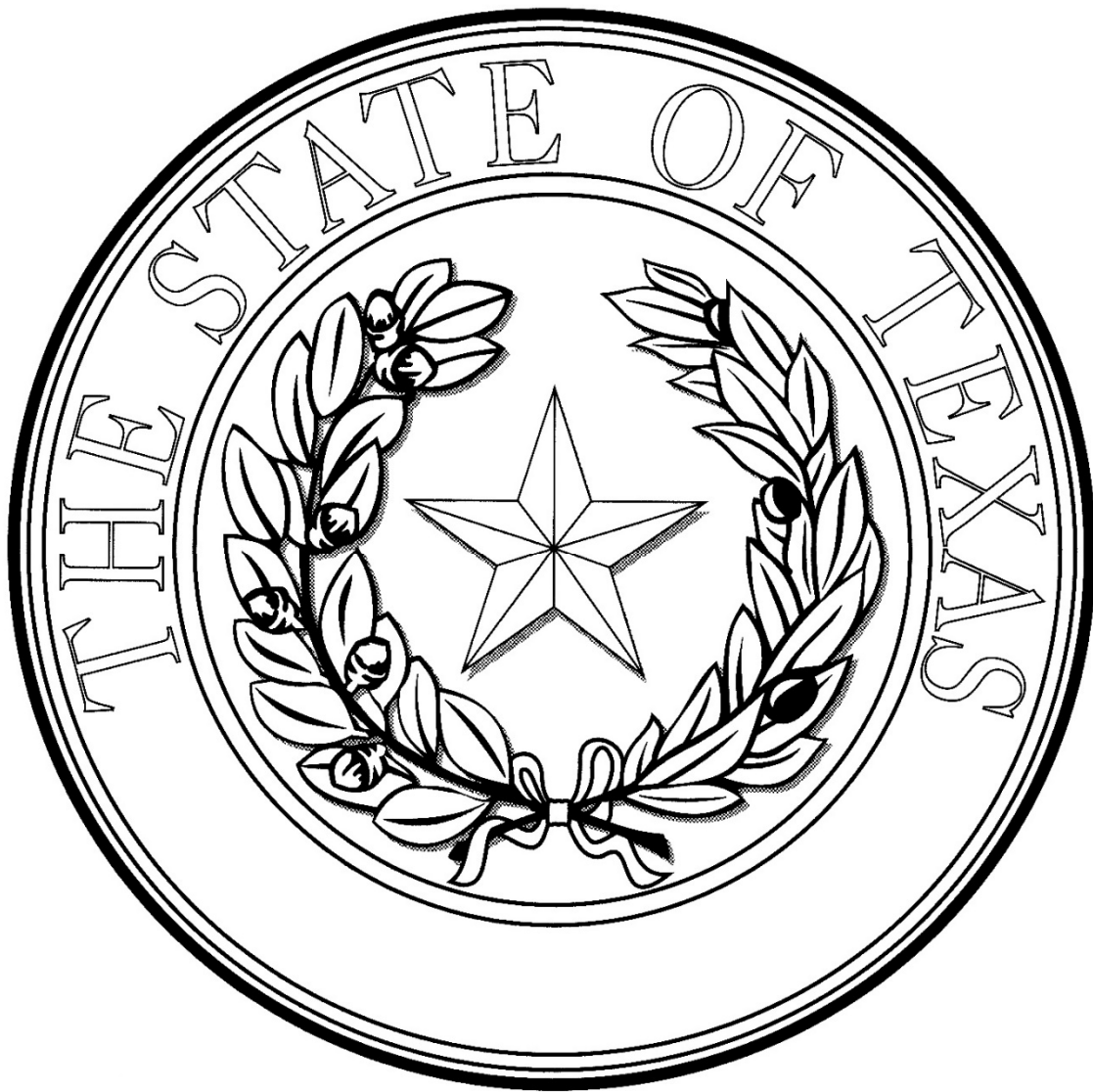

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THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for November 5, 2020

Appointed to the Lavaca-Navidad River Authority, for a term to expire May 1, 2021, Jennifer Powell Storz of Edna, Texas (replacing Scott H. Sachtleben of Austin, who resigned).

