to be so collected by FHA , RHS, VA, Freddie Mac or Fannie Mae, as applicable, and other applicable laws, but only to the extent such charges do not exceed the usual and reasonable amounts charged in the area in which the Residence is located. Such usual and reasonable settlement or financing costs shall include an application fee as determined by the Department, the total estimated costs of a credit report on the Applicants and an appraisal of the property to be financed with the Mortgage Loan, title insurance, survey fees, credit reference fees, legal fees, appraisal fees and expenses, credit report fees, FHA insurance premiums, private Mortgage guaranty insurance premiums, VA guaranty fees, VA funding fees, RHS guaranty fees, hazard or flood insurance premiums, abstract fees, tax service fees, recording or registration fees, escrow fees, and file preparation fees.

(d) The Department will determine from time to time, a schedule of fees and charges necessary for expenses and reserves of the housing finance division as set forth in a Board resolution.

(e) The Mortgage Lender must register the Mortgage Loan in accordance with the Department's published procedures.

§27.6. Criteria for Approving Participating Mortgage Lenders.

(a) To be approved by the Department for participation in the program, a Mortgage Lender must meet the requirements in the Participation Packet to be a qualified Mortgage Lender as specified by:

(1) FHA;

(2) RHS;

(3) VA; or

(4) be a lender currently participating in the conventional home lending market for loans originated in accordance with Fannie Mae's and/or Freddie Mac's requirements.

(b) As a condition for participation in the Program, a qualified Mortgage Lender must:

(1) agree to originate Mortgage Loans and assign those loans and related Mortgages and servicing to the Department's master servicer;

(2) originate, process, underwrite, close and fund originated loans; and

(3) be an approved Mortgage Lender with the Program's master servicer.

§27.7. Resale of the Residence.

Mortgage Loans that are financed with the proceeds of tax-exempt bonds, or for which a Mortgage Credit Certificate has been or will be issued, will be subject to federal income tax recapture provisions. Assumption of a Mortgage Loan is allowed under the Program if the new owner meets the Program requirements at the time of the sale of the Residence.

§27.8. Conflicts with Bond Indentures and Applicable Law.

All assistance provided under the Program is funded through or facilitated by the Department's mortgage revenue bond indentures and is subject to changes in the mortgage revenue bond indentures and applicable law. If there is a conflict between this chapter and any bond indenture or applicable law regarding the use of the funds from mortgage revenue bonds, the mortgage revenue bond indenture or applicable law shall control.

§27.9. Waiver.

The Board, in its discretion and within the limits of federal and state law, may waive any one or more of the rules governing this Program, except 10 TAC §27.8, if the Board finds that waiver is appropriate to fulfill the purposes or polices of Texas Government Code, Chapter 2306.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bobby Wilkinson
Executive Director
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For further information, please call: (512) 475-1762

CHAPTER 28. TAXABLE MORTGAGE PROGRAM

10 TAC §§28.1 - 28.9

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 28, Taxable Mortgage Program without changes to the proposed text as published in the November 22, 2019, issue of the *Texas Register* (44 TexReg 7112). The repeal will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this 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.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the rule governing the Taxable Mortgage Program.

2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does 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 action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedures for the Taxable Mortgage Program.

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

8. The repeal will not negatively or positively affect this 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 this repeal and determined that the 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 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 repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will 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 repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will be no 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 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.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between October 25, 2019, and November 25, 2019. No comments were received regarding the proposed repeal.

The Board adopted the final order authorizing the repeal on January 16, 2020.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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10 TAC §§28.1 - 28.9

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 28, Taxable Mortgage Program Rule with one technical citation change in §28.3 and other minor wording updates to the text as published in the November 22, 2019, issue of the *Texas Register* (44 TexReg 7113). These rules will be republished.

The purpose of the new sections is to make changes that clarify that 10 TAC Chapter 20, the Single Family Programs Umbrella Rule, does not apply to this program and rule; revise several definitions; remove §28.3, Procedures for Submitting Requests or Inviting Proposals, because the section had referenced the Department releasing requests for proposals for the purchase and sale of Mortgage Loans, which the Department does not do; add Residential Property Standards; clarify that borrower's receiving down payment assistance must repay all or a portion of the assistance no later than upon repayment of the associated first Mortgage Loan, whether due to sale of the property, refinance, or otherwise; clarify that federal income tax recapture provisions are only applicable for Mortgage Loans that are financed with the proceeds of tax-exempt bonds or for which a Mortgage Credit Certificate has been or will be issued; and make other minor technical corrections.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted and no exceptions apply. However, no costs are associated with this action that would have prompted a need to be offset.

The Department has analyzed this 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, Executive Director, has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the rules that govern the Taxable Mortgage Program.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor will it reduce work load to a degree that eliminates any existing employee positions.

3. The new rule does not require additional future legislative appropriations.

4. The new rule 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 rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The rule will not limit, expand or repeal an existing regulation but merely revises a rule.

7. The new rule does not increase or decrease the number of individuals to whom this rule applies; and

8. The new rule 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.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the general program guidelines for the Taxable Mortgage Program. The beneficiaries of this program are individual households, therefore no small or micro-businesses are subject to the rule.

3. The Department has determined that because this rule relates only to a revision to a rule that applies to a program for which individual households are the beneficiaries, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule 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 rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates to homebuyer assistance to individual households, not limited to any given community or area within the state; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule relates only to the continuation of the rules in place there are no "probable" effects of the new rule on particular geographic regions.

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 new sections are in effect, the public benefit anticipated as a result of the new rule will be a more updated rule reflecting transparent compliant regulations. There will be no economic cost to any individuals required to comply with the new rule because the activities described by the rule have already been in existence.

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 new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to a process that already exists and is not being significantly revised.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between October 25, 2019, and November 25, 2019. No comments were received regarding the proposed rule and the rule is being adopted without changes.

The Board adopted the final order authorizing the adoption of the rule on January 16, 2020.

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

§28.1. Purpose.

(a) The purpose of the Taxable Mortgage Program is to facilitate the origination of single-family mortgage loans and to refinance existing Mortgage Loans for eligible homebuyers and in both cases to provide down payment and closing cost assistance. Chapter 20 of this title (relating to the Single Family Programs Umbrella Rule) does not apply to the activities under this chapter, except if these activities are combined with activities subject to Chapter 20 of this title.

(b) Assistance under this program is dependent, in part, on the availability of funds. The Department may cease offering all or a part of the assistance available under the program at any time and in its sole discretion.

§28.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context or the Participation Packet indicates otherwise. Other definitions may be found in Texas Government Code, Chapter 2306; Chapter 1 of this title (relating to Administration); and Chapter 2 of this title (relating to Enforcement).

(1) Applicable Median Family Income--The Department's determination, as permitted by Texas Government Code, §2306.123, of the median income of an individual or family for an area using a source or methodology acceptable under federal law or rule. The Applicable Median Family Income, as updated from time to time, may be found on the Department's website (www.tdhca.state.tx.us) in the "Combined Income and Purchase Price Limits Table."

(2) Applicant--A person or persons applying for financing of a Mortgage Loan under the Program.

(3) Areas of Chronic Economic Distress--Those areas in the state, whether one or more, designated from time to time as areas of chronic economic distress by the state and approved by the U.S. Secretaries of Treasury and Housing and Urban Development, respectively, pursuant to §143(j) of the Code.

(4) Average Area Purchase Price--With respect to a Residence financed under the Program, the average purchase price of single-family residences in the statistical area in which the Residence is located which were purchased during the most recent twelve (12) month period for which statistical information is available, as determined in accordance with §143(e) of the Code.

(5) Code--The Internal Revenue Code of 1986, as amended from time to time.

(6) Department Designated Areas of Special Need--Geographic areas designated by the Department from time to time as areas of special need.

(7) Federal Housing Administration--A division of the U.S. Department of Housing and Urban Development, also known as FHA.

(8) Master Mortgage Origination Agreement--The contract between the Department and a Mortgage Lender, together with any

amendments thereto, setting forth certain terms and conditions relating to the origination and sale of Mortgage Loans by the Mortgage Lender and the financing of such Mortgage Loans by the Department.

(9) Mortgage Lender--The entity, as defined in §2306.004 of the Texas Government Code, participating in the Program and signatory to the Master Mortgage Origination Agreement.

(10) Participation Packet--The application submitted to the Department by the proposed Mortgage Lender to participate in the Program.

(11) Program--The Taxable Mortgage Program.

(12) Purchase Price Limit--The Purchase Price Limits published and updated from time to time in the "Combined Income and Purchase Price Limits Table" found on the Department's website equal to 90 percent of the Average Area Purchase Price, subject to certain exceptions for Targeted Area Loans.

(13) Regulations--The applicable proposed, temporary or final Treasury Regulations promulgated under the Code or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

(14) Residence--A dwelling in Texas in which an Applicant intends to reside as the Applicant's principal living space. Has the same meaning as Home in Chapter 2306 of the Texas Government Code.

(15) Rural Housing Service--A division of the United States Department of Agriculture, also known as RHS.

(16) Targeted Area--A qualified census tract, as determined in accordance with §6(a)103A-(2)(b)(4) of the Regulations or any successor regulations thereto, an Area of Chronic Economic Distress, or a Department Designated Area of Special Need. Applicants purchasing in Targeted Areas may have higher income and purchase price limits as set forth in the "Combined Income and Purchase Price Limits Table" found on the Department's website.

(17) United States Department of Veterans Affairs--Also known as VA.

§28.3. Restrictions on Residences Financed and Applicant.

(a) Type of Residence and Number of Units. To be eligible for assistance under the Program an Applicant must apply with respect to a home that is either a new or existing single family residence, new or existing condominium or townhome, or manufactured housing that has been converted to real property in accordance with the Texas Occupations Code, Chapter 1201 or FHA guidelines, as required by the Department. A duplex may be financed under the Program as long as one unit of the duplex is occupied by the Applicant as his or her Residence, and the duplex was first occupied for residential purposes at least five years prior to the closing of the Mortgage Loan.

(b) Homebuyer Education. Each Applicant must complete a Department approved pre-purchase homebuyer education course.

(c) Income Limits. An Applicant applying for a Mortgage Loan must meet Applicable Median Family Income requirements.

(d) Down Payment Assistance. An Applicant meeting the Applicable Median Family Income requirements in subsection (c) of this section may qualify for down payment and closing cost assistance in connection with the Mortgage Loan on a first come, first served basis, subject to availability of funds.

(e) Residential Property Standards. The Residence must meet all standards required by the State of Texas, local jurisdiction, and as required by the Mortgage Lender.

§28.4. Occupancy and Use Requirements.

(a) Occupancy requirement. The Applicant must occupy the property within 60 days after the date of closing as his or her Residence. Borrower's receiving down payment assistance must repay all or a portion of the assistance no later than upon repayment of the associated first Mortgage Loan, whether due to sale of the property, refinance, or otherwise.

(b) Use for a business. Homebuyer may not use more than 15% of the Residence in a trade or business (including childcare services) on a regular basis for compensation. If the Residence is to be used, in part, for a trade or business, a schematic drawing from an appraiser must be provided.

(c) Borrower may not use the Residence, or any part thereof, as an investment property, rental property, vacation or second home, or recreational home, and shall continue to occupy the Residence as Borrower's principal living space, unless waived by the Executive Director or their designee, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

§28.5. Application Procedure and Requirements for Commitments by Mortgage Lenders.

(a) An Applicant seeking assistance under the Program must first contact a participating Mortgage Lender. A list of participating Mortgage Lenders may be obtained on the Department's website or by contacting the Department.

(b) Applicant shall complete an application with a participating Mortgage Lender.

(c) Application Fees. Fees that may be collected by the Mortgage Lender from the Applicant relating to a Mortgage Loan include:

(1) an appropriate, as determined by the Department, origination fee and/or buyer/seller points; and

(2) all usual and reasonable settlement or financing costs that are permitted to be so collected by FHA, RHS, VA, Freddie Mac or Fannie Mae, as applicable, and other applicable laws, but only to the extent such charges do not exceed the usual and reasonable amounts charged in the area in which the Residence is located. Such usual and reasonable settlement or financing costs shall include an application fee as determined by the Department, the total estimated costs of a credit report on the Applicants and an appraisal of the property to be financed with the Mortgage Loan, title insurance, survey fees, credit reference fees, legal fees, appraisal fees and expenses, credit report fees, FHA insurance premiums, private Mortgage guaranty insurance premiums, VA guaranty fees, VA funding fees, RHS guaranty fees, hazard or flood insurance premiums, abstract fees, tax service fees, recording or registration fees, escrow fees, and file preparation fees.

(d) The Department will determine from time to time, a schedule of fees and charges necessary for expenses and reserves of the housing finance division as set forth in a Board resolution.

(e) The Mortgage Lender must register the Mortgage Loan in accordance with the Department's published procedures.

§28.6. Criteria for Approving Participating Mortgage Lenders.

(a) To be approved by the Department for participation in the program, a Mortgage Lender must meet the requirements in the Participation Packet to be a qualified Mortgage Lender as specified by:

(1) FHA;

(2) RHS;

(3) VA; or

(4) be a lender currently participating in the conventional home lending market for loans originated in accordance with Fannie Mae's and/or Freddie Mac's requirements.

(b) As a condition for participation in the Program, a qualified Mortgage Lender must:

(1) agree to originate Mortgage Loans and assign those loans and related Mortgages and servicing to the Department's master servicer;

(2) originate, process, underwrite, close and fund originated loans; and

(3) be an approved Mortgage Lender with the Program's master servicer.

§28.7. Resale of the Residence.

Mortgage Loans that are financed with the proceeds of tax-exempt bonds, or for which a Mortgage Credit Certificate has been or will be issued, will be subject to federal income tax recapture provisions. Assumption of a Mortgage Loan is allowed under the Program if the new owner meets the Program requirements at the time of the sale of the Residence.

§28.8. Conflicts with Bond Indentures and Applicable Law.

All assistance provided under the Program is funded through or facilitated by the Department's mortgage revenue bond indentures and is subject to changes in the mortgage revenue bond indentures and applicable law. If there is a conflict between this chapter and any bond indenture or applicable law regarding the use of the funds from mortgage revenue bonds, the mortgage revenue bond indenture or applicable law shall control.

§28.9. Waiver.

The Board, in its discretion and within the limits of federal and state law, may waive any one or more of the rules governing this Program, except 10 TAC §28.8, if the Board finds that waiver is appropriate to fulfill the purposes or polices of Texas Government Code, Chapter 2306, or for good cause, as determined by the Board.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 90. MIGRANT LABOR HOUSING FACILITIES

10 TAC §§90.1 - 90.8

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 90, Migrant Labor Housing Facilities, §§90.1 - 90.8, Migrant Labor Housing Facilities Rule, as published in the October 25, 2019, issue of the *Texas Register* (44 TexReg 6126). The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action. The Department has analyzed this 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, Executive Director, has determined that, for the first five years the repeal will be in effect:

1. The repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the licensing of Migrant Labor Housing Facilities.

2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce workload to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department but does include a decrease in fees paid to the Department for applicant's that have recently been inspected by another State or Federal agency.

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 action will repeal an existing regulation, but is associated with a simultaneous readoption with reasoned response changes based on public comment to the existing Migrant Labor Housing Facilities Rule.

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

8. The repeal will not negatively or positively affect this 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 this repeal and determined that the 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 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 repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will 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 repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will be no 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 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.

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held from October 25, 2019, through November 25, 2019, to receive input on the proposed repealed rule. One comment on the repeal was received. The comment was provided by Kathy Tyler in conjunction with her comment on the new rule.

Comment Summary: Commenter stated her opposition "to the repeal of 10 TAC Chapter 90 if it lessens the standards of living conditions on licensed facilities, as the new updated rules propose, and thus impacts the health and safety of workers."

Staff Response: The repeal is necessary in order to effect the proposed changes to the current regulation, including allowing an in-person, on-site inspection conducted by the Texas Workforce Commission (TWC) for federal purposes to be acceptable for the state license through the Department. The TWC inspection along with the certification by the provider of the housing as to 11 specific Texas requirements that may exceed (or are not included in) the federal requirements will replace a second inspection by the Department. The additional 11 requirements maintain key protections provided in the current rule, and are of interest to the state of Texas to preserve. The change in approach is expected to result in more migrant housing facilities seeking licensure under the requirements and resident protections of the state's licensing program and thus expand the impact of the licensing program on the health and safety of agricultural workers living temporarily in farmworker housing. Repeal and replacement of the current 10 TAC Chapter 90 is recommended by staff as proposed.

STATUTORY AUTHORITY.

The repeal is made pursuant to TEX. GOV'T CODE §2306.053, which authorizes the Department to adopt rules. Except as described, herein the repealed rule affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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10 TAC §§90.1 - 90.8

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC, Chapter 90, §§90.1 - 90.8, Migrant Labor Housing Facilities Rule, with changes to the proposed text of §§90.1 - 90.3 and 90.5 - 90.8 as published in the October 25, 2019, issue of the *Texas Register* (44 TexReg 6126). Sections 90.1 - 90.3 and 90.5 - 90.8 will be republished. Section 90.4 will not be republished.

In accordance with Tex. Gov't Code Chapter 2306, Subchapter LL, a person may not establish, maintain, or operate a Migrant Labor Housing Facility without obtaining a License from the Department, and Subchapter LL further outlines requirements relating to the application, inspection, fees, and suspension of Licenses. The purpose of the adopted new chapter is to provide compliance with Tex. Gov't Code Chapter 2306, Subchapter LL, and update the rule to add the purpose of the rule, remove definitions redundant with statute, add a definition for the term "Provider" and previously undefined term "License," add a section addressing Applicable Standards, significantly reduce and streamline the section that had provided Facility standards, revise the fee structure for a reduced application fee in certain circumstances to prevent Providers being discouraged from pursuing a License because of possible cost, revise the inspection timeline to ensure timeliness and reduce the likelihood of a timing conflict, update the process for handling complaints, update the applicable forms, and improve readability and clarity. Tex. Gov't Code §2001.0045(b) does not apply to the rule because it is exempt under both §2001(0045(c)(6), which exempts rule changes necessary to protect the health, safety, and welfare of the residents of this state, and §2001.0045(c)(9), which exempts rule changes necessary to implement legislation. Compliance with the adopted rule is intended to ensure adherence to reasonable standards to benefit the health, safety, and welfare of those migrant laborers housed in the Facilities required to be licensed. Tex. Gov't Code Chapter 2306, Subchapter LL, provides for the implementation of this activity. The Department has analyzed this 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, Executive Director, has determined that, for the first five years the adopted rulemaking would be in effect:

1. The adopted rule does not create or eliminate a government program, but relates to the re-adoption of this rule, which makes changes to an existing activity, the licensing and oversight of certain Migrant Labor Housing Facilities.

2. The adopted rule does not require a change in work that would require the creation of new employee positions. While some additional work by the Department will be required associated with the acceptance of additional license applications and fees, added inspections, and follow-up of compliance with possible inspections findings, the Department anticipates handling this additional work with existing staff resources. The rule changes do not reduce work load such that any existing employee positions could be eliminated.

3. The adopted rule does not require additional future legislative appropriations.

4. In accordance with Tex. Gov't Code §2306.929, the Department is authorized to set the license fee in an amount not to exceed $250. Since 2006, this rule has had the fee set at $250, and the Department is not suggesting changing this basic fee though is adopting a lower fee for certain recently-inspected Facilities. The Department does anticipate an increase in the possible fees received, as there is a more targeted initiative to encourage those Providers that are currently not licensed to apply for licensure, which would increase fee receipts. As an offset to

this potential increase and to the extent that the Department can utilize the inspections conducted by other state agencies and thereby limit the cost by eliminating the duplication of work, the Department is reducing the fee for new Licensees where they already have a satisfactory housing inspection by another state or federal agency.

5. The adopted rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The adopted rule will not limit or repeal an existing regulation, but can be considered to "expand" the existing regulations on this activity because the adopted rule clarifies the scope of facilities, standards, and individuals subject to the rule. Many Providers of such housing may have been unaware of the need to obtain a License from the Department, and were unaware of the possibility that housing that met the standards of the Department of Labor might not also meet the Texas licensing standards. This addition to the rule is necessary to clarify the statutory scope of Providers that must be licensed and ensure compliance with Tex. Gov't Code, Chapter 2306, Subchapter LL.

7. The adopted rule does increase the number of individuals subject to the rule's applicability as described in item 6 above.

8. The adopted rule may be considered to have a negative effect on the state's economy because of the potential expense for employers to bring their Migrant Labor Housing Facility into compliance with the requirements of the rule and statutorily-required licensure. Alternatively, the rule could also impact an employer's ability to procure the labor needed, which may affect the overall productivity of their industry and contribution to the state economy. This is an unavoidable consequence of the statute. The Department is not able to quantify or determine at this time the extent of Providers that are not currently licensed and the extent to which their Facilities are not up to licensure standard.

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 this rule and determined that:

1. TDHCA has, in drafting this rule, attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, ch. 2306, subchapter LL.

2. None of the adverse effect strategies outlined in this subsection are applicable.

3. Based on raw data regarding H2-A visas that required housing inspections, there could be between 200 and 400 small or micro-businesses initially subject to the rule, not already licensed and compliant. The latest United States Department of Agriculture Census of Agriculture reports Texas as having 1,610 farms with migrant workers, and the same Census shows that approximately 29% of all Texas farms with hired workers have three or more workers, which results in a potential impact on 467 small businesses in total. The Department has determined that there may be adverse economic effects on small or micro-businesses for those Providers of migrant labor housing that are not currently providing housing to their laborers that will meet the adopted standard, but these economic effects are an unavoidable consequence of the statute. A minimal fee of $250 is in the existing rule, and this is not being increased so does not present a new cost, other than for those not previously licensed. The adopted rule does include a $175 reduction in the cost of a License for applicants who have recently been inspected by and provide a copy of a satisfactory housing inspection by another State or Federal agency. The economic impact of the rule beyond the fee can vary significantly per Provider depending on the extent to which their Facilities are not up to standard. Because the amount of work and materials needed to bring a Facility up to standard can vary dramatically from a Facility only needing to make a few minor repairs, to a possibly significant renovation of Facilities, an estimate is not able to be calculated. Moreover, though employers of workers on H2-A visas are required to provide housing to their workers, the Department cannot estimate the economic impact of the adopted rule if agricultural employers who currently provide housing to migrant laborers decide to cease providing housing rather than comply with the licensure standards.

The rule is not directly applicable to rural communities, other than through the likelihood that business entities that are subject to this rule may be more likely to be located in those communities. However, for the reasons stated above, the economic consequences of the adopted changes are limited and unpredictable, thus no economic impact of the rule is projected for rural communities.

(3-a) The adopted rule identifies the applicable federal standard for housing of farm workers, where applicable, and an additional 11 requirements, which have already been part of the rule, but that may exceed or not be contained in one or both of the federal standards. Further, though federal requirements exempt places of public accommodation (such as hotels) from inspection, the adopted rules account for the statutory requirements regarding licensure of Facilities by placing the onus on a housing Provider, for example an agricultural employer (who contracts for Facilities used by migrant workers), to obtain a License and facilitate an inspection of such a Facility - which would include rental accommodations such as a hotel.

The purpose of Tex. Gov't Code, Ch. 2306, subchapter LL, is clearly grounded in protection of the health, safety, and welfare of migrant farm workers. Tex. Gov't Code §2306.925 provides the Department with regulatory flexibility to define "the reasonable minimum standards of construction, sanitation, equipment, and operation" in order for a Migrant Labor Housing Facility to receive a License. These minimum federal standards are set out in 29 CFR §§500.130 and 500.132-500.135, (the Employment and Training Administration (ETA) and Occupational Safety and Health Administrations (OSHA) housing standards also referred to as the "ETA and OSHA Housing Standards" respectively), and the adopted rule eliminates the exception for inspecting public accommodations provided in 29 CFR §500.131, and adds 11 additional standards - all grounded in enhanced health and safety. In accordance with the requirements of this analysis, the adopted rule uses "regulatory methods that will accomplish the objectives of the applicable rules while minimizing adverse impacts on small businesses," but this analysis accepts that any additional regulations that increase health and safety standards accomplish the objectives of the statute at a cost above the "minimum" required by federal regulation.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The adopted rule 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 rule as to its possible effects on local economies

and has determined that for the first five years the rule will be in effect the adopted rule may have a negative effect on a local economy and its employment if the local Providers in that community conclude that to bring their Facilities into compliance would be cost prohibitive, impact their hiring decisions, and/or impact their ability to procure the labor needed. These issues could possibly effect the overall productivity of their business and impact on local employment. The extent of how many Providers are in a given local economy, and the extent to which that Providers' Facilities would not meet standards, cannot be readily quantified or determined at this time for any given community. Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic area affected by the rule..." Considering that the licensing standards in the new rule have largely been in effect for several years, there are no "probable" effects of the new rules on particular geographic regions.

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 new section is in effect, the public benefit anticipated as a result of the new section will be increased assurance of the health, safety, and welfare of migrant labor workers that are provided housing by their employers. The possible economic costs to any individuals required to comply with the new section will be the $75 to $250 fee for those Providers not already licensed, the up to $200 per day fee for non-compliance and the cost of improvements needed to bring a Facility into compliance.

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 new section is in effect, enforcing or administering the new section does have some foreseeable implications related to costs or revenues of the state or local government: The minimal revenue to the state of $75 to $250 per application and up to $200 per day fines for non-compliance will be used to offset additional expenses associated with inspection travel for each application. The other costs to administer the increased activity are being absorbed within current resources by the Department. There are no foreseeable implications relating to cost or revenues of local governments from enforcing or administering the adopted rule.

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held from October 25, 2019, through November 25, 2019, to receive input on the new rule. Seven commenters provided public comment: (1) Daniela Dwyer and David Mauch, Texas RioGrande Legal Aid, (2) Scott Evans and Jarrod Sharp, Federation of Employers and Workers of America, (3) Ryan Skrobarczyk, Texas Nursery & Landscape Association, (4) Jay Bragg, Texas Farm Bureau, (5) J. Kelley Green, Texas Cotton Ginners' Association, (6) Steve Verett and Kody Bessent, Plains Cotton Growers, Inc., and (7) Kathy Tyler.

The comment summaries and reasoned responses are organized below in order of appearance in the rule. Recommended revisions to the rule are reflected in response to the comments as applicable. Sentences/phrases with changes are shown in italics; they do not reflect every addition or deletion of words.

General Comments

Commenter Summary: Commenters (2), (3), (4), (5) and (6) expressed support and appreciation for the efforts to eliminate the duplication of inspection and reduction in fees for H2A employers given the existence of the Texas Workforce Commission (TWC) inspection and the Department of Labor (DOL) audit or enforcement inspections that are materially the same as the inspection conducted by TDHCA.

Staff Response: Staff appreciates the comments and anticipates these changes will improve the number and quality of licensees in the long run.

Commenter Summary: Commenter (1) expressed general concern that the Department is accommodating H2A employers to close the gap between federal and more stringent state standards. The commenter further predicts two negative outcomes of the proposed changes to be a decrease in the quality of housing and a drastic decrease in the amount of resources dedicated to enforcement. Commenter (7) echoed these general concerns when opposing the reduction in licensing fees being charged to recently-inspected License applicants saying that the Department needs the additional funds to assure current and future implementation and enforcement of the regulations.

Staff Response: There is no evidence that suggests that the elimination of duplicative inspections or a reduction of individual licensing fees will have a negative effect on the quality of housing or the enforcement of regulations. On the contrary, the expansion of the number of licensed housing units and greater recognition of the licensing requirements should continue to improve the identification and quality of housing available to migrant farmworkers. The current increase in the number of licensees has occurred in large part due to the Department's efforts to make it easier for the H2A employers to find out about and apply for the migrant labor housing facility license. The Department has been making licensing easier for H2A employers by emailing electronic versions of the application form directly to H2A employers and allowing employer to use one license to cover scattered site building locations (all of which get inspected individually but under one license and fee). This outreach and accommodation effort has been a significant reason for a more than fivefold increase in licensees and an even greater increase in number of buildings that have been inspected and come under the license program. The proposed changes will continue to provide for an annual in-person inspection for each building under license by a state or federal agency. As more providers become aware of the licensing requirements in Texas, the total number of facilities inspected annually should increase since places of public accommodation and other facilities that might not be inspected annually under federal requirements will be subject to inspection by the Department under the licensing program. Staff has recommended no change as a result of this comment.

§90.1. Purpose.

Comment Summary: Commenter (1) questioned the accuracy of the purpose statement, which they believe should better reflect "access to safe and decent housing" and should avoid discussion of alignment with federal standards for migrant farmworker housing, contending that the state regulations were created specifically to provide greater protections for workers than those available under federal law. The commenter goes on to provide descriptions of five instances where the commenter represented farm workers regarding poor living conditions.

Commenters (3) and (4) expressed appreciation for the clarity that is being provided to acknowledge the intent of TDHCA to align state and federal regulatory programs to improve efficiency and to eliminate duplicative efforts.

Staff Response: This new section, §90.1 Purpose, was revised to its current form after an initial draft generated concerns by and

discussions with Commenter (1). The purpose clause provides the justification and aim for the rule or in this case the revisions to the rule, but is a plain reference to state statute and related federal regulation without presumptions as to legislative intent. No revisions to the rule based on the comments for this subsection are recommended.

§90.2. Definitions.

Comment Summary: Commenter (4) appreciates the new definition of Provider but suggests "additional language is needed to make it clear that employers of migrant workers that do not arrange for housing are NOT [housing] providers." Commenter (2) believes it important to clarify that a worker providing their own housing for their family is not considered a Provider.

Staff Response: This new definition already excludes anyone that does not provide or arrange for housing for Migrant Agricultural Workers, and "arranged" has been changed to reflect the statutory term "established." Thus, a Provider would not include an employer of Migrant Agricultural Workers that does not provide housing to their employees (presuming that they are not required by another law or regulation to provide such housing). The clarification regarding a worker providing housing for their own family is included in §90.3 and discussed further below. Given the request for clarification to the definition, additions were made to ensure that the term focused on those whom the rule seeks to regulate that actually "provide" housing to Migrant Agricultural workers by establishing the place where they will live during their work. This may include direct employers (e.g. the farm owner) or indirect employers (e.g. an individual or group that supplies labor to farms), but only if a place to temporarily live is actually provided to the Workers. But the term "Provider" would not include common short-term property rental owners and operators who are not engaged in the agricultural industry. Staff proposes the following change to the definition of Provider:

(11) Provider--Any Person who provides for the use of a Migrant Labor Housing Facility by Migrant Agricultural Workers, whether the Facility is owned by the Provider, or is contractually obtained *(or otherwise established) by the Provider. An agricultural industry employer or a contracted or affiliated entity may be a Provider if it owns, contracts, or pays for the use of a Migrant Labor Housing Facility by Migrant Agricultural Workers, regardless of whether any rent or fee is required to be paid by a Worker. A common short-term property rental owner or operator that does not exclusively rent to Migrant Agricultural Workers is not a Provider solely because they have rented to Migrant Agricultural Workers.* The Provider is the operator under Tex. Gov't Code §2306.928.

§90.3. Applicability.

Comment Summary for §90.3(a) and (d): Commenter (1) appreciates the clarification provided in the proposed rule that the law does apply to hotel/public accommodations and will continue to require inspections of same, but expressed concern that the §90.3(a) and (d) limit §2306.922 by excluding entities that do not contract directly with growers or farm labor contractors. In addition, the commenter contends that Tex. Gov't Code §2306.922 does not limit the liability to only one party or provide for excluding the owner of a property who house migrant workers but do not have a contractual relationship with them for employment. They also express concern that some farm labor contractors are also workers themselves and may be willing to provide unsafe housing for themselves and relatives they employ thereby undermining the Department's goals.

Commenter (2) requested clarification in the second sentence of the proposed §90.3(d) because it unnecessarily further defines "Facility" rather than providing an exception to the term "Provider" or a separate applicability clause for workers housed by a family member in a mobile residence on land owned by someone else. Further concern was expressed that an employer or owner of the land in such a situation may be required to have a license. Commenter (3) appreciates the attempted clarity but questions the idea behind overruling the exception for public accommodations, such as hotels, that is explicitly provided for under the federal rule. They also believe additional clarity should be included to eliminate any possible confusion about the guarantee that no structure, trailer or vehicle is required to be licensed if provided by the worker's family.

Staff Response: The language in this section clarifies that inspection and licensing requirements do not apply to a property owner or operator that is unrelated to their tenant's employment, or where the tenant is providing their own housing on someone else's property. It is recognized that while places of public accommodation are excluded from additional inspection at the federal level, no such exception exists in the state statute. However, the ability to license, inspect, and hold a party responsible for the condition of a dwelling does require a significant legal connection between the person to be licensed and that dwelling. The concept of a "Provider" and a contractual relationship was placed in the rule to signify this significant legal connection. Without such a connection, the Commenter's reading of the statute would lead to nonsensical results: a hotel operator or private lessor could lease rooms to anyone who asks to rent the room and can pay, but would need to inquire as to each guest whether they happen to satisfy the definition of "Migrant agricultural worker" to determine whether leasing to two or more such guests for three days would require a special license to be obtained pre-occupancy. Contrary to the commenters' assertion, the language in §90.3(a) does not further limit the licensing requirement, especially given the clarifying changes to the definition of "Provider" and this subsection, but in combination with rest of the section it clarifies who is responsible for having a license. The proposed clarification will reduce confusion over who is responsible and reduce redundant licensing of both the Provider and a property owner or operator. The exceptions for worker controlled housing is intended to only apply when the worker is housing their own family and not in a situation where a farm labor contractor hires workers and houses unrelated employees. Staff does agree that further clarification based on the comments provided would be helpful and proposes the following additional changes to these sections including the separation of a portion of the language in clause (d) to be enumerated as clause (e) and the prior clause (e) to be renumbered as clause (f):

(a) All Migrant Labor Housing Facilities in the state of Texas, which may include hotels and other public accommodations if owned by or contracted for by *Providers must be inspected* and comply with the requirements in this chapter and 29 CFR §§500.130, 500.132 - 500.135, without the exception provided in 29 CFR §500.131.

...

(d) *Owners or operators of homeless shelters, public camp grounds, youth hostels, hotels and other public or private accommodations that do not contract for services with Providers to house Workers are not required to be licensed.*

(e) No License would be required where a Worker is housed exclusively with his/her Family using their own structure, trailer, or vehicle, but temporarily residing on the land of another.

(f) A Facility may include multiple buildings on scattered or non-contiguous sites, as long as the scattered sites are in a reasonable distance from each other, and the work location and the buildings are operated as one Facility by the Provider.

Comment Summary for §90.3(b): Commenter (1) suggests the language in §90.3(b) impermissibly narrows the intent of the statute by not being inclusive of anyone other than the employers and suggests that this section requires a contractual relationship between the employer and worker to obligate a Provider to obtain a license for housing.

Staff Response: This subsection (b) does not limit the prior subsection (a) or limit the term Provider in any way but rather it specifically speaks to a specific subset of Providers, agricultural employers. This subsection clarifies when an agricultural employer is a Provider of housing, even if they do not own the housing facility, they are the responsible party for having a license. Since this section is only speaking to this subset of Providers, it does not need to be made broader to include other persons as proposed by the commenter, as doing so would add confusion to explanatory purpose of this subsection. Requiring or even allowing for the regular occurrence of multiple licenses for the same facility is redundant and is an inefficient use of limited inspection and licensing resources. Moreover, Commenter's concern that a "formal written contractual relationship" may not exist is not the requirement in the rule, and if an employer (as postulated by Commenter) were to hire a farm labor provider to house and deliver workers to the worksite, the financial arrangement between the employer and the farm labor provider who secured the dwelling would (under the proposed rule) could still make the employer a "Provider" of housing, and responsible for obtaining a license. Any confusion over who is held accountable for licensing or for the provisions of this regulation will be determined by the Department and its Board in accordance with the rules. No revisions to the rule based on the comments for this subsection are recommended.

§90.4. Standards and Inspections.

Comment Summary: Commenter (1) contends that two major existing state protections have been excluded from the proposed regulations. Namely, they have stated that four-burner stoves would no longer be required and that a vector control plan for vermin infestation would no longer be required. They contend that the exclusion of each of these requirements will cause a health risk to residents. They also contend that the revised standards omit the reference to the Texas Commission on Environmental Quality (TCEQ) Public Drinking Water Standard and suggest the federal regulation is vague as to what drinking water standard is required. Commenter (7) suggested that it is unclear whether the inclusion of the 11 additional standards beyond the ETA and OSHA standards will protect the health and safety of Texas migrant farmworkers as well as the current regulations protect them and therefore believes the Department should continue to ensure compliance with all the current standards.

Commenter (3) appreciates the effort to streamline standards and encourages the clear delineation of standards that are distinct from the federal standards. They also recommend avoiding adding future standards, which may conflict with federal standards or represent burdens, which might prevent employers from securing otherwise safe housing. Commenter (4) also appreciates the clarity and move toward consistency with federal regulation and suggests that §90.4(a) should have language added to make it clear that TDHCA will accept inspections from other applicable state/federal agencies *as per §90.5(g) Licensing* of this rule.

Staff Response: Staff surveyed several high quality national chain extended stay hotels and was unable to find one that had more than a two burner stove as standard equipment in a unit. Staff believes that Providers who use hotels or motels that meet the federal and local standards for temporary housing and provide either two burner stoves or, in the alternative, furnish all meals for workers should be allowed to use such housing accommodations. The four-burner stove requirement appears in neither the ETA or OSHA standard though extensive cooking facility requirements exist in both. Similarly federal standards requiring a vector control plan are limited, but both require that the facility be free of insects, rodents and other vermin (24 CFR 654.415 and 29 CFR1910.142 (j). The parameters of a vector control plan in the existing rule are not well defined, and it is the outcome of having no pests in the facility that is of measurable importance. The water standards required under TCEQ are of the same enforceability whether they are referenced in this rule or not because they apply to all water supplies and are enforced through TCEQ. Finally, this subsection of the rule speaks to the form of acceptance of inspections conducted by other state or federal agencies on behalf of the Department as being on forms promulgated by those agencies. The actual acceptance of such inspections is already included in other parts of this rule so that adding additional language in this section is not necessary. Therefore, staff is not recommending revisions to the rule based on the comments in this subsection.

§90.5. Licensing.

Comment Summary: Commenter (5) pointed out that the prior rule contained a requirement that the Department had 14 days to issue a letter informing the applicant of any corrections or additions needed for the application. In a process where time is of essence, it would make sense to have some sort of a time limit on this part of the process, and 14 days seems like a reasonable amount of time.