Appointed to the Upper Neches River Municipal Water Authority Board of Directors, for a term to expire February 1, 2023, Joe M. Crutcher of Palestine, Texas (replacing Milton P. "Phil" Jenkins of Palestine, who resigned).

Appointments for November 9, 2020

Appointed to the Guadalupe-Blanco River Authority Board of Directors, for a term to expire February 1, 2025, William R. "Will" Carbonara of Cuero, Texas (Mr. Carbonara is being reappointed).

Appointed to the Guadalupe-Blanco River Authority Board of Directors, for a term to expire February 1, 2025, Stephen B. "Steve" Ehrig of Gonzales, Texas (Mr. Ehrig is being reappointed).

Appointed to the Guadalupe-Blanco River Authority Board of Directors, for a term to expire February 1, 2025, Don B. Meador of San Marcos, Texas (Mr. Meador is being reappointed).

Designated as presiding officer of the Guadalupe-Blanco River Authority Board of Directors, for a term to expire at the pleasure of the Governor, Dennis L. Patillo of Victoria.

Greg Abbott, Governor

TRD-202004757



Proclamation 41-3781

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, certified on October 5, 2020, that exceptional drought conditions posed a threat of imminent disaster in Andrews, Armstrong, Bailey, Brewster, Briscoe, Castro, Childress, Cochran, Collingsworth, Crane, Cosby, Culberson, Dawson, Dimmit, Deaf Smith, Ector, Floyd, Gaines, Glasscock, Gray, Hale, Hockley, Hudspeth, Jeff Davis, Lamb, Loving, Lubbock, Lynn, Martin, Midland, Motley, Parmer, Presidio, Randall, Reagan, Reeves, Sutton, Swisher, Terrell, Terry, Upton, Uvalde, Ward, Wheeler, Winkler, Yoakum, and Zavala counties. I hereby certify that exceptional drought conditions continue to pose a threat of imminent disaster in these counties, and that the conditions also now threaten Dickens, Hall, Maverick, Medina, Oldham, and Roberts counties.

WHEREAS, significantly low rainfall and prolonged dry conditions continue to increase the threat of wildfire across these portions of the state; and

WHEREAS, these drought conditions pose an imminent threat to public health, property, and the economy;

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in Andrews, Armstrong, Bailey, Brewster, Briscoe, Castro, Childress, Cochran, Collingsworth, Crane, Crosby, Culberson, Dawson, Dickens, Dimmit, Deaf Smith, Ector, Floyd, Gaines, Glasscock, Gray, Hale, Hall, Hockley, Hudspeth, Jeff Davis, Lamb, Loving, Lubbock, Lynn, Martin, Maverick, Medina, Midland, Motley, Oldham, Parmer, Presidio, Randall, Reagan, Reeves, Roberts, Sutton, Swisher, Terrell, Terry, Upton, Uvalde, Ward, Wheeler, Winkler, Yoakum, and Zavala counties.

Pursuant to Section 418.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor.