Staff Response: Staff agrees with the importance of performance timelines in the inspection and licensing process. Whenever possible, TDHCA inspection staff has provided deficiency concerns or findings during or immediately at the end of the inspection as standard operating procedure. In rare instances where the licensee or licensee representative is not present during the inspection, the inspector follows up with deficiency concerns and if they are not immediately addressed they would be forwarded to the home office for disposition. The prior rule did include a 14 day timeline for the Department to notify a prospective licensee regarding the need for corrections or additions but did not provide a consequence for not meeting this timeline, i.e. the license was not obligated to be issued nor did the deficiency become cleared as a result of missing this timeline so the existence of the timeline as provided in the old rule added potential confusion. With the acceptance of the inspections done by other agencies in lieu of redundant TDHCA inspections, the confusion with regard to missing this deadline could be even more confusing. Because of the additional confusion that could exist with the outcome of this deadline, staff recommends that it remain part of internal standard operating procedures, and not part of the rule. No revisions to the rule in this subsection are recommended.

Comment Summary for §90.5(d) and (g): Commenter (4) believes the changes proposed with regard to the fee and inspections are reasonable and should help reduce cost and regulatory burdens of the program without sacrificing the intent of the statute. Commenters (2) and (3) appreciate the fee reduction and elimination of duplicative inspections but have concerns regarding when a TDHCA inspection or re-inspection and higher fee would be determined. They reference §90.5(d) which currently states: "However, if an inspection or re-inspection by the Department is required at the sole determination by the Department, the full application fee will apply." The concern here is that no criteria or discernable standard has been provided by the Department to determine when an inspection or re-inspection by TDHCA will be required. At the very least, they suggest, causal factors that would justify utilization of this provision should be provided through interagency guidance.

Commenter (1) indicates that the proposed fee reduction, reflected in §90.5(d), for TWC inspected facilities will drastically reduce funding for the Department's enforcement of the statute. Commenter (1) appreciates the attempt by the Department to efficiently utilize limited resources and not duplicate inspections however, they believe the proposed use of an attestation by the Provider with regard to meeting the additional state standards is not a reasonable method in which to generate compliance. They state if attestation is maintained as a method of acceptance: that documentary evidence should be required for each and all attestation elements; that attestations should be required under penalty of perjury; and, that the timing of acceptance of an existing federal inspection should only allow one that has be conducted within the past 90 days.

Commenter (3) appreciates the Department's acceptance of inspections completed under the H2A program and allowing employers to affirm they are compliance with additional TDHCA standards.

Staff Response: Staff agrees that additional clarification or guidance may need to be developed to help describe when a separate inspection will be required, however as this is a new process and we will be accepting inspection forms from inspectors we do not know and with which we have little to no regular interaction, all of the possible reasons for an additional independent inspection cannot easily be identified. At the current time, staff believes additional inspections will be required when any of the following issues may exist and cannot be corrected quickly: a complaint has been received or a recent past pattern of complaints or deficiencies (corrected through attestation) exists with an applicant; a copy of the license application including attestations is incomplete; or, the federal inspection is incomplete, illegible, beyond the 90 day timeliness criteria or not made available to the Department. The Department will make reasonable efforts to resolve the issue(s), for example, by seeking to obtain a legible copy of the completed federal inspection from the applicant or the agency conducting the inspection. In addition, having a timely inspection is in the interest of the Department, the residents, and the Provider. This is especially true for the Provider, since penalties can be assessed for operating a facility without a current license. Thus, it could be cost effective for the Provider to have an independent TDHCA inspection and pay the additional $175 where a complaint for operating an unlicensed facility has been received by the Department and a $200 per day penalty could be assessed while waiting for a copy of the completed federal inspection. With regard to concerns about relying upon the attestation of the Provider, the Department recognizes that most Providers seeking a license are desirous of providing safe and decent housing in compliance with all rules and regulations and will respond truthfully to the information provided in the application. Moreover, with the improved ability for residents to know their rights and report housing that does not meet the Texas standards, identification of such housing will be much easier, and thus the identification of Provider's who do not provide truthful attestations will also be more evident. No revisions to the rule in this subsection are recommended.

§90.6. Records.

Comment Summary for subsection §90.6(a): Commenter (5) identified that the term "premises" is not defined in the requirement that "Each Licensee shall maintain on premises, available for inspection by the Department, the following records:" and recommends that the words "maintain on premises," be replaced with "be maintained and". Commenters (2), (3) and (4) also suggests the words "on premises" be deleted.

Staff Response: Staff agrees with the commenters that the term premises is not defined and could mean the Provider's premises, which could be located in another state or for a scattered site could unnecessarily require duplicate records at each site. Staff Recommend the first sentence be changed as follows:

(a) Each Licensee shall maintain *and upon request make* available for inspection by the Department, the following records:

Comment Summary for subsection §90.6(a)(4): Commenter (5) asked for the end of the sentence to be clarified as follows: "and any correspondence *to or* from such approving or permitting authorities"

Staff Response: Staff agrees with the change, appreciates its identification and recommends it.

Comment Summary for subsection §90.6(c): Commenter (1) appreciates and supports the requirement to post an informational poster and decal at the housing site to verify that the housing has been inspected and to advise workers of their rights.

Staff Response: Staff appreciates the comment which requires no further change.

§90.7. Complaints.

Comment Summary for subsection §90.7(g)(6): Commenter (5) identified the phrase "or appeal" to be redundant in that sentence.

Staff Response: Staff agrees with the redundant language and recommends the following change:

(6) The timeframe for the Licensee either to agree to the recommended corrective action, and accept the administrative penalties and/or sanctions, *or to appeal* the matter.

§90.8. Administrative Penalties and Sanctions.

Comment Summary: Commenters (2) and (3) suggested that in §90.8(b) a penalty should only begin to be assessed once notice of the violation has been provided by the Department. Commenter (2) suggests the penalty should only be assessed after an ability to cure the violation has been provided and Commenter (3) recommends the penalty be waived for a fee accrued after notice but corrected in a time appropriate manner. Commenter (2) suggests the following specific change: "For each violation of the Act or rules a penalty of up to $200 per day per violation may be assessed *after a notice of violation has been duly executed and delivered to the Licensee, and a reasonable opportunity has been provided to correct the violation."* This would

allow for a circumstance based cure period so that the Provider would have sufficient time to make repairs in the case of a catastrophic incident, such as a hurricane, occurring between the time of the original housing inspection and the violation. Commenter (4) believes the change in fines for violation from up to $200 to up to $200 per day per violation is significant and that the intent of such a penalty structure should be compliance not punitive. Commenter (4) suggests the following language: (b) For each violation of the Act or rules a penalty of up to $200 per day per violation may be assessed *after the date that it is documented that the Provider is made aware of the deficiency by either the TDHCA or a current tenant.*

Commenter (1) appreciates the clarification with the per-day per-violation but is concerned about discussions regarding further clarification as to the starting point of the penalty when a violation is known to exist prior to the date which a grower is given official notice by the Department of a violation. They express concern that the proposed clarifications will decrease the housing Providers' day-to-day concern about housing conditions and that they may delay resolving known violations until they get notified by the Department. Commenter (7) suggests adding that assessments of violation penalties shall be up to $200 per day per violation and *per resident.*

Staff Response: The phrasing of the proposed rule is taken directly from Tex. Gov't Code §2306.933. Though the limitations suggested by some commenters regarding knowledge and notice of violations may ultimately bear on the sufficiency of evidence to sustain a fine and the decision regarding which violations to prosecute (either through the Department's process or through a local County Attorney), the rule, as proposed, does not limit the scope of what violations can be prosecuted. Accordingly, no revisions to the rule in this subsection (beyond non-substantive clarification) are recommended.

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

§90.1. Purpose.

The purpose of Chapter 90 is to establish rules governing Migrant Labor Housing Facilities that are subject to being licensed under Tex. Gov't Code Chapter 2306, Subchapter LL (§§2306.921 - 2306.933). It is recognized that aligning state requirements with the federal standards for migrant farmworker housing that must be inspected in order to participate in other state and federal programs, such as with the U.S. Department of Labor's H2-A visa program, allows for cooperative efforts between the Department and other state and federal entities to share information. This will reduce redundancies and improve the effectiveness of the required licensing.

§90.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Additionally, any words and terms not defined in this section but defined or given specific meaning in Tex. Gov't Code Chapter §§2306.921 - 2306.933, are capitalized. Other terms in 29 CFR §§500.130 - 500.135, 20 CFR §§654.404 et seq., and 29 CFR §1910.142 or used in those sections and defined elsewhere in state or federal law or regulation, when used in this chapter, shall have the meanings defined therein, unless the context herein clearly indicates otherwise.

(1) Act--The state law that governs the operation and licensure of Migrant Labor Housing Facilities in the state of Texas, found at Tex. Gov't Code, §§2306.921 - 2306.933.

(2) Board--The governing board of the Texas Department of Housing and Community Affairs.

(3) Business Day--Any day that is not a Saturday, Sunday, or a holiday observed by the State of Texas.

(4) Business hours--8:00 a.m. to 5:00 p.m., local time.

(5) Department--The Texas Department of Housing and Community Affairs.

(6) Director--The Executive Director of the Department.

(7) Family--A group of people, whether legally related or not, that act as and hold themselves out to be a Family; provided, however, that nothing herein shall be construed as creating or sanctioning any unlawful relationship or arrangement such as the custody of an unemancipated minor by a person other than their legal guardian.

(8) License--The document issued to a Licensee in accordance with the Act.

(9) Licensee--Any Person that holds a valid License issued in accordance with the Act.

(10) Occupant--Any person, including a Worker, who uses a Migrant Labor Housing Facility for housing purposes.

(11) Provider--Any Person who provides for the use of a Migrant Labor Housing Facility by Migrant Agricultural Workers, whether the Facility is owned by the Provider, or is contractually obtained (or otherwise established) by the Provider. An agricultural industry employer or a contracted or affiliated entity may be a Provider if it owns, contracts, or pays for the use of a Migrant Labor Housing Facility by Migrant Agricultural Workers, regardless of whether any rent or fee is required to be paid by a Worker. A common short-term property rental owner or operator that does not exclusively rent to Migrant Agricultural Workers is not a Provider solely because they have rented to Migrant Agricultural Workers. The Provider is the operator under Tex. Gov't Code §2306.928.

(12) Worker--A Migrant Agricultural Worker, being an individual who is:

(A) working or available for work seasonally or temporarily in primarily an agricultural or agriculturally related industry, and

(B) moves one or more times from one place to another to perform seasonal or temporary employment or to be available for seasonal or temporary employment.

§90.3. Applicability.

(a) All Migrant Labor Housing Facilities in the state of Texas, which may include hotels and other public accommodations if owned by or contracted for by Providers must be inspected and comply with the requirements in this chapter and 29 CFR §§500.130, 500.132 - 500.135, without the exception provided in 29 CFR §500.131.

(b) Where agricultural employers own, lease, rent, or otherwise contract for Facilities "used" by individuals or Families that meet the criteria described in the Act, the employer as Provider of said housing, "establishes" and becomes the "operator" of a Migrant Labor Housing Facility, and is the responsible entity for obtaining and "maintaining" the License on such Facility, as those terms are used in Tex. Gov't Code §2306.921 - .922.

(c) An applicant for a License must facilitate an inspection by the Department with the owner of the property(s) at which the Migrant Labor Housing Facility is located.

(d) Owners or operators of homeless shelters, public camp grounds, youth hostels, hotels and other public or private accommodations that do not contract for services with Providers to house Workers are not required to be licensed.

(e) No License would be required where a Worker is housed exclusively with his/her Family using their own structure, trailer, or vehicle, but temporarily residing on the land of another.

(f) A Facility may include multiple buildings on scattered or noncontiguous sites, as long as the scattered sites are in a reasonable distance from each other, and the work location and the buildings are operated as one Facility by the Provider.

§90.5. Licensing.

(a) Tex. Gov't Code, §2306.922 requires the licensing of Migrant Labor Housing Facilities.

(b) Any Person who wants to apply for a License to operate a Facility may obtain the application form from the Department. The required form is available on the Department's website at https://www.tdhca.state.tx.us/migrant-housing/index.htm.

(c) An application must be submitted to the Department prior to the intended operation of the Facility, but no more than 60 days prior to said operation.

(d) The fee for a License is $250 per year, except in such cases where the Facility was previously inspected and approved to be utilized for housing under a State or Federal migrant labor housing program, and that such inspection conducted by a State or Federal agency is provided to the Department. Where a copy of such inspection conducted by a State or Federal agency is less than 90 days old, has no material deficiencies or exceptions, and is provided to the Department prior to the Department's scheduled inspection, the application fee shall be reduced to $75. However, if an inspection or re-inspection by the Department is required at the sole determination by the Department, the full application fee will apply. The License is valid for one year from the date of issuance unless sooner revoked or suspended.

(e) Fees shall be tendered by check, money order, or via an online payment system (if provided by the Department), payable to the Texas Department of Housing and Community Affairs. If any check or other instrument given in payment of a licensing fee is returned for any reason, any License that has been issued in reliance upon such payment being made is null and void.

(f) A fee, when received in connection with an application is earned and is not subject to refund.

(g) Upon receipt of a complete application and fee, the Department shall review the existing inspection conducted by a State or Federal agency, if applicable and/or schedule an inspection of the Facility by an authorized representative of the Department. Inspections shall be conducted during Business Hours on weekdays that the Department is open, and shall cover all units that are subject to being occupied. Inspections by other State or Federal agencies in accordance with the requirements in 29 CFR §§500.130 - 500.135 may be accepted by the Department for purposes of this License, only if notice is given to the Department prior to the inspection in order for the Department to consider the inspection as being conducted by an authorized representative of the Department in accordance with Tex. Gov't Code §2306.928. In addition, a certification of the additional state standards described in 10 TAC §90.4(c), relating to Standards and Inspections, must be provided by the applicant, along with any supplemental documentation requested by the Department, such as photographs.

(h) The Person performing the inspection on behalf of the Department shall prepare a written report of findings of that inspection.

(1) If the Person performing the inspection finds that the Migrant Labor Housing Facility, based on the inspection, is in compliance with 10 TAC §90.4, relating to Standards and Inspections, and the Director finds that there is no other impediment to licensure, the License will be issued.

(2) If the Person performing the inspection finds that although one or more deficiencies were noted that will require timely corrective action which may be confirmed by the Provider without need for re-inspection, and the Director finds that there is no other impediment to licensure, the License will be issued subject to such conditions as the Director may specify. The applicant may, by signed letter, agree to these conditions, request a re-inspection within 60 days from the date of the Director's letter advising of the conditions, provide satisfactory documentation to support the completion of the corrective action as may be required by the Department, or treat the Director's imposing of conditions as a denial of the application.

(3) If the Person performing the inspection finds that although one or more deficiencies were noted that will require timely corrective action, the deficiencies are of such a nature that a re-inspection is required, the applicant shall address these findings and advise the inspector or Department, within 60 days from the date of written notice of the findings, of a time when the Facility may be re-inspected. If a re-inspection is required, the License will not be eligible for the reduced fee described in subsection (d) of this section and the balance of the $250 fee must be remitted to the Department prior to the re-inspection. If Occupants are allowed to use the Facility prior to the re-inspection the applicant must acknowledge the operation of the Facility in violation of these rules, and pay a fee to the Department of up to $200 per day of operation through the date the Facility is approved by the inspector, and eligible for licensing. If the results of the re-inspection are satisfactory and the Director finds that there is no other impediment to licensure, the License will be issued. If it is the determination of the Director that the applicant made all reasonable efforts to complete any repairs and have the property re-inspected in a timely manner, the penalty for operating a Facility without a License may be reduced to an amount determined by the Director, but not less than $200.

(4) If the person performing the inspection finds that the Migrant Labor Housing Facility is in material noncompliance with §90.4 of this chapter, relating to Standards and Inspections, or that one or more imminent threats to health or safety are present, the Director may deny the application. In addition, the Department may also take action in accordance with §90.8, relating to Administrative Penalties and Sanctions.

(i) If the Director determines that an application for a License ought to be granted subject to one or more conditions, the Director shall issue an order accompanying the License, and such order shall:

(1) Be clearly incorporated by reference on the face of the License;

(2) Specify the conditions and the basis in law or rule for each of them; and

(3) Such conditions may include limitations whereby parts of a Migrant Labor Housing Facility may be operated without restriction and other parts may not be operated until remedial action is completed and documented in accordance with the requirements set forth in the order.

(j) Correspondence regarding an application should be addressed to: Texas Department of Housing and Community Affairs, Attention: Migrant Labor Housing Facilities, P.O. Box 12489, Austin, TX 78711-2489

(k) The Department shall issue a letter informing the applicant of what is needed to complete the application and/or if a deviation found during the inspection requires a correction in order to qualify for issuance of a License.

(l) An applicant or Licensee that wishes to appeal any order of the Director, including the appeal of a denial of an application for a License or an election to appeal the imposing of conditions upon a License, may appeal such order by sending a signed letter to the Director within thirty (30) days from the date specified on such order, indicating the matter that they wish to appeal.

§90.6. Records.

(a) Each Licensee shall maintain and upon request make available for inspection by the Department, the following records:

(1) Copies of all correspondence to and from the Department. This shall include the current designation of each Provider;

(2) A current list of the Occupants of the Facility and the date that the occupancy of each commenced;

(3) Documentation establishing that all bedding facilities were sanitized prior to their being assigned to the current occupant; and

(4) Copies of any and all required federal, state, or local approvals and permits, including but not limited to any permits to operate a waste disposal system or a well or other water supply, and any correspondence to or from such approving or permitting authorities.

(b) All such records shall be maintained for a period of at least three years.

(c) A Licensee shall post in at least one conspicuous location in a Facility or in at least one building per site for a scattered site Facility:

(1) A copy of the License;

(2) A decal provided by the Department with the licensing program logo and the year for which the License was granted; and

(3) A poster provided by the Department or the following notice in at least 20 point bold face type: If you have concerns or problems with the condition or operation of this Facility or your unit, the Texas Department of Housing and Community Affairs (the Department) is the state agency that licenses and oversees this Facility. You may make a complaint to the Department by calling, toll-free, 1-833-522-7028, or by writing to Migrant Labor Housing c/o TDHCA, P.O. Box 13941, Austin, TX 78711-3941. This office has staff that speaks Spanish. To the fullest extent that we can, we will keep your identity confidential. The Department's rules prohibit any Facility or Provider from retaliating against you for making a complaint. Si Usted tiene preocupaciones o problemas con la condición u operación de esta instalación o su unidad, el Departamento de Vivienda y Asuntos Comunitarios del Estado de Texas (El Departamento o TDHCA) es la agencia que da licencia y supervisa esta instalacion. Usted puede mandar sus quejas al Departamento por teléfono gratuitamente por marcando 1-833-522-7028 o escribiendo a Migrant Labor Housing c/o TDHCA, P.O. Box 13941, Austin, TX 78711-3941. La oficina tiene personas que hablan español. A lo mas posible que podemos, protegeremos su identidad. Las regulaciones del Departamento prohíben cualquier represalias por la instalación por el operador contra personas que se quejen contra ellos.

§90.7. Complaints.

(a) If the Department receives any complaint, it shall investigate it by appropriate means, including the conducting of a complaint inspection. Any complaint inspection will be conducted after giving the Provider notice of the inspection and an opportunity to be present. The complainant will be contacted by the Department as soon as possible but no later than 10 days of making a complaint and such a call may be relayed to local authority(s) if a possible life threatening safety or health issue is involved.

(b) A Licensee, through its Provider, shall be provided a copy of any complaint (or, if the complaint was made verbally, a summary of the matter) and given a reasonable opportunity to respond. Generally, this shall be 10 business days.

(1) Complaints may be made in writing or by telephone to 1-833-522-7028.

(2) Complaints may be made in English, Spanish, or other language.

(3) To the fullest extent permitted by applicable law, the identity of any complainant shall be maintained as confidential (unless the complainant specifically consents to the disclosure of their identity or requests that the Department disclose their identity).

(4) Licensees and Providers shall not engage in any retaliatory action against an Occupant for making a complaint in good faith.

(c) If any complaint involves matters that could pose an imminent threat to health or safety, all time frames shall be accelerated, and such complaint shall be addressed as expeditiously as possible.

(d) The Department may conduct interviews, including interviews of Providers and Occupants, and review such records as it deems necessary to investigate a complaint.

(e) The Department shall review the findings of any inspection and its review and, if it finds a violation of the Act or these rules to have occurred, issue a notice of violation.

(f) A notice of violation and order will be sent to the Licensee to the attention of the Provider.

(g) The notice of violation will set forth:

(1) The complaint or other matter made the subject of the notice;

(2) The findings of fact;

(3) The specific provisions of the Act and/or these rules found to have been violated;

(4) The required corrective action;

(5) Any administrative penalty or other sanction to be assessed; and

(6) The timeframe for the Licensee either to agree to the recommended corrective action, and accept the administrative penalties and/or sanctions, or to appeal the matter.

(h) The order will set forth:

(1) The complaint or other matter made the subject of the order;

(2) The findings of fact;

(3) The specific provisions of the Act and/or these rules found to have been violated;

(4) The required corrective action;

(5) Any administrative penalty or other sanction assessed; and

(6) The date on which the order becomes effective if not appealed or otherwise resolved.

(i) Complaints regarding Migrant Labor Housing Facilities will be addressed under this section, and not §1.2 of this title, relating to Department Complaint System to the Department.

§90.8. Administrative Penalties and Sanctions.

(a) When the Director finds that the requirements of the Act or these rules are not being met, he or she may assess administrative penalties or impose other sanctions as set forth in subsections (b) - (d) of this section. Nothing herein limits the right, as set forth in the Act, to seek injunctive relief.

(b) For each violation of the Act or rules a penalty of up to $200 per day per violation may be assessed.

(c) For violations that present an imminent threat to health or safety, if not promptly addressed, the Director may suspend or revoke the affected License.

(d) Administrative penalties assessed regarding Migrant Labor Housing Facilities will be addressed exclusively under this section, and not 10 TAC Chapter 2, relating to Enforcement.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 16, 2020.

TRD-202000176
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 5, 2020
Proposal publication date: October 25, 2019
For further information, please call: (512) 475-1762

TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

22 TAC §501.91

The Texas State Board of Public Accountancy adopts an amendment to §501.91, concerning Reportable Events, without changes to the proposed text as published in the November 29, 2019 issue of the *Texas Register* (44 TexReg 7299) and will not be republished.

The amendment to §501.91 revises subsection (d) to make it clear that firms and licensees are not required to report an un-appealable adverse finding in any state or federal court or agreed settlement in a civil action or an agreed consent order or settlement with a regulatory authority or a negotiated settlement evidencing deficient accounting services when no Texas licensee is involved or no harm has been caused to an entity located in Texas.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 16, 2020.

TRD-202000184
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: February 5, 2020
Proposal publication date: November 29, 2019
For further information, please call: (512) 305-7842

CHAPTER 512. CERTIFICATION BY RECIPROCITY

22 TAC §512.1

The Texas State Board of Public Accountancy adopts an amendment to §512.1, concerning Certification as a Certified Public Accountant by Reciprocity, without changes to the proposed text as published in the November 1, 2019, issue of the *Texas Register* (44 TexReg 6497). The rule will not be republished.

The amendment to §512.1 deletes the reference to good moral character, to track the changes made to the Act effective September 1, 2019, and advises applicants that the Board will be reviewing applicants' criminal history records in order to ensure that licensees possess the integrity necessary to provide accounting services to the public.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill
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Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

CHAPTER 513. REGISTRATION
SUBCHAPTER B. REGISTRATION OF CPA FIRMS

22 TAC §513.11

The Texas State Board of Public Accountancy adopts an amendment to §513.11, concerning Qualifications for Non-CPA Owners of Firm License Holders, without changes to the proposed text as published in the November 1, 2019, issue of the *Texas Register* (44 TexReg 6498). The rule will not be republished.

The amendment to §513.11 deletes the reference to good moral character to reflect the changes made to the Act beginning September 1, 2019, and advises applicants that the Board will be reviewing applicants' criminal history records in order to ensure that licensees possess the integrity necessary to provide accounting services to the public.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

22 TAC §513.16

The Texas State Board of Public Accountancy adopts an amendment to §513.16, concerning Death or Incapacitation of Firm Owner, without changes to the proposed text as published in the November 29, 2019, issue of the *Texas Register* (44 TexReg 7301). The rule will not be republished.

The amendment to §513.16 removes the requirement that medical affidavits be notarized.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

CHAPTER 515. LICENSES

22 TAC §515.8

The Texas State Board of Public Accountancy adopts an amendment to §515.8, concerning Retired or Disability Status, without changes to the proposed text as published in the November 29, 2019, issue of the *Texas Register* (44 TexReg 7302). The rule will not be republished.

The amendment to §515.8 removes the requirement that medical affidavits be notarized.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

CHAPTER 519. PRACTICE AND PROCEDURE
SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §519.2

The Texas State Board of Public Accountancy adopts an amendment to §519.2, concerning Definitions, without changes to the proposed text as published in the November 29, 2019 issue of the *Texas Register* (44 TexReg 7304). The rule will not be republished.

The amendment to §519.2 revises the definition of deferred adjudication to eliminate the requirement for a pleading of guilt in order to be considered deferred adjudication.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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Proposal publication date: November 29, 2019
For further information, please call: (512) 305-7842

CHAPTER 525. CRIMINAL BACKGROUND INVESTIGATIONS

22 TAC §525.1

The Texas State Board of Public Accountancy adopts an amendment to §525.1, concerning Applications for the UCPAE, Issuance of the CPA Certificate, or Initial License, without changes to the proposed text as published in the November 29, 2019, issue of the *Texas Register* (44 TexReg 7305). The rule will not be republished.

The amendment to §525.1 incorporates into the board's rules the standards found in Chapter 53 of the Occupations Code which were revised during the 86th Session of the Texas Legislature.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

22 TAC §525.2

The Texas State Board of Public Accountancy adopts an amendment to §525.2, concerning Applications for or Renewal of a License for Licensees with Criminal Backgrounds, without changes to the proposed text as published in the November 29, 2019, issue of the *Texas Register* (44 TexReg 7308). The rule will not be republished.

The amendment to §525.2 incorporates into the board's rules the standards found in Chapter 53 of the Occupations Code which were revised during the 86th Session of the Texas Legislature.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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Proposal publication date: November 29, 2019
For further information, please call: (512) 305-7842

22 TAC §525.3

The Texas State Board of Public Accountancy adopts an amendment to §525.3, concerning Criminal Background Checks, without changes to the proposed text as published in the November 29, 2019, issue of the *Texas Register* (44 TexReg 7310). This rule will not be republished.

The amendment to §525.3 clarifies the Board's requirement for the fingerprints of applicants and licensees and the review of their criminal history records to assure the public's protection.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 16, 2020.

TRD-202000192
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: February 5, 2020
Proposal publication date: November 29, 2019
For further information, please call: (512) 305-7842

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 5. DEPOPULATION PROGRAMS

28 TAC §5.4307

The Commissioner of Insurance adopts amended 28 TAC §5.4307, relating to the Assumption Reinsurance Program for policies issued by the Texas Windstorm Insurance Association (TWIA). The amendments to §5.4307 are adopted without changes to the proposed text published in the October 25, 2019, issue of the *Texas Register* (44 TexReg 6213). The rule will not be republished.

REASONED JUSTIFICATION. The amended section is necessary to implement changes to Insurance Code §2210.705 enacted by Senate Bill 615, 86th Legislature, Regular Session (2019). SB 615 necessitates amending §5.4307, because the section conflicted with the new provisions of Insurance Code §2210.705.

Insurance Code §2210.705 requires the adoption of rules establishing the procedure for the transfer of reinsured policies. SB 615 deleted a provision that required those rules to include an offer commencement date of December 1. It also changed the required deadline for a policyholder to opt out of a reinsurance agreement from "on or before May 31" to "not more than 60 days after the policyholder receives notice of the reinsurance agreement." Consistent with these changes, TDI has amended §5.4307 to delete the subsection that required an offer commencement date of December 1. TDI has also updated the policyholder opt-out deadline and adjusted the numbering for the paragraphs under subsection (b).

SB 615 requires TDI to adopt or amend rules as needed due to its changes to Insurance Code §2210.705 by March 31, 2020.

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The Commissioner adopts amended 28 TAC §5.4307 under Insurance Code §2210.705 and §36.001.

Section 2210.705 requires TDI to adopt rules addressing the procedure for the transfer of reinsured policies under the TWIA depopulation program.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 17, 2020.

TRD-202000215
James Person
General Counsel
Texas Department of Insurance
Effective date: February 6, 2020
Proposal publication date: October 25, 2019
For further information, please call: (512) 676-6584

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER F. MOTOR VEHICLE SALES TAX

34 TAC §3.96

The Comptroller of Public Accounts adopts an amendment to §3.96, concerning the imposition and collection of a surcharge on certain diesel powered motor vehicles, without changes to the proposed text as published in the December 13, 2019, issue of the *Texas Register* (44 TexReg 7671). The rule will not be republished. The comptroller amends the section to reflect the changes in Tax Code, §152.0215 (Texas Emissions Reduction Plan Surcharge) made by House Bill 3745, 86th Legislature, 2019.

Subsection (g) is amended to change the expiration date of the surcharge from August 31, 2019, to the last day of the fiscal biennium during which Texas Commission on Environmental Quality publishes in the *Texas Register* the notice required by Health and Safety Code, §382.037 (Notice in *Texas Register* Regarding National Ambient Air Quality Standards for Ozone).

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002 (Comptroller's Rules, Compliance, Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §152.0215 (Texas Emissions Reduction Plan Surcharge).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 16, 2020.

TRD-202000156
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Effective date: February 5, 2020
Proposal publication date: December 13, 2019
For further information, please call: (512) 475-0387

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER F. LIMITATION ON APPRAISED VALUE ON CERTAIN QUALIFIED PROPERTIES

34 TAC §§9.1051 - 9.1053, 9.1055, 9.1058

The Comptroller of Public Accounts adopts amendments to §9.1051, concerning definitions, §9.1052. concerning forms, §9.1053, concerning entity requesting agreement to limit appraised value, §9.1055, concerning comptroller application review and agreement to limit appraised value, and §9.1058, concerning miscellaneous provisions, without changes to the proposed text as published in the November 29, 2019, issue of the *Texas Register* (44 TexReg 7356). The rules will not be republished.

The amendments to §9.1051 amend the definition of substantive document in paragraph (19) to clarify that employee names and personal identifying information will not be treated as substantive documents that will be required to be posted on the comptroller's website; and update the definitions of average weekly wage for manufacturing jobs in paragraph (21), average weekly wage for non-qualifying jobs in paragraph (22) and unemployment in paragraph (29) to remove references to webpage links that are no longer correct.

The changes to §9.1052 only changes Form 50-296A, Application for Appraised Value Limitation on Qualified Property and Form 50-826, Texas Economic Development Act Agreement and otherwise do not change the rule itself. Copies of Form 50-296A and Form 50-826 are available on the comptroller's website at https://comptroller.texas.gov/economy/local/ch313/forms.php. The revised Form 50-296A clarifies that only non-confidential application materials will be published on the comptroller website, requests additional information about the identity of the parent company and reporting entity for Texas franchise tax purposes, requests the applicant to identify the estimated beginning date of the limitation period under Tax Code, §313.027(a-1)(2), and identify all other state and local incentives applicable to the project. The revised Form 50-826 amends the definition of Force Majeure, changes Article VII, Annual Limitation of Payments by Applicant, to permit the district and applicant to negotiate the applicable terms, updates the reference to Exhibit 4 in the agreement for the description of the applicant's Qualified Property, amends Section 8.5.A to extend from 48 hours to 96 hours the time required for written notice by the school district to inspect the applicant's Qualified Property and amends Section 10.12 to require the applicant to provide notice to the comptroller's office of any actual or anticipated change in ownership of the applicant and of any legal or administrative investigations or proceedings initiated against the Applicant related to the project.

The amendments to §9.1053 update subsection (a)(1)(A) and (2)(B)(i) to remove the reference to Schedule D in the application because Schedule D no longer exists; amend subsection (f)(2) to change the deadline to provide the proposed agreement to the school district and comptroller from 20 days to 30 days prior to the meeting at which the governing body of the school district is scheduled to consider the application; and add subsection (f)(9) to require applicants to provide the comptroller with estimates of the gross tax benefit that would result from the limitation on appraised value on the qualified property within 30 days after filing a completed application with the school district to assist the comptroller in evaluating the applications.

The amendment to §9.1055 amends subsection (e) to extend from 10 business days to 20 business days the time the comptroller has to review a proposed 313 agreement and provide written notification to the school district after completing its review. The amendment also rewords subsection (e)(2) to enhance readability.

The amendment to §9.1058 amends subsection (f) to clarify that all agreements in a series under Tax Code, §313.027(h) must be submitted concurrently at application and the application must clearly state the agreement will be part of a series and set forth the other agreements that are intended to be included as part of the series of agreements.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Tax Code, §313.031, which authorizes the comptroller to adopt rules necessary for the implementation and administration of Tax Code, Chapter 313.

The amendments implement Tax Code, Chapter 313.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 17, 2020.

TRD-202000216
Don Neal
Chief Counsel, Operations and Support Legal Services Division
Comptroller of Public Accounts
Effective date: February 6, 2020
Proposal publication date: November 29, 2019
For further information, please call: (512) 475-0387

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

CHAPTER 211. ADMINISTRATION

37 TAC §211.1

The Texas Commission on Law Enforcement (Commission) adopts the amended §211.1, concerning Definitions, without changes to the proposed text as published in the November 22, 2019, issue of the *Texas Register* (44 TexReg 7142). The rule will not be republished.

This amendment was necessary to include any successors of the Southern Association of Colleges and Schools under Texas Occupations Code, Section 1701.151.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority.

No other code, article, or statute is affected by this adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 16, 2020.

TRD-202000202
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 5, 2020
Proposal publication date: November 22, 2019
For further information, please call: (512) 936-7700

37 TAC §211.26

The Texas Commission on Law Enforcement (Commission) adopts the amended §211.26, concerning Law Enforcement Agency Audits, without changes to the proposed text as published in the November 22, 2019, issue of the *Texas Register* (44 TexReg 7145). The rule will not be republished.

This amendment was necessary to reflect who may get the audit report.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code §1701.162, Records and Audit Requirements.

No other code, article, or statute is affected by this adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kim Vickers
Executive Director
Texas Commission on Law Enforcement
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For further information, please call: (512) 936-7700

CHAPTER 217. ENROLLMENT, LICENSING, APPOINTMENT, AND SEPARATION

37 TAC §217.1

The Texas Commission on Law Enforcement (Commission) adopts amended §217.1, concerning Minimum Standards for Enrollment and Initial Licensure, with changes to the proposed text as published in the November 22, 2019, issue of the *Texas Register* (44 TexReg 7146). The rule will be republished.

This amendment was necessary to reflect statutory changes pursuant to HB 4468 (86R).

One public comment was received.

Comment:

"After reviewing the live record of the Sept. 19 meeting, and discussing with my administrator, I wish to make the following public comments.

"My comment concerns the TCOLE approved Personal History Statement. When the PHS was originally given to agencies, it was provided as a guide and agencies were allowed to modify it to meet the needs of the agency. As I followed the discussion and interpreted the proposed rule change, we would now be required to us the TCOLE PHS in its entirety.

"This leads to several issues for smaller agencies. As an example, credit history. We have determined that credit worthiness does not rise to the level of requiring disclosure during the hiring process, and as such has been removed from our PHS. Honesty and susceptibility to bribes is an integrity issue unrelated to credit worthiness ie: one without integrity will accept bribes regardless of credit obligations, whereas one with will never accept a bribe.

"On a responsibility scale with regard to credit, 20 years ago probably half our new officers was behind on at least one bill, simply do [*sic*] to cost of living vice income of a rookie officer, they all were honest officers and did credit to the agency serving the public.

"This is merely one of the areas of concern with the proposed rule, but sufficient for comment. Our request is to continue to allow use of PHS tailored to the agencies needs.

"In support of this, is the proposed changes regarding military discharge, making only a dishonorable discharges [*sic*] a disqualifying factor for licensure or appointment. The Commission, rightly in my opinion acknowledges that the agency is the gatekeeper on deciding what conditions that the agency will accept in a possible employee, and in my belief supports that the agency is likewise the gatekeeper when determining what degree of personal history is needed to to determine an adequate candidate.

"Thank you for your time and the effort you put in serving on the Commission."

Agency response:

"You [*sic*] email will be forwarded to the Commissioners.

"I would, however, like to point out that the actual proposed rule states, '... require completion of a personal history statement that meets or exceeds the Commission-approved personal history statement.'

"Therefore, it is only necessary to use a PHS that meets or exceeds ours. That allows flexibility on the exact PHS used, and does not require using the TCOLE PHS in its entirety.

"If you have any additional questions or concerns, please don't hesitate to contact me."

Response to clarification:

"Thank you for the clarification and taking the time to answer so promptly. I was listening to the live cast and couldn't find the actual language of the proposed rule on the website (last open comment link was March 19). At least that I could find. That does make more sense."

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code §1701.251, Training Programs; Instructors, Texas Occupations Code §1701.253, School Curriculum, Texas Occupations Code §1701.255, Enrollment Qualifications, Texas Occupations Code §1701.256, Instruction in Weapons Proficiency Required, Texas Occupations Code §1701.306, Psychological and Physical Examination, Texas Occupations Code §1701.307, Issuance of Officer or County Jailer License, Texas Occupations Code §1701.308, Weapons Proficiency, Texas Occupations Code §1701.309, Age Requirement, Texas Occupations Code §1701.310, Appointment of County Jailer; Training Required, Texas Occupations Code §1701.311, Provisional License for Workforce Shortage, Texas Occupations Code §1701.312, Disqualification: Felony Conviction or Placement on Community Supervision, Texas Occupations Code §1701.405, Telecommunicators.

No other code, article, or statute is affected by this adoption.

§217.1. Minimum Standards for Enrollment and Initial Licensure.

(a) In order for an individual to enroll in any basic licensing course the provider must have on file documentation, acceptable to the Commission, that the individual meets eligibility for licensure.

(b) The commission shall issue a license to an applicant who meets the following standards:

(1) minimum age requirement:

(A) for peace officers and public security officers, is 21 years of age; or 18 years of age if the applicant has received:

(i) an associate's degree; or 60 semester hours of credit from an accredited college or university; or

(ii) has received an honorable discharge from the armed forces of the United States after at least two years of active service;

(B) for jailers and telecommunicators is 18 years of age;

(2) minimum educational requirements:

(A) has passed a general educational development (GED) test indicating high school graduation level;

(B) holds a high school diploma; or

(C) for enrollment purposes in a basic peace officer academy only, has an honorable discharge from the armed forces of the United States after at least 24 months of active duty service.