However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

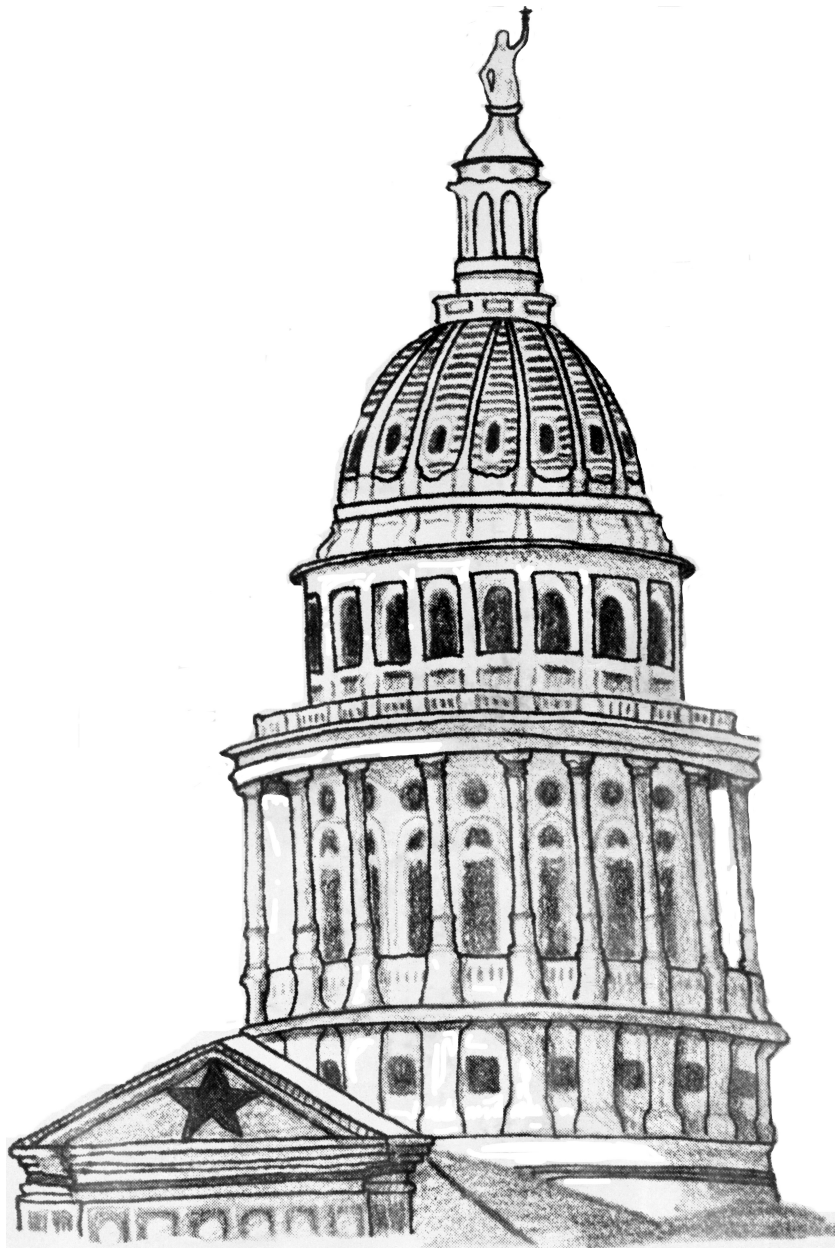
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 4th day of November, 2020.

Greg Abbott, Governor

TRD-202004656





THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, and Open Records Decisions.

An index to the full text of these documents is available on the Attorney General's website at <https://www.texas.attorneygeneral.gov/attorney-general-opinions>. For information about pending requests for opinions, telephone (512) 463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <https://www.texasattorneygeneral.gov/attorney-general-opinions>.)

Opinions

Opinion No. KP-0340

The Honorable Brian Birdwell

Chair, Senate Committee on Natural Resource and Economic Development

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether a home-rule municipality may enter into a contract with a special utility district that prohibits the city from petitioning for decertification of all or part of the special utility district's certificate of convenience and necessity in the future (RQ-0354-KP)

SUMMARY

Chapter 13 of the Water Code governs certificates of convenience and necessity for the provision of water and sewer service. No provision in chapter 13 addresses whether a home-rule municipality may enter into a contract with a special utility district that prohibits the city from petitioning for decertification of all or part of the special utility district's certificate of convenience and necessity in the future. However, the common-law reserved powers doctrine could limit a municipality's contracting authority in some circumstances, despite the existence of home-rule power. Accordingly, we cannot conclude as a matter of law that in all circumstances a home-rule municipality may agree by contract not to petition to decertify a special utility district's certificate of convenience and necessity in the future. Instead, such questions must be decided on a case-by-case basis.