(3) is fingerprinted and is subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record;

(4) has never been on court-ordered community supervision or probation for any criminal offense above the grade of Class B misdemeanor or a Class B misdemeanor within the last ten years from the date of the court order;

(5) is not currently charged with any criminal offense for which conviction would be a bar to licensure;

(6) has never been convicted of an offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years;

(7) has never been convicted or placed on community supervision in any court of an offense involving family violence as defined under Chapter 71, Texas Family Code;

(8) for peace officers, is not prohibited by state or federal law from operating a motor vehicle;

(9) for peace officers, is not prohibited by state or federal law from possessing firearms or ammunition;

(10) has been subjected to a background investigation completed by the enrolling or appointing entity into the applicant's personal history. A background investigation shall include, at a minimum, the following:

(A) An enrolling entity shall:

(i) require completion of the Commission-approved personal history statement;

(ii) verify that the applicant meets each individual requirement for licensure under this rule based on the personal history statement and any other information known to the enrolling entity; and

(iii) contact all previous enrolling entities.

(B) In addition to subparagraph (A) of this paragraph, a law enforcement agency or law enforcement agency academy shall:

(i) require completion of a personal history statement that meets or exceeds the Commission-approved personal history statement;

(ii) contact at least three personal references;

(iii) contact all employers for at least the last ten years, if applicable;

(iv) contact the chief administrator or the chief administrator's designee at each of the applicant's previous law enforcement employers; and

(v) complete criminal history and driving records checks.

(11) examined by a physician, selected by the appointing or employing agency, who is licensed by the Texas Medical Board. The physician must be familiar with the duties appropriate to the type of license sought and appointment to be made. The appointee must be declared by that professional, on a form prescribed by the commission, within 180 days before the date of appointment by the agency to be:

(A) physically sound and free from any defect which may adversely affect the performance of duty appropriate to the type of license sought;

(B) show no trace of drug dependency or illegal drug use after a blood test or other medical test; and

(C) for the purpose of meeting the requirements for initial licensure, an individual's satisfactory medical exam that is conducted as a requirement of a basic licensing course may remain valid for 180 days from the individual's date of graduation from that academy, if accepted by the appointing agency;

(12) examined by a psychologist, selected by the appointing, employing agency, or the academy, who is licensed by the Texas State Board of Examiners of Psychologists. This examination may also be conducted by a psychiatrist licensed by the Texas Medical Board. The psychologist or psychiatrist must be familiar with the duties appropriate to the type of license sought. The individual must be declared by that professional, on a form prescribed by the commission, to be in satisfactory psychological and emotional health to serve as the type of officer for which the license is sought. The examination must be conducted pursuant to professionally recognized standards and methods. The examination process must consist of a review of a job description for the position sought; review of any personal history statements; review of any background documents; at least two instruments, one which measures personality traits and one which measures psychopathology; and a face to face interview conducted after the instruments have been scored. The appointee must be declared by that professional, on a form prescribed by the commission, within 180 days before the date of the appointment by the agency;

(A) the commission may allow for exceptional circumstances where a licensed physician performs the evaluation of psychological and emotional health. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; or

(B) the examination may be conducted by qualified persons identified by Texas Occupations Code §501.004. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; and

(C) for the purpose of meeting the requirements for initial licensure, an individual's satisfactory psychological exam that is conducted as a requirement of a basic licensing course may remain valid for 180 days from the individual's date of graduation from that academy, if accepted by the appointing agency;

(13) has never received a dishonorable discharge;

(14) has not had a commission license denied by final order or revoked;

(15) is not currently on suspension, or does not have a surrender of license currently in effect;

(16) meets the minimum training standards and passes the commission licensing examination for each license sought;

(17) is a U.S. citizen.

(c) For the purposes of this section, the commission will construe any court-ordered community supervision, probation or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:

(1) another penal provision of Texas law; or

(2) a penal provision of any other state, federal, military or foreign jurisdiction.

(d) A classification of an offense as a felony at the time of conviction will never be changed because Texas law has changed or because the offense would not be a felony under current Texas laws.

(e) A person must meet the training and examination requirements:

(1) training for the peace officer license consists of:

(A) the current basic peace officer course(s);

(B) a commission recognized, POST developed, basic law enforcement training course, to include:

(i) out of state licensure or certification; and

(ii) submission of the current eligibility application and fee; or

(C) a commission approved academic alternative program, taken through a licensed academic alternative provider and at least an associate's degree.

(2) training for the jailer license consists of the current basic county corrections course(s) or training recognized under Texas Occupations Code §1701.310;

(3) training for the public security officer license consists of the current basic peace officer course(s);

(4) training for telecommunicator license consists of telecommunicator course; and

(5) passing any examination required for the license sought while the exam approval remains valid.

(f) The commission may issue a provisional license, consistent with Texas Occupations Code §1701.311, to an agency for a person to be appointed by that agency. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a provisional license. A provisional license is issued in the name of the applicant; however, it is issued to and shall remain in the possession of the agency. Such a license may neither be transferred by the applicant to another agency, nor transferred by the agency to another applicant. A provisional license may not be reissued and expires:

(1) 12 months from the original appointment date;

(2) on leaving the appointing agency; or

(3) on failure to comply with the terms stipulated in the provisional license approval.

(g) The commission may issue a temporary jailer license, consistent with Texas Occupations Code §1701.310. A jailer appointed on a temporary basis shall be enrolled in a basic jailer licensing course on or before the 90th day after their temporary appointment. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a temporary jailer license. A temporary jailer license may not be renewed and expires:

(1) 12 months from the original appointment date; or

(2) on completion of training and passing of the jailer licensing examination.

(h) The commission may issue a temporary telecommunicator license, consistent with Texas Occupations Code §1701.405. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed.

Upon the approval of the application, the commission will issue a temporary telecommunicator license. A temporary telecommunicator license expires:

(1) 12 months from the original appointment date; or

(2) on completion of training and passing of the telecommunicator licensing examination. On expiration of a temporary license, a person is not eligible for a new temporary telecommunicator license for one year.

(i) A person who fails to comply with the standards set forth in this section shall not accept the issuance of a license and shall not accept any appointment. If an application for licensure is found to be false or untrue, it is subject to cancellation or recall.

(j) The effective date of this section is February 1, 2020.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kim Vickers
Executive Director
Texas Commission on Law Enforcement
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For further information, please call: (512) 936-7700

37 TAC §217.7

The Texas Commission on Law Enforcement (Commission) adopts amended §217.7, concerning Reporting Appointment and Separation of a Licensee, with changes to the proposed text as published in the November 22, 2019, issue of the *Texas Register* (44 TexReg 7149). The rule will be republished.

This amendment is necessary to clarify when the separation of the licensee must be submitted.

No comments were received regarding adoption of this amendment

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code §1701.307, Issuance of Officer or County Jailer License, Texas Occupations Code §1701.3071, Issuance of a Telecommunicator License, Texas Occupations Code §1701.451, Pre-employment Request for Employment Termination Report and Submission of Background Check Confirmation Form.

No other code, article, or statute is affected by this adoption.

§217.7. Reporting Appointment and Separation of a Licensee.

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

(1) obtain the person's written consent for the agency to view the person's employment records;

(2) obtain a copy of the Personal Status Report (PSR) maintained by the commission;

(3) obtain a completed, signed, and notarized Personal History Statement (PHS);

(4) obtain a Computerized Criminal History (CCH) from TCIC and NCIC;

(5) obtain proof of eligibility after separation from the military, if applicable;

(6) conduct and document a background investigation;

(7) for peace officers, obtain proof of weapons qualification within the 12 months preceding appointment;

(8) for current licensees, electronically request and obtain the F-5 Return (F5R) from the commission, contact each of the person's previous law enforcement employers, and document the contact on the F5 return; and

(9) in addition to the requirements listed in this section:

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

(i) obtain a new declaration of psychological and emotional health (L3 Form);

(ii) obtain a new declaration of the lack of any drug dependency or illegal drug use (L2 Form); and

(iii) obtain new proof that the licensee has been fingerprinted and subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record.

(B) For a person's initial appointment:

(i) obtain proof of meeting educational requirements;

(ii) obtain proof of meeting U.S. citizenship requirements;

(iii) obtain new proof that the person has been fingerprinted and subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record;

(iv) obtain a new declaration of psychological and emotional health (L3 Form), if more than 180 days from the graduation of the basic licensing course;

(v) obtain a new declaration of medical eligibility and lack of any drug dependency or illegal drug use (L2 Form), if more than 180 days from the graduation of the basic licensing course; and

(vi) submit an appointment application (L1 Form) and receive an approval of the application before the person discharges any duties related to the license sought.

(10) For current licensees, submit a Statement of Appointment (L1 Form) within 7 days of the appointment.

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

(1) submit a Separation report (Form F5) to the commission; and

(2) provide a copy to the licensee in a manner prescribed by Texas Occupations Code section 1701.452.

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

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

(e) The effective date of this section is February 1, 2020.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kim Vickers
Executive Director
Texas Commission on Law Enforcement
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For further information, please call: (512) 936-7700

CHAPTER 218. CONTINUING EDUCATION

37 TAC §218.3

The Texas Commission on Law Enforcement (Commission) adopts the amended §218.3, concerning Legislatively Required Continuing Education for Licensees, with changes to the proposed text as published in the November 22, 2019, issue of the *Texas Register* (44 TexReg 7150). This rule will be republished.

This amendment is necessary to reflect statutory changes pursuant to S.B. 11 (86R), S.B. 1827 (86R), H.B. 1415 (86R), H.B. 2195 (86R), H.B. 1552 (86R), H.B. 3503 (86R), H.B. 1735 (86R), and H.B. 292 (86R).

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code §1701.253, School Curriculum, Texas Occupations Code §1701.351, Continuing Education Required for Peace Officers, Texas Occupations Code §1701.352, Continuing Education Programs, Texas Occupations Code §1701.353, Continuing Education Procedures, Texas Occupations Code §1701.354, Continuing Education for Deputy Constables, Texas Occupations Code §1701.3545, Initial Training and Continuing Education for Constables.

No other code, article, or statute is affected by this adoption.

§218.3. Legislatively Required Continuing Education for Licensees.

(a) Each licensee shall complete the legislatively mandated continuing education in this chapter. Each appointing agency shall allow the licensee the opportunity to complete the legislatively mandated continuing education in this chapter. This section does not limit the number or hours of continuing education an agency may provide.

(b) Each training unit (2 years).

(1) Peace officers shall complete at least 40 hours of continuing education, to include the corresponding legislative update for that unit.

(2) Telecommunicators shall complete at least 20 hours of continuing education.

(c) Each training cycle (4 years).

(1) Peace officers who have not yet reached intermediate proficiency certification shall complete: Cultural Diversity (3939), Special Investigative Topics (3232), Crisis Intervention (3843) and De-escalation (1849).

(2) Individuals licensed as reserve law enforcement officers, jailers, or public security officers shall complete Cultural Diversity (3939), unless the person has completed or is otherwise exempted from legislatively required training under another commission license or certificate.

(d) Assignment specific training.

(1) Police chiefs: individuals appointed as "chief" or "police chief" of a police department shall complete:

(A) For an individual appointed to that individual's first position as chief, the initial training program for new chiefs provided by the Bill Blackwood Law Enforcement Management Institute, not later than the second anniversary of that individual's appointment or election as chief; and

(B) At least 40 hours of continuing education for chiefs each 24-month unit, as provided by the Bill Blackwood Law Enforcement Management Institute.

(2) Constables: elected or appointed constables shall complete:

(A) For an individual appointed or elected to that individual's first position as constable, the initial training program for new constables provided by the Bill Blackwood Law Enforcement Management Institute, not later than the second anniversary of that individual's appointment or election as constable.

(B) Each 48 month cycle, at least 40 hours of continuing education for constables, as provided by the Bill Blackwood Law Enforcement Management Institute and a 20 hour course of training in civil process to be provided by a public institution of higher education selected by the Commission.

(3) Deputy constables: each deputy constable shall complete a 20 hour course of training in civil process each training cycle. The commission may waive the requirement for this training if the constable, in the format required by TCOLE, requests exemption due to the deputy constable not engaging in civil process as part of their assigned duties.

(4) New supervisors: each peace officer assigned to their first position as a supervisor must complete new supervisor training within one year prior to or one year after appointment as a supervisor.

(5) School-based Law Enforcement Officers: School district peace officers and school resource officers providing law enforcement services at a school district must obtain a school-based law enforcement proficiency certificate within 180 days of the officer’s commission or placement in the district or campus of the district.

(6) Eyewitness Identification Officers: peace officers performing the function of eyewitness identification must first complete the Eyewitness Identification training (3286).

(7) Courtroom Security Officers/Persons: any person appointed to perform courtroom security functions at any level shall complete the Courtroom Security course (10999) within 1 year of appointment.

(8) Body-Worn Cameras: peace officers and other persons meeting the requirements of Occupations Code 1701.656 must first complete Body-Worn Camera training (8158).

(9) Officers Carrying Epinephrine Auto-injectors: peace officers meeting the requirements of Occupations Code 1701.702 must first complete epinephrine auto-injector training.

(10) Jailer Firearm Certification: jailers carrying a firearm as part of their assigned duties must first obtain the Jailer Firearms certificate before carrying a firearm.

(11) University Peace Officers, Trauma-Informed Investigation Training: each university or college peace officer shall complete an approved course on trauma-informed investigation into allegations of sexual harassment, sexual assault, dating violence, and stalking.

(e) Miscellaneous training.

(1) Human Trafficking: every peace officer first licensed on or after January 1, 2011, must complete Human Trafficking (3270), within 2 years of being licensed.

(2) Canine Encounters: every peace officer first licensed on or after January 1, 2016, must take Canine Encounters (4065), within 2 years of being licensed.

(3) Deaf and Hard of Hearing Drivers: every peace officer licensed on or after March 1, 2016, must complete Deaf and Hard of Hearing Drivers (7887) within 2 years of being licensed.

(4) Civilian Interaction Training: every peace officer licensed before January 1, 2018, must complete Civilian Interaction Training Program (CITP) within 2 years. All other peace officers must complete the course within 2 years of being licensed.

(5) Crisis Intervention Training: every peace officer licensed on or after April 1, 2018, must complete the 40 hour Crisis Intervention Training within 2 years of being licensed.

(6) Mental Health for Jailers: all county jailers must complete Mental Health for Jailers not later than August 31, 2021.

(f) The Commission may choose to accept an equivalent course for any of the courses listed in this chapter, provided the equivalent course is evaluated by commission staff and found to meet or exceed the minimum curriculum requirements of the legislatively mandated course.

(g) The commission shall provide adequate notice to agencies and licensees of impending non-compliance with the legislatively required continuing education.

(h) The chief administrator of an agency that has licensees who are in non-compliance shall, within 30 days of receipt of notice of non-compliance, submit a report to the commission explaining the reasons for such non-compliance.

(i) Licensees shall complete the legislatively mandated continuing education in the first complete training unit, as required, or first complete training cycle, as required, after being licensed.

(j) All peace officers must meet all continuing education requirements except where exempt by law.

(k) The effective date of this section is February 1, 2020.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 16, 2020.

TRD-202000205
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 5, 2020
Proposal publication date: November 22, 2019
For further information, please call: (512) 936-7700

37 TAC §218.9

The Texas Commission on Law Enforcement (Commission) adopts the amended §218.9, concerning Continuing Firearms Proficiency Requirements, without changes to the proposed text as published in the November 22, 2019, issue of the *Texas Register* (44 TexReg 7152). The rule will not be republished.

This amendment is necessary to reflect who is required to complete the required firearms proficiency requirements.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code §1701.308, Weapons Proficiency, Texas Occupations Code §1701.355, Continuing Demonstration of Weapons Proficiency.

No other code, article, or statute is affected by this adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 16, 2020.

TRD-202000206
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 5, 2020
Proposal publication date: November 22, 2019
For further information, please call: (512) 936-7700

CHAPTER 219. PRELICENSING, REACTIVATION, TESTS, AND ENDORSEMENTS

37 TAC §219.2

The Texas Commission on Law Enforcement (Commission) adopts amended §219.2, concerning Reciprocity for Out-of-State Peace Officers, Federal Criminal Investigators, and Military Police, with changes to the proposed text as published in the November 22, 2019, issue of the *Texas Register* (44 TexReg 7153). The rule will be republished.

This amendment is necessary to reflect the courses and years of service required.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code §1701.307, Issuance of Officer or County Jailer License, Texas Occupations Code §1701.316, Reactivation of Peace Officer License.

No other code, article, or statute is affected by this adoption.

§219.2. Reciprocity for Out-of-State Peace Officers, Federal Criminal Investigators, and Military Police.

(a) To be eligible to take a state licensing examination, an out of state, federal criminal investigator, or military police must comply with all provisions of §219.1 of this chapter and this section.

(b) A prospective out-of-state peace officer, federal criminal investigator, or military police applicant for peace officer licensing in Texas must:

(1) meet all statutory licensing requirements of the state of Texas and the rules of the commission;

(2) successfully complete a supplementary peace officer training course, the curriculum of which is developed by the commission, any other courses, as required by the commission; and

(3) successfully pass the Texas Peace Officer Licensing Examination as provided in §219.1 of this chapter.

(c) Requirements (Peace Officers): Applicants who are peace officers from other U.S. states must meet the following requirements:

(1) provide proof of successful completion of a state POST-approved (or state licensing authority) basic police officer training academy;

(2) have honorably served (employed, benefits eligible) as a sworn full time paid peace officer for 2 continuous years. Service time applied to this section must have been obtained following completion of a state POST approved basic training course;

(3) be subject to continued employment or eligible for re-hire (excluding retirement); and

(4) the applicant's license or certificate must never have been, nor currently be in the process of being, surrendered, suspended, or revoked.

(d) Requirements (Federal): The Texas Code of Criminal Procedures Section 2.122 recognizes certain named criminal investigators of the United States as having the authority to enforce selected state laws by virtue of their authority. These individuals are deemed to have the equivalent training for licensure consideration.

(e) Qualifying Federal Officers must:

(1) have successfully completed an approved federal agency law enforcement training course (equivalent course topics and hours) at the time of initial certification or appointment;

(2) have honorably served (employed, benefits eligible) in one of the aforementioned federal full time paid capacities for 2 continuous years. Service time applied to this section must have been obtained following completion of a federal agency law enforcement approved basic training course; and

(3) be subject to continued employment or eligible for re-hire (excluding retirement).

(f) Requirements (Military): Must have a military police military occupation specialty (MOS) or air force specialty code (AFSC) classification approved by the commission.

(g) Qualifying military personnel must provide proof of:

(1) successfully completed basic military police course for branch of military served; and

(2) active duty service for 2 continuous years. Service time applied to this section must have been obtained following completion of an approved basic military police course.

(h) The applicant must make application and submit any required fee(s) in the format currently prescribed by the commission to take the peace officer licensing exam. The applicant must comply with the provisions of §219.1 of this chapter when attempting the licensing exam.

(i) Required documents must accompany the application:

(1) a certified or notarized copy of the basic training certificate for a peace officer, a certified or notarized copy of a federal agent's license or credentials, or a certified or notarized copy of the peace officer license or certificate issued by the state POST or proof of military training;

(2) a notarized statement from the state POST, current employing agency or federal employing agency revealing any disciplinary action(s) that may have been taken against any license or certificate issued by that agency or any pending action;

(3) a notarized statement from each applicant's employing agency confirming time in service as a peace officer or federal officer or agent;

(4) a certified or notarized copy of the applicant's valid state-issued driver's license;

(5) a certified copy of the applicant's military discharge (DD-214), if applicable; and

(6) for applicants without a valid Texas drivers license, a passport-sized color photograph (frontal, shoulders and face), signed with the applicant's full signature on the back of the photograph.

(j) The commission may request that applicants submit a copy of the basic and advanced training curricula for equivalency evaluation and final approval.

(k) All out-of-state, federal, and military applicants will be subject to a search of the National Decertification Database (NDD), NCIC/TCIC, and National Criminal History Databases to establish eligibility.

(l) Any applicant may be denied because of disciplinary action, including suspension or revocation, or misconduct in another jurisdiction.

(m) All documents must bear original certification seals or stamps.

(n) The effective date of this section is February 1, 2020.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 16, 2020.

TRD-202000207

Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 5, 2020
Proposal publication date: November 22, 2019
For further information, please call: (512) 936-7700

37 TAC §219.11

The Texas Commission on Law Enforcement (Commission) adopts the amended §219.11, concerning Reactivation of a License without changes to the proposed text as published in the November 22, 2019, issue of the *Texas Register* (44 TexReg 7154). The rule will not be republished.

This amendment is necessary to reflect which license is being reactivated.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code §1701.316, Reactivation of a Peace Officer License, Texas Occupations Code §1701.3161, Reactivation of Peace Officer License: Retired Peace Officers.

No other code, article, or statute is affected by this proposal.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 16, 2020.

TRD-202000208
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 5, 2020
Proposal publication date: November 22, 2019
For further information, please call: (512) 936-7700

CHAPTER 221. PROFICIENCY CERTIFICATES

37 TAC §221.1

The Texas Commission on Law Enforcement (Commission) adopts amended §221.1, concerning Proficiency Certificate Requirements, without changes to the proposed text as published in the November 22, 2019, issue of the *Texas Register* (44 TexReg 7156). The rule will not be republished.

This amendment is necessary to reflect statutory changes pursuant to HB 971 (86R).

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code §1701.257, Firearms Training Program for Supervision Officers, Texas Occupations Code §1701.258, Education and Training Programs on Trafficking of Persons, Texas Occupations Code §1701.402, Proficiency Certificates.

No other code, article, or statute is affected by this adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 16, 2020.

TRD-202000209
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 5, 2020
Proposal publication date: November 22, 2019
For further information, please call: (512) 936-7700

37 TAC §221.43

The Texas Commission on Law Enforcement (Commission) adopts amended §221.43, concerning School -Based Law Enforcement Proficiency Certificate, with changes to the proposed text as published in the November 22, 2019, issue of the *Texas Register* (44 TexReg 7157). The rule will be republished.

This amendment is necessary to reflect statutory changes pursuant to SB 11 (86R) and HB 2195 (86R).

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupation Code §1701.262, Training for School District Peace Officers and School Resource Officers, Texas Occupations Code §1701.263, Education and Training Program for School District Peace Offices and School Resource Officers, Texas Education Code 37.0812, Training Policy: School District Peace Officers and School Resource Officers.

No other code, article, or statute is affected by this adoption.

§221.43. School-Based Law Enforcement Proficiency Certificate.

(a) To qualify for a school-based law enforcement proficiency certificate, an applicant must complete a course approved by the commission under Texas Occupations Code §1701.262.

(b) School district peace officers and school resource officers providing law enforcement at a school district must obtain a school-based law enforcement proficiency certificate within 180 days of the officer's commission or placement in the district or campus of the district.

(c) The effective date of this section is February 1, 2020.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 16, 2020.

TRD-202000210

Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 5, 2020
Proposal publication date: November 22, 2019
For further information, please call: (512) 936-7700

37 TAC §221.45

The Texas Commission on Law Enforcement (Commission) adopts the new §221.45, concerning Jailer Firearm Certificate with changes to the proposed text as published in the November 22, 2019, issue of the *Texas Register* (44 TexReg 7156). The rule will be republished.

This new rule is necessary to follow the requirements of HB 1552 and HB 3503.

No comments were received regarding adoption of this new rule.

The new rule is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority and Texas Occupations Code §1701.2561, Firearms Training for County Jailers.

No other code, article, or statute is affected by this adoption.

§221.45. Jailer Firearm Certificate.

(a) To qualify for a jailer firearms certificate, an applicant must complete a course as approved by the commission, under Texas Occupations Code 1701.2561, be currently appointed as a jailer, and make application to the commission.

(b) Jailers carrying a firearm as part of their assigned duties must first obtain the jailer firearms certificate before carrying the firearm and must maintain current firearms qualifications as shown in §218.9.

(c) The effective date of this section is February 1, 2020.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 16, 2020.

TRD-202000211
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Effective date: February 5, 2020
Proposal publication date: November 22, 2019
For further information, please call: (512) 936-7700

Texas

Review Of Agency Rules

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Finance Commission of Texas

Title 7, Part 1

The Finance Commission of Texas (commission) files this notice of intention to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 7, Part 1, Chapter 1, concerning Consumer Credit Regulation. Chapter 2 contains Subchapter B, concerning Official Interpretations and Advisory Letters.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission will accept written comments received on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705, or by email to rule.comments@occc.texas.gov. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commission.

TRD-202000194
Matthew Nance
Deputy General Counsel, Office of Consumer Credit Commissioner
Finance Commission of Texas
Filed: January 16, 2020

Office of Consumer Credit Commissioner

Title 7, Part 5

The Finance Commission of Texas (commission) files this notice of intention to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 7, Part 5, Chapter 90, concerning Chapter 342, Plain Language Contract Provisions. Chapter 90 contains Subchapter A, concerning General Provisions; Subchapter B, concerning Secured Consumer Installment Loans (Subchapter E); Subchapter C, concerning Signature Loans (Subchapter F); Subchapter D, concerning Second Lien Home Equity Loans (Subchapter G); Subchapter E, concerning Second Lien Purchase Money Loans (Subchapter G); Subchapter F, concerning Second Lien Home Improvement Contracts (Subchapter G); and Subchapter G, concerning Spanish Disclosures.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission will accept written comments received on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705, or by email to rule.comments@occc.texas.gov. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commission.

TRD-202000193
Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Filed: January 16, 2020

Texas Board of Nursing

Title 22, Part 11

In accordance with Government Code §2001.039, the Texas Board of Nursing (Board) files this notice of intention to review and consider for re-adoption, re-adoption with amendments, or repeal, the following chapters contained in Title 22, Part 11, of the Texas Administrative Code, pursuant to the 2019 rule review plan adopted by the Board at its July 2018 meeting.

Chapter 220. Nurse Licensure Compact, §220.1

Chapter 223. Fees, §§223.1 - 223.2

Chapter 224. Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments, §§224.1 - 224.11

Chapter 226. Patient Safety Pilot Programs on Nurse Reporting Systems, §§226.1 - 226.7

In conducting its review, the Board will assess whether the reasons for originally adopting these chapters continue to exist. Each section of these chapters will be reviewed to determine whether it is obsolete, whether it reflects current legal and policy considerations and current procedures and practices of the Board, and whether it is in compliance

with Chapter 2001 of the Government Code (Administrative Procedure Act).

The public has thirty (30) days from the publication of this rule review in the *Texas Register* to comment and submit any response or suggestions. Written comments may be submitted to Dusty Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, by email to dusty.johnston@bon.texas.gov, or by fax to Dusty Johnston at (512) 305-8101. Any proposed changes to these chapters as a result of this review will be published separately in the Proposed Rules section of the *Texas Register* and will be open for an additional comment period prior to the final adoption or repeal by the Board.

TRD-202000157
Jena Abel
Deputy General Counsel
Texas Board of Nursing
Filed: January 16, 2020

Texas Department of Insurance, Division of Workers' Compensation

Title, 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation (DWC) will review all sections within 28 Texas Administrative Code (TAC) Chapters 120 (concerning Compensation Procedure - Employers), 122 (concerning Compensation Procedure - Claimants), and 124 (concerning Carriers: Required Notices and Mode of Payment). This review will be in accordance with the requirements for periodic rule review under Texas Government Code §2001.039.

DWC will consider whether the reasons for adopting these rules initially continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

To comment on this rule review project, submit written comments by 5:00 p.m., Central time, on Tuesday, March 3, 2020. Comments received after that date will not be considered. Comments should clearly specify the section of the rule to which they apply and include proposed alternative language as appropriate. General comments should be designated as such.

Comments may be submitted by email to rulecomments@tdi.texas.gov or by mailing or delivering to Cynthia Guillen, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Any repeals or suggested amendments identified during the review of these rules may be considered in future rulemaking in accordance with the Administrative Procedures Act, Texas Government Code Chapter 2001.

TRD-202000243
Nicholas Canaday III
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: January 21, 2020

Texas State Soil and Water Conservation Board

Title 31, Part 17

The Texas State Soil and Water Conservation Board (State Board) proposes its notice of intent to review and consider for re-adoption, revision, or repeal Title 31, Texas Administrative Code (TAC), Part 17, Chapter 520, District Operations, Subchapter A, Election Procedures, pursuant to the Texas Government Code §2001.039.

The State Board will consider whether the reasons for adopting the rules contained in this chapter continue to exist. As required by the Texas Government Code §2001.039, the State Board will accept comments as to whether the reasons for adopting Title 31, TAC, Part 17, Chapter 520, District Operations, Subchapter A, Election Procedures continue to exist.

The comment period on the review of Title 31, TAC, Chapter 520, District Operations, Subchapter A, Election Procedures begins with the publication in the *Texas Register,* and ends 30 days thereafter. Comments regarding this rule review may be submitted to Liza Parker, Texas State Soil and Water Conservation Board, 1497 Country View Lane, Temple, TX 76504. Comments may also be submitted electronically to lparker@tsswcb.texas.gov. Comments should be identified as "State Board Rule Review."

Any proposed amendments as a result of the review will be published in the *Texas Register* in compliance with Texas Government Code, Chapter 2001, and will be open for the required public comment period prior to adoption or repeal by the commission.

TRD-202000241
Liza Parker
Policy Analyst/Legislative Liaison
Texas State Soil and Water Conservation Board
Filed: January 17, 2020

Adopted Rule Reviews

Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission or agency) has completed its Rule Review of 30 TAC Chapter 60, Compliance History, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the August 2, 2019, issue of the *Texas Register* (44 TexReg 4067).

The review assessed whether the initial reasons for adopting the rules continue to exist, and the commission has determined that those reasons exist. The rules in Chapter 60 require the commission to rate the compliance history of every owner or operator of a facility that is regulated under any of these state environmental laws: water-quality laws (Texas Water Code (TWC), Chapter 26); laws for the installation and operation of injection wells (TWC, Chapter 27); Subsurface Area Drip Dispersal Systems (TWC, Chapter 32); the Texas Solid Waste Disposal Act (Texas Health and Safety Code (THSC), Chapter 361); the Texas Clean Air Act (THSC, Chapter 382); Removal of Convenience Switches (THSC, Chapter 375); and the Texas Radiation Control Act (THSC, Chapter 401).

TWC, §5.753, concerning the Standard for Evaluating Compliance History, authorizes the agency to "develop standards for evaluating and using compliance history that ensure consistency" among regulated entities. Additionally, TWC, §5.754, concerning Classification and Use of Compliance History, authorizes the agency to establish a set of standards for the classification of a person's compliance history, establish methods of assessing the compliance history of regulated entities, and require the use of compliance history when making decisions regarding the issuance, renewal, amendment, modification,

denial, suspension, or revocation of a permit; enforcement matters; the use of announced investigations; and participation in innovative programs. Chapter 60 establishes the rules the agency uses to meet these statutory mandates, including the components, formulas, and classifications that are used to measure regulated entities' performance.

Public Comment

The public comment period closed on September 3, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 60 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202000219
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 17, 2020

The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 213, Edwards Aquifer, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the August 16, 2019, issue of the *Texas Register* (44 TexReg 4331).

The review assessed whether the initial reasons for adopting the rules continue to exist, and the commission has determined that those reasons exist. The rules in Chapter 213 are required because the rules regulate activities that pose a threat to water quality in order to protect existing and potential uses of groundwater and maintain Texas Surface Water Quality Standards. The rules in Chapter 213 regulate activities having the potential to adversely affect the water quality of the Edwards Aquifer and hydrologically-connected surface water to protect existing and potential beneficial uses of groundwater. The activities addressed are those that pose a threat to water quality in the recharge, transition, and contributing zones of the Edwards Aquifer.

The rules in Chapter 213, Subchapter A, apply to all regulated developments within the recharge zone and to certain activities within the transition zone and to point source wastewater discharges in the recharge zone and transition zone; specifically, where the natural drainage flows back to the recharge zone. Depending on certain activities and locations within the transition zone, Chapter 213, Subchapter A will apply. Regulated development includes any construction-related or post-construction activities on the recharge zone of the Edwards Aquifer having the potential for polluting the aquifer and hydrologically-connected surface streams. These activities include, but are not limited to, the construction of residential or commercial sites, utility lines, roads and highways, sewage collection systems, or aboveground storage tank (AST) or underground storage tank (UST) facilities for static hydrocarbons or hazardous substances. Clearing, excavation, or any other activity which alters or disturbs the topographic, geologic, or existing recharge characteristics of a site is also considered a regulated activity.

The rules in Chapter 213, Subchapter B regulate activities in the contributing zone to the Edwards Aquifer having the potential for polluting surface streams which recharge the Edwards Aquifer in the Medina, Bexar, Comal, Kinney, Uvalde, Hays, Travis, and Williamson Counties. The regulation of activities that can affect the quality of water flowing into the recharge zone protects the existing and potential uses of these water sources. Regulated activities under Chapter 213, Subchapter B include any construction-related or post-construction activity occurring on the contributing zone of the Edwards Aquifer that has the potential for contributing pollution to surface streams that enter the Edwards Aquifer recharge zone. These activities include, but are not limited to, the construction of residential or commercial sites, utility lines, roads, highways, or AST or UST facilities for static hydrocarbons or hazardous substances. Clearing, excavation, or any other activity which alters or disturbs the topographic, geologic, or existing storm water runoff characteristics of a site is also considered a regulated activity. Chapter 213, Subchapter B apply to regulated activities disturbing at least five acres, or regulated activities disturbing less than five acres which are part of a larger common plan of development or sale with the potential to disturb cumulatively five or more acres.

The rules in Chapter 213, Subchapter C exempts discharges associated with pesticide applications from prohibition of increased pollutant loads outlined in Chapter 213, Subchapters A and B.

Public Comment

The public comment period closed on September 17, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 213 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202000217
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 17, 2020

The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 230, Groundwater Availability Certification for Platting, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the August 16, 2019, issue of the *Texas Register* (44 TexReg 4331).

The review assessed whether the initial reasons for adopting the rules continue to exist, and the commission has determined that those reasons exist. The rules in Chapter 230 contain the requirements that must be followed if municipal and county authorities require certification that adequate groundwater is available for a proposed subdivision if groundwater under that land is to be the source of the water supply. While Texas Local Government Code, §212.0101 and §232.0032, do not require municipal or county authorities to exercise this power, if they do require certification from a subdivision using groundwater as the source of its water supply, the applicant must follow the rules laid out in Chapter 230. This chapter is necessary to implement the requirements related to the form and content of a certification of groundwater availability for platting by municipal and county authorities as provided by Texas Local Government Code, §212.0101 and §232.0032.

Public Comment

The public comment period closed on September 17, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review, the commission finds that the reasons for adopting the rules in Chapter 230 continue to exist and readopts these

sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202000212
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 17, 2020

The Texas Commission on Environmental Quality (TCEQ or commission) has completed its Rule Review of 30 TAC Chapter 307, Texas Surface Water Quality Standards, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the August 2, 2019, issue of the *Texas Register* (44 TexReg 4067).

The review assessed whether the initial reasons for adopting the rules continue to exist, and the commission has determined that those reasons exist. The rules in Chapter 307 are required because the Texas Surface Water Quality Standards (TSWQS) establish instream water quality requirements for all surface waters in the state. Almost all water-related program activities in Texas are based on the TSWQS. These standards affect state, federal, and local programs. The TCEQ is directed to establish water quality standards in Texas Water Code, §26.023.

Public Comment

The public comment period closed on September 3, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 307 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202000218
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 17, 2020

Texas Board of Pardons and Paroles

Title 37, Part 5

The Texas Board of Pardons and Paroles (Board) files this notice of readoption of 37 TAC, Part 5, Chapter 147, Hearings, Subchapter B, Evidence. The review was conducted pursuant to Government Code, §2001.039. Notice of the Board's intention to review was published in the May 3, 2019, issue of the *Texas Register* (44 TexReg 2274).

As a result of the review, the Board has determined that the original justifications for these rules continue to exist. No comments on the proposed review were received. The Board readopts Chapter 147, Hearings, Subchapter B, Evidence without amendments.

This concludes the review of 37 TAC, Chapter 147, Hearings, Subchapter B, Evidence.

TRD-202000221
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Filed: January 17, 2020

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/27/20 - 02/02/20 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/27/20 - 02/02/20 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 02/01/20 - 02/29/20 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 02/01/20 - 02/29/20 is 5.00% for commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-202000247
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 21, 2020

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Texas Council for Developmental Disabilities

Request for Applications: Leadership and Advocacy Training by Local Self-Advocacy Organization

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for one local self-advocacy organization to provide leadership and advocacy training to individuals with disabilities, students with developmental disabilities, individuals living in institutions, family members of people with disabilities, and other interested community members who do not fall into any of these categories.

Eligible applicants for this Request for Applications (RFA) are limited to local self-advocacy groups and organizations; however, applicants that do not have the capacity to receive funds can partner with an organization that can perform fiscal and administrative functions. Regardless of the involvement of a partner organization, self-advocates will take the lead on the project and conduct the training.

The funding amount for this RFA is open-ended based on activities proposed, but typical TCDD projects that address leadership and advocacy range from $25,000 to $150,000 per year. A maximum of one project will be funded for up to five years.

Funds available for these projects are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of a review process established by TCDD and on the availability of funds. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this RFA and TCDD is available at www.tcdd.texas.gov. All questions pertaining to this RFA should be directed in writing to Rosalin Willis, Grants Management Director, via email at apply@tcdd.texas.gov. Ms. Willis may also be reached by telephone at (512) 437-5432.

Deadline: Proposals must be submitted by 12:00 p.m. CT on Friday, March 27, 2020. Proposals will not be accepted after the due date.

TRD-202000262
Beth Stalvey
Executive Director
Texas Council for Developmental Disabilities
Filed: January 22, 2020

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 3, 2020.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **March 3, 2020.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Ashita & Ashish #1, LLC dba Midcrown Food Mart; DOCKET NUMBER: 2019-1066-PST-E; IDENTIFIER: RN102375565; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: BAHRAMI ENTERPRISES L-L-C dba Minit Mart; DOCKET NUMBER: 2019-1016-PST-E; IDENTIFIER: RN101650885; LOCATION: Midlothian, Ellis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.221 and Texas Health and Safety Code, §382.085(b), by failing to control displaced vapors by a vapor control or a vapor balance system during the transfer of gasoline from a tank-truck tank into the underground storage tanks (USTs) at the station; 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information to the agency regarding the USTs within 30 days from the date of the occurrence of the change or addition; 30 TAC §334.42(i) and TWC, §26.3475(c)(2), by failing to inspect all sumps, manways, overspill containers, or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight; 30 TAC §334.45(c)(3)(A), by failing to install an emergency shutoff valve (also known as a shear or impact valve) on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser; 30 TAC §334.49(a)(4) and TWC, §26.3475(d), by failing to ensure that corrosion protection is provided to all underground metal components of the USTs; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every 30 days; PENALTY: $12,538; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Ball Metal Beverage Container Corp.; DOCKET NUMBER: 2019-0976-AIR-E; IDENTIFIER: RN100214881; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: aluminum beverage can production plant; RULES VIOLATED: 30 TAC §§101.20(1), 116.115(c), and 122.143(4), 40 Code of Federal Regulations §60.8(a) and §60.493(b), New Source Review Permit Number 17847, Special Conditions Number 6, Federal Operating Permit (FOP) Number O1131, General Terms and Conditions (GTC) and Special Terms and Conditions Numbers 6.B and 8, and Texas Health and Safety Code (THSC), §382.085(b), by failing to conduct the initial performance test within 60 days after achieving the maximum production rate at which the affected facility will be operated but not later than 180 days after initial startup; 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O1131, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; and 30 TAC §122.210(a) and THSC, §382.085(b), by failing to submit an application to revise a permit for those activities at a site which change, add, or remove one or more permit terms and conditions; PENALTY: $7,623; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: BRANCH GROCERY INC; DOCKET NUMBER: 2019-0416-PST-E; IDENTIFIER: RN102395951; LOCATION: Princeton, Collin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,987; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: CAL'S CONVENIENCE, INCORPORATED dba Stripes 268 (Facility 1) and CAL'S CONVENIENCE, INCORPORATED dba Stripes 5043 (Facility 2); DOCKET NUMBER: 2019-1283-PST-E; IDENTIFIERS: RN102006897 and RN101735942; LOCATION: Ozona, Crockett County; TYPE OF FACILITY: two convenience stores with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(2)(C) and TWC, §26.3475(d), by failing to inspect the impressed current corrosion protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $20,581; ENFORCEMENT COORDINATOR: Hailey Johnson, 512-239-1756; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(6) COMPANY: City of Saint Jo; DOCKET NUMBER: 2019-1265-PWS-E; IDENTIFIER: RN101390425; LOCATION: Saint Jo, Montague County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §§290.106(c) and (e) and 290.107(c) and (e), and 290.108(c) and (e), by failing to collect and report the results of nitrate and volatile organic chemical contaminants sampling to the executive director (ED) for the January 1, 2018 - December 31, 2018, monitoring period, and failing to collect and report the results of synthetic organic chemical contaminants (methods 504, 515, and 531), metals and minerals, and radionuclides sampling to the ED for the January 1, 2016 - December 31, 2018, monitoring period; and 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed in a manner consistent with TCEQ requirements for the January 1, 2017 - December 31, 2017, monitoring period; PENALTY: $888; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(7) COMPANY: City of San Augustine; DOCKET NUMBER: 2019-1053-MWD-E; IDENTIFIER: RN101389930; LOCATION: San Augustine, San Augustine County; TYPE OF FACILITY: water treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (4), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010268002, Permit Conditions Number 2(d), by failing to take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment; 30 TAC §305.125(1) and (5) and TWC, §26.121(a)(1), and TPDES Permit Number WQ0010268002, Operational Requirements Number 1, by failing to ensure at all times that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; and 30 TAC §305.125(1) and (17) and §319.7(d), and TPDES Permit Number WQ0010268002, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results at intervals specified in the permit; PENALTY: $4,175; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: Corpus Christi Alumina LLC; DOCKET NUMBER: 2019-0215-IWD-E; IDENTIFIER: RN102318847; LOCATION:

Gregory, San Patricio County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0004646000, Permit Conditions Number 2.d and Other Requirements Number 7, by failing to take all reasonable steps to minimize or prevent any discharge, or other permit violation, which has a reasonable likelihood of adversely affecting human health or the environment; 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and TPDES Permit Number WQ0004646000, Permit Conditions Number 2.g, by failing to prevent an unauthorized discharge of industrial wastewater into or adjacent to any water in the state; and 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and TPDES Permit Number WQ0004646000, Effluent Limitations and Monitoring Requirements, Internal Outfall Number 601, Number 3, by failing to comply with permitted effluent limitations; PENALTY: $36,900; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(9) COMPANY: GPM Southeast, LLC dba EZ Mart 4249; DOCKET NUMBER: 2019-1497-PST-E; IDENTIFIER: RN102353836; LOCATION: Carthage, Panola County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $2,813; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: ISP Technologies Incorporated; DOCKET NUMBER: 2019-0838-AIR-E; IDENTIFIER: RN100825272; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: chemical manufacturing; RULES VIOLATED: 30 TAC §§116.115(b)(2)(F), 116.615(2), and 122.143(4), Standard Permit Registration Number 133596, Federal Operating Permit (FOP) Number O1592, General Terms and Conditions and Special Terms and Conditions Number 17, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maximum emissions rate; and 30 TAC §122.121 and §122.210(a) and THSC, §382.0518(a) and §382.085(b), by failing to submit an application to revise an FOP to change, add, or remove one or more permit terms or conditions; PENALTY: $27,375; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: J & J'S PROPERTY INVESTMENT, LLC and John Son Le dba J & J'S PROPERTY INVESTMENT, LLC; DOCKET NUMBER: 2019-0565-PWS-E; IDENTIFIER: RN108238395; LOCATION: Cuero, DeWitt County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.110(e)(4)(B), by failing to retain the Disinfection Level Quarterly Operating Reports and provide a copy if requested by the executive director (ED); 30 TAC §290.39(l)(4) and (5), by failing to comply with the site-specific requirements for water systems granted an exception; 30 TAC §290.41(c)(3)(N), by failing to provide flow-measuring devices, located to facilitate daily reading, for each well to measure production yields and provide for the accumulation of water production data; 30 TAC §290.42(b)(1) and (e)(2), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; 30 TAC §290.42(l), by failing to compile and keep up-to-date a thorough plant operations manual for operator review and reference; 30 TAC §290.43(d)(2), by failing to provide all pressure tanks with a pressure release device and an easily readable pressure gauge; 30 TAC §290.45(c)(1)(A)(ii) and Texas Health and Safety Code, §341.0315(c), by failing to provide a minimum pressure tank capacity of ten gallons per unit with a minimum of 220 gallons; 30 TAC §290.46(f)(2) and (3)(A)(i)(III) and (ii)(III), (B)(iv), and (D)(i) and (ii), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; and 30 TAC §290.46(v), by failing to ensure that the electrical wiring is securely installed in compliance with a local or national electrical code; PENALTY: $2,378; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(12) COMPANY: JAMERA CUSTOM HOMES, INCORPORATED; DOCKET NUMBER: 2019-1338-WQ-E; IDENTIFIER: RN109812586; LOCATION: Splendora, Montgomery County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater associated with construction activities; PENALTY: $18,239; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Juan Garcia dba Regio Tires 2; DOCKET NUMBER: 2019-1086-MSW-E; IDENTIFIER: RN110521069; LOCATION: Arlington, Tarrant County; TYPE OF FACILITY: scrap tire recycling facility; RULES VIOLATED: 30 TAC §328.56(b), by failing to ensure that scrap tires or scrap tire pieces are transported by a registered transporter to an authorized facility; 30 TAC §328.56(c), by failing to use manifests, work orders, invoices, or other records to document the removal and management of all scrap tires generated at the facility; and 30 TAC §328.58(f), by failing to retain and make available upon request by agency personnel original manifests, work orders, invoices or other documentation used to support activities related to the accumulation, handling, and shipment of used or scrap tires or scrap tire pieces; PENALTY: $11,812; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Monarch Utilities I L.P.; DOCKET NUMBER: 2019-1209-PWS-E; IDENTIFIER: RN101380848; LOCATION: Granbury, Hood County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.44(d) and §290.46(r), by failing to provide a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions and a minimum pressure of 20 psi during emergencies such as firefighting; and 30 TAC §290.46(q)(2), by failing to institute special precautions as described in the flowchart found in 30 TAC §290.47(e) in the event of low distribution pressure and water outages. Between June 27, 2019 - July 9, 2019, distribution pressure fell below 20 psi, and on June 28, 2018, there was a complete water outage, and the water system did not adequately institute special precautions; PENALTY: $575; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Muehlstein Investments, Incorporated dba Lone Oak Grocery and Market; DOCKET NUMBER: 2019-1131-PST-E; IDENTIFIER: RN102713674; LOCATION: Adkins, Bexar County; TYPE OF FACILITY: facility with an out-of-service underground storage tank system; RULES VIOLATED: 30 TAC §334.50(b)(1)(A), §334.54(b)(2), and (c)(2), and TWC, §26.3475(c)(1), by failing to

monitor an out-of-service underground storage tank system for releases, and failing to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; and 30 TAC §334.606, by failing to maintain operator training certification records on-site and make them available for inspection upon request by agency personnel; PENALTY: $4,108; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(16) COMPANY: Natural Gas Pipeline Company of America LLC; DOCKET NUMBER: 2019-1524-AIR-E; IDENTIFIER: RN100225614; LOCATION: Longview, Harrison County; TYPE OF FACILITY: compressor station; RULES VIOLATED: 30 TAC §116.115(c), New Source Review Permit Number 9418, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $813; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(17) COMPANY: Potosi Water Supply Corporation; DOCKET NUMBER: 2019-1541-PWS-E; IDENTIFIER: RN101451573; LOCATION: Abilene, Taylor County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfection Level Quarterly Operating Report to the executive director by the tenth day of the month following the end of each quarter for the second quarter of 2019; and 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligram per liter for total trihalomethanes based on the locational running annual average; PENALTY: $526; ENFORCEMENT COORDINATOR: Jée Willis, (512) 239-1115; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(18) COMPANY: ROUND MOUNTAIN EXPRESS INCORPORATED dba Bigs 108; DOCKET NUMBER: 2019-1391-PST-E; IDENTIFIER: RN101433191; LOCATION: Round Mountain, Blanco County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST system for releases at a frequency of at least once every 30 days; PENALTY: $16,125; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(19) COMPANY: TRINITY RCT, L.P.; DOCKET NUMBER: 2019-1467-PWS-E; IDENTIFIER: RN101263754; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent for Well Number 1 with an opening that is covered with a 16-mesh or finer corrosion-resistant screen; 30 TAC §290.44(d) and §290.46(r), by failing to provide a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions, and 20 psi during emergencies such as firefighting; 30 TAC 290.45(b)(1)(C)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a well capacity of 0.6 gallon per minute (gpm) per connection; 30 TAC §290.45(b)(1)(C)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide two or more pumps having a total capacity of 2.0 gpm per connection at each pump station or pressure plane; and 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; PENALTY: $1,621; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: Victerra Energy, LLC fka Atlantic Resources Company, LLC; DOCKET NUMBER: 2019-1255-AIR-E; IDENTIFIER: RN109272716; LOCATION: Orla, Reeves County; TYPE OF FACILITY: gas plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O3909/General Operating Permit Number 514, Site-wide Requirements (b)(3), and Texas Health and Safety Code, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: $2,888; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3424; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

TRD-202000242
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 21, 2020

Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant With Enhanced Controls: Proposed Air Quality Registration Number 159589

APPLICATION. Corpus Christi Polymers LLC, 7001 Joe Fulton International Trade Corridor, Corpus Christi, Texas 78409-3207 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 159589 to authorize the operation of a permanent concrete batch plant. The facility is proposed to be located at 7001 Joe Fulton International Trade Corridor, Corpus Christi, Nueces County, Texas 78409. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=27.836111&lng=-97.493055&zoom=13&type=r. This application was submitted to the TCEQ on December 19, 2019. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director determined the application technically complete on January 7, 2020.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal

comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Thursday, March 5, 2020, at 6:00 p.m.

Holiday Inn Corpus Christi Airport and Convention Center

5549 Leopard Street, Corpus Christi, Texas 78408

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Corpus Christi Regional Office, located at NRC Bldg., Ste. 1200, 6300 Ocean Dr., Unit 5839, Corpus Christi, Texas 78412-5839, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Corpus Christi Polymers LLC, 7001 Joe Fulton International Trade Corridor, Corpus Christi, Texas 78409-3207, or by calling Mr. Kevin Ellis, Project Manager, Power Engineers, Inc., at (512) 879-6647.

Notice Issuance Date: January 17, 2020

TRD-202000254
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 22, 2020

Notice of Public Hearing on Proposed New 30 TAC Chapter 328, Subchapter K

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed new 30 Texas Administrative Code (TAC) Chapter 328, Waste Minimization and Recycling, Subchapter K, §§328.200 - 328.204, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement Senate Bill 1376, 86th Texas Legislature, 2019, which amended Texas Health and Safety Code, §361.425 and §361.426. Proposed new Subchapter K, Governmental Entity Recycling and Purchasing of Recycled Materials, would document the requirement for governmental entities to establish a program for the separation and collection of recyclable materials generated by the entity; establish that governmental entities shall give a preference in purchasing for products made of recyclable materials; and provide for exemptions from the requirements.

The commission will hold a public hearing on this proposal in Austin on February 27, 2020, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2019-125-328-AD. The comment period closes on March 3, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Calen Roome, Public Education Unit, (512) 239-4621.

TRD-202000168
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 16, 2020

Notice of Public Hearing on Proposed Revision to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will offer a public hearing in San Antonio on February 18, 2020, at 2:00 p.m. at the Alamo Area Council of Governments located at 8700 Tesoro Drive.

The hearing is offered to receive testimony regarding the proposed Bexar County 2015 Eight-Hour Ozone Nonattainment Area Federal Clean Air Act (FCAA), §179B Demonstration State Implementation Plan (SIP) Revision **(Project No. 2019-106-SIP-NR).** The proposed SIP revision demonstrates that the Bexar County marginal ozone nonattainment area would attain the 2015 eight-hour National Ambient Air Quality Standard by its attainment date "but for" anthropogenic emissions emanating from outside the United States in accordance with FCAA, §179B. The hearing for the proposed revision is required by Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency concerning SIPs.

The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Jamie

Zech, Air Quality Division at (512) 239-3935 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

An electronic version of this proposed SIP revision and appendices is available at *https://www.tceq.texas.gov/airquality/sip/san/san-latest-ozone*.

The comment period for this SIP revision **(Project No. 2019-106-SIP-NR)** closes February 19, 2020. Written comments will be accepted through the *eComments* system at *https://www6.tceq.texas.gov/rules/ecomments/*. For additional submission methods, please contact Brian Foster at (512) 239-1930.

TRD-202000213
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 17, 2020

Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 114 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, §114.622 and §114.629, and corresponding revisions to the state implementation plan (SIP) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency (EPA) concerning SIPs.

The proposed rulemaking would implement House Bill (HB) 1346 and HB 1627, from the 86th Texas Legislature, 2019, relating to the Diesel Emissions Reduction Incentive Program, to allow the commission to lower the required minimum usage in a nonattainment area or affected county for grant-funded vehicles and equipment from 75% to as low as 55% and to remove Victoria County from the list of affected counties.

The commission will hold a public hearing on this proposal in Austin on February 25, 2020, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: https://www6.tceq.texas.gov/rules/ecomments/. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-122-114-AI. The comment period closes on March 3, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Amancio Gutierrez, Grant Development and Management Section, (512) 239-3770.

TRD-202000183
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 16, 2020

Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 344

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 TAC Chapter 344, Landscape Irrigation, §§344.1, 344.20 - 344.22, 344.24, 344.30, 344.31, 344.33 - 344.38, 344.40, 344.42, 344.43, 344.50 - 344.52, 344.60 - 344.65, 344.70 - 344.72, and 344.80; the repeal of §344.32; and new §344.66, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

This proposed rulemaking is in response to two petitions submitted by the Irrigator Advisory Council, which were approved by the commission on October 4, 2017, to initiate rulemaking with stakeholder involvement (Non-Rule Project Numbers 2017-041-PET-NR and 2017-042-PET-NR). The proposed rulemaking would incorporate some of the requested changes made by the two rule petitions, as well as amend existing sections in order to better align the rules with state statute and other related regulations. These proposed revisions would strengthen the rules to increase protection of the public health and increase water conservation.

The commission will hold a public hearing on this proposal in Austin on February 27, 2020, at 2:00 p.m. in Building E, Room 201S at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2018-004-344-CE. The comment period closes March 3, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Al Fuentes, Program Support & Environmental Assistance Division, (512) 239-1407.

TRD-202000170
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 16, 2020

Notice of Water Rights Application

APPLICATION NO. 13479; DeCordova Bend Estates Owners Association, Inc., 5301 Country Club Dr., Granbury, Texas 76409, Applicant, has applied for a water use permit to maintain two reservoirs for recre-

ational purposes and to use the bed and banks of McCarthy Branch and an unnamed tributary of the Brazos River, Brazos River Basin to convey contract water to the reservoirs for subsequent diversion for agricultural purposes in Hood County. The application and a portion of the fees were received on February 7, 2018. Additional information and fees were received on June 28, and July 18, 2018. The application was declared administratively complete and filed with the Office of the Chief Clerk on July 27, 2018. The Executive Director completed the technical review of the application and prepared a draft permit. The Executive Director recommends that the application be granted in accordance with the draft permit. The draft permit, if granted, would contain special conditions including, but not limited to, the maintenance of the contracts between the Applicant and the Brazos River Authority. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F, Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results. A public meeting is intended for the taking of public comment and is not a contested case hearing. The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement [I/we] request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns.

Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-202000255
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 22, 2020

Department of State Health Services

Certification Limited Liability Report

The Hospital Survey Unit in the Center for Health Statistics, Texas Department of State Health Services, has completed its analysis of hospital data for the purpose of certifying nonprofit hospitals or hospital systems for limited liability, in accordance with Texas Health and Safety Code, §311.0456. The twenty-five hospitals that requested certification in accordance with §311.0456, will be notified, by mail, on the determination of whether certification requirements were met. The certification issued under Texas Health and Safety Code, §311.0456, to a nonprofit hospital or hospital system takes effect on December 31, 2019, and, according to the statute, expires on the anniversary of that date.

Certified:

One nonprofit hospital system (6 hospitals) and thirteen nonprofit hospitals were determined to meet the certification criteria (i.e., they provided charity care in an amount greater than or equal to 8 percent of net patient revenue, and 40 percent or more of which was provided in their Counties).

1. Seton Healthcare System (Travis County only)

a. Ascension Seton Medical Center in Travis County

b. Ascension Seton Northwest in Travis County

c. Ascension Seton Shoal Creek in Travis County

d. Ascension Seton Southwest in Travis County

e. Dell Children's Medical Center in Travis County

f. Dell Seton Medical Center at the University of Texas in Travis County

2. Ascension Providence in McLennan County

3. Ascension Seton Edgar B Davis in Caldwell County

4. Ascension Seton Hays in Hays County

5. Baylor Scott & White Medical Center - Llano in Llano County

6. Baylor Scott & White Medical Center - Brenham in Washington County

7. Baylor Scott & White Medical Center - Marble Falls in Burnet County

8. CHRISTUS Southeast Texas - Jasper Memorial in Jasper County

9. CHRISTUS Southeast Texas - St. Elizabeth & St. Mary in Jefferson County

10. CHRISTUS Spohn Hospital Alice in Jim Wells County

11. CHRISTUS Spohn Hospital Beeville in Bee County

12. CHRISTUS Spohn Hospital Shoreline in Nueces County (Multi Locations: CHRISTUS Spohn Hospital Corpus Christi in Nueces County and CHRISTUS Spohn Hospital South in Nueces County)

13. CHRISTUS Spohn Hospital Kleberg in Kleberg County

14. United Regional Health Care System in Wichita County

Not Certified:

Six nonprofit hospitals were not certified, due to failure to meet the certification criteria (i.e., they did not provide charity care in an amount greater than or equal to 8 percent of their net patient revenue and/or did not provide at least 40 percent of the charity care in their Counties).

1. Ascension Seton Highland Lakes in Burnet County

2. Ascension Seton Smithville in Bastrop County

3. Ascension Seton Williamson in Williamson County

4. CHRISTUS Santa Rosa - Medical Center in Bexar County

5. CHRISTUS St. Michael Health System in Bowie County

6. Hendrick Medical Center in Taylor County

For further information about this report, please contact Dwayne Collins or Andria Orbach in the Center for Health Statistics at (512) 776-7261, Dwayne.Collins@dshs.texas.gov or Andria.Orbach@dshs.texas.gov.

TRD-202000251
Barbara L. Klein
General Counsel
Department of State Health Services
Filed: January 21, 2020

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Texas Department of Housing and Community Affairs

Notice of Funding Availability (NOFA) Release for Program Year 2020 Community Services Block Grant Discretionary (CSBG-D) Funds - Native American and Migrant Seasonal Farm Worker Education and Employment Initiatives

The Department announces the availability of $300,000 in CSBG-D funding for education and employment initiatives for migrant seasonal farm worker and Native American populations. Each year, the Department sets aside 5% of its annual CSBG allocation for state discretionary use. Each year, funds from CSBG-D are used for specific identified efforts that the Department supports and other ongoing initiatives such as employment and education programs for migrant and seasonal farm workers and Native Americans. This year, $300,000 has been targeted for migrant and seasonal farm worker and Native American populations for employment and education programs for which the Department is issuing this NOFA. The Department will release funds competitively.

The Department's anticipated contract period for Program Year (PY) 2020 CSBG-D migrant and seasonal farm worker and Native American initiatives is April 1, 2020, through March 31, 2021.

Interested applicants must meet the requirements set forth in the application and must submit a complete application through the established system described in the NOFA by Monday, February 10, 2020, 5:00 p.m., Austin local time.

The application forms contained in this packet and submission instructions are available on the Department's web site at http://www.tdhca.state.tx.us/nofa.htm. Should you have any related questions, please contact Rita Gonzales-Garza at (512) 475-3905 or rita.garza@tdhca.state.tx.us.

TRD-202000167
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 16, 2020

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Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for Aetna Better Health of Kansas, Inc., a foreign Health Maintenance Organization (HMO). The home office is in Overland Park, Kansas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Robert Rudnai, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-202000266
James Person
General Counsel
Texas Department of Insurance
Filed: January 22, 2020

♦ ♦ ♦

Texas Lottery Commission

Scratch Ticket Game Number 2206 "TIC TAC TOAD"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2206 is "TIC TAC TOAD". The play style is "row/column/diagonal".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2206 shall be $1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2206.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: BEE SYMBOL, CLOUDS SYMBOL, FLY SYMBOL, GRASSHOPPER SYMBOL, LADYBUG SYMBOL, LAKE SYMBOL, RAINBOW SYMBOL, SUN SYMBOL, TREES SYMBOL, LILYPAD SYMBOL, BUTTERFLY SYMBOL, SUNGLASSES SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $50.00, $100, $200, $500 and $1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2206 - 1.2D

PLAY SYMBOL	CAPTION
BEE SYMBOL	BEE
CLOUDS SYMBOL	CLOUDS
FLY SYMBOL	FLY
GRASSHOPPER SYMBOL	HOPPER
LADYBUG SYMBOL	LADYBUG
LAKE SYMBOL	LAKE
RAINBOW SYMBOL	RAINBOW
SUN SYMBOL	SUN
TREES SYMBOL	TREES
LILYPAD SYMBOL	LILYPAD
BUTTERFLY SYMBOL	BTRFLY
SUNGLASSES SYMBOL	DBL
$1.00	ONE$
$2.00	TWO$
$4.00	FOR$
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$40.00	FRTY$
$50.00	FFTY$
$100	ONHN
$200	TOHN
$500	FVHN
$1,000	ONTH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2206), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 2206-0000001-001.

H. Pack - A Pack of the "TIC TAC TOAD" Scratch Ticket Game contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "TIC TAC TOAD" Scratch Ticket Game No. 2206.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "TIC TAC TOAD" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose ten (10) Play Symbols. If a player reveals 3 matching Play Symbols in any one row, column or diagonal line, the player wins the PRIZE. If the player reveals 3 "SUNGLASSES" Play Symbols in

any one row, column or diagonal line, the player wins DOUBLE the PRIZE. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly ten (10) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly ten (10) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the ten (10) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the ten (10) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win one (1) time in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. Non-Winning Tickets will have at least one (1) row, column, or diagonal line that contains two (2) matching Play Symbols (including the "SUNGLASSES" (DBL) Play Symbol) plus one (1) different Play Symbol.

D. All Tickets will contain at least two (2) "SUNGLASSES" (DBL) Play Symbols, unless restricted by other parameters, play action or prize structure.

E. Winning Tickets will only have one (1) occurrence of three (3) matching Play Symbols in any row, column, or diagonal line.

F. Tickets that win with the "SUNGLASSES" (DBL) Play Symbols will win as dictated by the approved prize structure with one (1) occurrence of three (3) "SUNGLASSES" (DBL) Play Symbols in any one row, column, or diagonal line.

2.3 Procedure for Claiming Prizes.

A. To claim a "TIC TAC TOAD" Scratch Ticket Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $50.00, $100, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $40.00, $50.00, $100, $200 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TIC TAC TOAD" Scratch Ticket Game prize of $1,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated

winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TIC TAC TOAD" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "TIC TAC TOAD" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "TIC TAC TOAD" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 9,120,000 Scratch Tickets in Scratch Ticket Game No. 2206. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2206 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1	972,800	9.38
$2	608,000	15.00
$4	60,800	150.00
$5	121,600	75.00
$10	30,400	300.00
$20	45,600	200.00
$40	7,600	1,200.00
$50	11,400	800.00
$100	1,140	8,000.00
$200	608	15,000.00
$500	152	60,000.00
$1,000	30	304,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.90. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2206 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2206, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202000245
Bob Biard
General Counsel
Texas Lottery Commission
Filed: January 21, 2020

Scratch Ticket Game Number 2208 "$50 OR $100!"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2208 is "$50 OR $100!". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2208 shall be $10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2208.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, MONEY BAG SYMBOL, STACK OF CASH SYMBOL, $50.00 and $100.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2208 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI

40	FRTY
MONEY BAG SYMBOL	WIN$50
STACK OF CASH SYMBOL	WIN$100
$50.00	FFTY$
$100	ONHN

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2208), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2208-0000001-001.

H. Pack - A Pack of the "$50 OR $100!" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "$50 OR $100!" Scratch Ticket Game No. 2208.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "$50 OR $100!" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose fifty-six (56) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "MONEY BAG" Play Symbol, the player wins $50 instantly! If the player reveals a "STACK OF CASH" Play Symbol, the player wins $100 instantly! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly fifty-six (56) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly fifty-six (56) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the fifty-six (56) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the fifty-six (56) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. KEY NUMBER MATCH: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

D. KEY NUMBER MATCH: No matching WINNING NUMBERS Play Symbols on a Ticket.

E. KEY NUMBER MATCH: A Ticket may have up to fourteen (14) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

F. KEY NUMBER MATCH: The "MONEY BAG" (WIN$50) Play Symbol will only appear on intended winning Tickets and will only appear with the $50 Prize Symbol.

G. KEY NUMBER MATCH: The "STACK OF CASH" (WIN$100) Play Symbol will only appear on intended winning Tickets and will only appear with the $100 Prize Symbol.

H. KEY NUMBER MATCH: The "MONEY BAG" (WIN$50) Play Symbol may appear up to two (2) times on winning Tickets, unless restricted by other parameters, play action or prize structure.

I. KEY NUMBER MATCH: The "STACK OF CASH" (WIN$100) Play Symbol will never appear more than one (1) time on intended winning Tickets.

2.3 Procedure for Claiming Prizes.

A. To claim a "$50 OR $100!" Scratch Ticket Game prize of $50.00 or $100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00 or $100 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. As an alternative method of claiming a "$50 OR $100!" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

D. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "$50 OR $100!" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.7 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If

more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,080,000 Scratch Tickets in Scratch Ticket Game No. 2208. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2208 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$50.00	708,000	10.00
$100	141,600	50.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 8.33. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2208 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2208, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202000256
Bob Biard
General Counsel
Texas Lottery Commissioner
Filed: January 22, 2020

Scratch Ticket Game Number 2213 "MONEY MULTIPLIER"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2213 is "MONEY MULTIPLIER". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2213 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2213.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, CROWN SYMBOL, WISHBONE SYMBOL, KEY SYMBOL, GRAPES SYMBOL, CLOVER SYMBOL, DIAMOND SYMBOL, BANANA SYMBOL, MELON SYMBOL, HEART SYMBOL, HORSESHOE SYMBOL, JOKER SYMBOL, CHERRIES SYMBOL, BELL SYMBOL, STAR SYMBOL, GOLD BAR SYMBOL, STACK OF CASH SYMBOL, POT OF GOLD SYMBOL, $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100, $500, $1,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2213 - 1.2D

PLAY SYMBOL	CAPTION
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO

43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX
57	FFSV
58	FFET
59	FFNI
60	SXTY
CROWN SYMBOL	CRN
WISHBONE SYMBOL	WBN
KEY SYMBOL	KEY
GRAPES SYMBOL	GRPE
CLOVER SYMBOL	CLO
DIAMOND SYMBOL	DMD
BANANA SYMBOL	BAN
MELON SYMBOL	MEL
HEART SYMBOL	HEART
HORSESHOE SYMBOL	HRSHOE
JOKER SYMBOL	JOKER
CHERRIES SYMBOL	WINX2
BELL SYMBOL	WINX3
STAR SYMBOL	WINX4
GOLD BAR SYMBOL	WINX5
STACK OF CASH SYMBOL	WINX10
POT OF GOLD SYMBOL	WINX20
$5.00	FIV$
$10.00	TEN$

$15.00	FFN$
$20.00	TWY$
$25.00	TWFV$
$50.00	FFTY$
$100	ONHN
$500	FVHN
$1,000	ONTH
$100,000	100TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2213), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2213-0000001-001.

H. Pack - A Pack of the "MONEY MULTIPLIER" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "MONEY MULTIPLIER" Scratch Ticket Game No. 2213.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "MONEY MULTIPLIER" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose sixty-three (63) Play Symbols. GAME 1 PLAY INSTRUCTIONS: (1) If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that ROW. (2) If the player wins on a ROW, the player will check to see if the MULTIPLIER Play Symbol for that ROW matches a MULTIPLIER SYMBOL in the MULTIPLIER LEGEND. (3) If there is a match, the player will multiply the PRIZE won by the corresponding MULTIPLIER VALUE in the MULTIPLIER LEGEND. MONEY BONUS PLAY INSTRUCTIONS: If the player reveals 2 matching prize amounts in the same MONEY BONUS, the player wins that amount. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly sixty-three (63) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly sixty-three (63) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the sixty-three (63) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the sixty-three (63) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

C. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 25 and $25).

D. KEY NUMBER MATCH: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

E. KEY NUMBER MATCH: No matching WINNING NUMBERS Play Symbols on a Ticket.

F. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol.

G. KEY NUMBER MATCH: A Ticket may have up to five (5) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

H. KEY NUMBER MATCH: The "CHERRIES" (WINX2) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

I. KEY NUMBER MATCH: The "BELL" (WINX3) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

J. KEY NUMBER MATCH: The "STAR" (WINX4) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

K. KEY NUMBER MATCH: The "GOLD BAR" (WINX5) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

L. KEY NUMBER MATCH: The "STACK OF CASH" (WINX10) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

M. KEY NUMBER MATCH: The "POT OF GOLD" (WINX20) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

N. KEY NUMBER MATCH: Non-winning ROWS will only use one (1) of the following MULTIPLIER Play Symbols: "CROWN" (CRN), "WISHBONE" (WBN), "KEY" (KEY), "GRAPES" (GRPE), "CLOVER" (CLO), "DIAMOND" (DMD), "BANANA" (BAN), "MELON" (MEL), "HEART" (HEART), "HORSESHOE" (HRSHOE) and "JOKER" (JOKER).

O. KEY NUMBER MATCH: A Ticket may have up to five (5) matching non-winning MULTIPLIER Play Symbols, unless restricted by other parameters, play action or prize structure.

P. MONEY BONUS: A non-winning Prize Symbol in one (1) MONEY BONUS play area will never match a winning Prize Symbol in the other MONEY BONUS play area.

Q. MONEY BONUS: There will be no matching non-winning MONEY BONUS Prize Symbols in the separate MONEY BONUS play areas on a Ticket.

R. MONEY BONUS: The $1,000 and $100,000 Prize Symbols will not be used in the MONEY BONUS play areas.

2.3 Procedure for Claiming Prizes.

A. To claim a "MONEY MULTIPLIER" Scratch Ticket Game prize of $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $50.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MONEY MULTIPLIER" Scratch Ticket Game prize of $1,000 or $100,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MONEY MULTIPLIER" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas

Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "MONEY MULTIPLIER" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "MONEY MULTIPLIER" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,080,000 Scratch Tickets in Scratch Ticket Game No. 2213. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2213 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5.00	755,200	9.38
$10.00	330,400	21.43
$15.00	188,800	37.50
$20.00	188,800	37.50
$25.00	118,000	60.00
$50.00	86,140	82.19
$100	18,880	375.00
$500	1,770	4,000.00
$1,000	15	472,000.00
$100,000	4	1,770,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.19. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2213 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2213, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202000246
Bob Biard
General Counsel
Texas Lottery Commission
Filed: January 21, 2020

Texas Department of Motor Vehicles

Notice of Public Hearing on Proposed Amendments to 43 TAC §§217.3, 217.141 - 217.143, and New §§217.401 - 217.407

The Texas Department of Motor Vehicles will conduct a public hearing on February 6, 2020, to receive spoken and written comments on proposed amendments to 43 TAC §§217.3, 217.141 - 217.143, and new §§217.401 - 217.407, concerning assembled vehicles, in accordance with the procedures specified in 43 TAC §206.23. The public hearing will commence at 1:00 p.m. CST as an agenda item during the Texas Department of Motor Vehicles board meeting on Thursday, February 6, 2020, located at 4000 Jackson Avenue, Building 1, Lone Star Room, Austin, Texas 78731.

The proposed rulemaking was published in the December 20, 2019, issue of the *Texas Register* (44 TexReg 7866). A copy of the proposed rulemaking can also be obtained from the department's website at *https://www.txdmv.gov/general-counsel/proposed-and-adopted-rules.*

The department will consider spoken and written comments presented at the public hearing. Written comments may also be sent by email to *rules@txdmv.gov.* Written comments emailed to the department must be received between 8:00 a.m. and 5:00 p.m. CST on February 6, 2020, to be considered. A person speaking before the board at the public hearing will be given an opportunity to speak for a maximum of three minutes. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible.

Any individual with a disability who plans to attend this meeting and requires auxiliary aids or services should notify the department as far in advance as possible, but no less than two days in advance, so that appropriate arrangements can be made. Contact David Richards by telephone at (512) 465-1423.

TRD-202000271
Tracey Beaver
General Counsel
Texas Department of Motor Vehicles
Filed: January 22, 2020

Public Utility Commission of Texas

Notice of Application to Adjust High Cost Support Under 16 TAC §26.407(h)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on January 13, 2020, to adjust the high-cost support received from the Small and Rural Incumbent Local Exchange Company Universal Service Plan without effect to current rates.

Docket Title and Number: Application of Mid-Plains Rural Telephone Cooperative, Inc. to Adjust High Cost Support under 16 Texas Administrative Code (TAC) §26.407(h), Docket Number 50441.

Mid-Plains Rural Telephone Cooperative, Inc. requests a high-cost support adjustment increase of $295,915. The requested adjustment complies with the cap of 140% of the annualized support the provider received in the 12 months prior to the filing of the application, as required by 16 TAC §26.407(g)(1).

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 as a deadline to intervene may be imposed. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 50441.

TRD-202000158
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: January 16, 2020

Notice of Application to Adjust High Cost Support Under 16 TAC §26.407(h)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on January 14, 2020, to adjust the high-cost support received from the Small and Rural Incumbent Local Exchange Company Universal Service Plan without effect to current rates.

Docket Title and Number: Application of Brazos Telephone Cooperative, Inc. to Adjust High Cost Support under 16 Texas Administrative Code (TAC) §26.407(h), Docket Number 50451.

Brazos Telephone Cooperative, Inc. requests a high-cost support adjustment increase of $592,128. The requested adjustment complies with the cap of 140% of the annualized support the provider received in the 12 months prior to the filing of the application, as required by 16 TAC §26.407(g)(1).

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 as a deadline to intervene may be imposed. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 50451.

TRD-202000270
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: January 22, 2020

Texas Department of Transportation

Aviation Division - Request for Qualifications (RFQ) for Professional Engineering Services

The City of Devine, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a professional engineering firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualification statements for the current aviation project as described below.

Current Project: City of Devine; TxDOT CSJ No.: 2015DVINE. The TxDOT Project Manager is Steve Harp, P.E.

Scope: Provide engineering and design services, including construction administration, to rehabilitate Airfield Lighting (MIRLS), replace rotating beacon and tower with tilt pole, and replace PAPI system.

The Agent, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The proposed contract is subject to 49 CFR Part 26 concerning the participation of Disadvantaged Business Enterprises (DBE).

The DBE goal for the design phase of the current project is **0%.** The goal will be re-set for the construction phase.

Utilizing multiple engineering/design and construction grants over the course of the next five years, future scope of work items at the Devine Municipal Airport may include constructing wildlife fence.

The City of Devine reserves the right to determine which of the services listed above may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services listed above.

To assist in your qualification statement preparation, the criteria, project diagram, and most recent Airport Layout Plan are available online at *http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm* by selecting "Devine Municipal Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects.

AVN-550 Preparation Instructions:

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, (800) 68- PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html.* The form may not be altered in any way. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight pages of data plus one optional illustration page. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, or submits a cover page with the AVN-550, that provider will be disqualified. Responses to this solicitation WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the Tx-

DOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

The completed Form AVN-550 must be received in the TxDOT Aviation eGrants system no later than **February 26, 2020, 11:59 p.m. (CDST).** Electronic facsimiles or forms sent by email or regular/overnight mail will not be accepted.

Firms that wish to submit a response to this solicitation must be a user in the TxDOT Aviation eGrants system no later than one business day before the solicitation due date. To request access to eGrants, please complete the Contact Us web form located at *http://txdot.gov/government/funding/egrants-2016/aviation.html.*

An instructional video on how to respond to a solicitation in eGrants is available at *http://txdot.gov/government/funding/egrants-2016/aviation.html.*

Step by step instructions on how to respond to a solicitation in eGrants will also be posted in the RFQ packet at *http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm.*

The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html* under Information for Consultants. All firms will be notified and the top-rated firm will be contacted to begin fee negotiations for the design and bidding phases. The selection committee does, however, reserve the right to conduct interviews for the top-rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at (800) 68-PILOT (74568). For procedural questions, please contact Ann Pinder, Grant Manager. For technical questions, please contact Steve Harp, P.E., Project Manager.

For questions regarding responding to this solicitation in eGrants, please contact the TxDOT Aviation help desk at (800) 687-4568 or *avn-egrantshelp@txdot.gov.*

TRD-202000244
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: January 21, 2020

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1……..950 *(P)*

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