Opinion No. KP-0341

Mr. Steven C. McCraw

Director

Texas Department of Public Safety

Post Office Box 4087

Austin, Texas 78773-0001

Re: Whether a political subdivision may require the Department of Public Safety to lift driver license renewal holds requested under Transportation Code chapter 706 if the political subdivision has not met the requirements for sending a clearance notice under section 706.005 or has not collected the reimbursement fee under section 706.006 (RQ-0379-KP)

SUMMARY

Chapter 706 of the Transportation Code authorizes a contract between a municipality or county and the Department of Public Safety, whereby the municipality or county provides information to the Department about a person's failure to appear for a complaint or citation or failure to pay or satisfy a judgment, and the Department denies the renewal of the person's driver's license until certain requirements are met.

Subsection 706.006(a) generally requires a political subdivision to collect a reimbursement fee from a person who fails to appear for a complaint or citation or fails to pay or satisfy a judgment that has been reported to the Department. The Department may deny renewal of the driver's license of a person who does not pay a reimbursement fee due under section 706.006 until the fee is paid.

Nothing in the language of chapter 706 of the Transportation Code authorizes a political subdivision to require the Department to lift previously-requested holds for reasons other than those articulated in subsection 706.005(b).

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-202004746

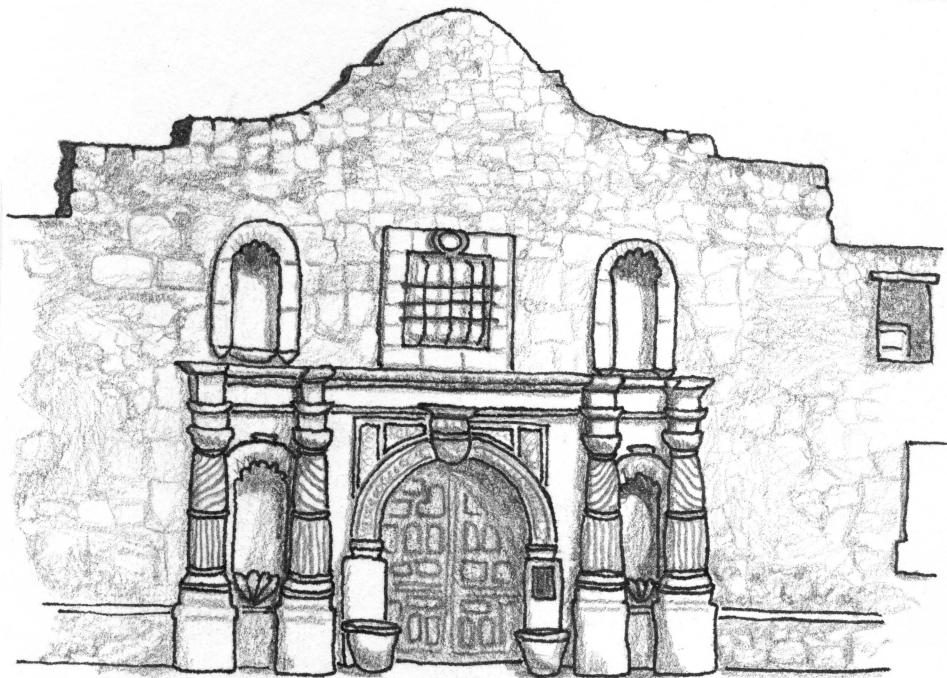
Lesley French

General Counsel

Office of the Attorney General

Filed: November 9, 2020





EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 379. FAMILY VIOLENCE PROGRAM

SUBCHAPTER B. SHELTER CENTERS DIVISION 2. CONTRACT STANDARDS

1 TAC §379.206

The Texas Health and Human Services Commission is renewing the effectiveness of emergency amended §379.206 for a 60-day period. The text of the emergency rule was originally published in the July 24, 2020, issue of the *Texas Register* (45 TexReg 5073).

Filed with the Office of the Secretary of State on November 3, 2020.

TRD-202004622

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Original effective date: July 8, 2020

Expiration date: January 3, 2021

For further information, please call: (512) 206-5646



DIVISION 6. PROGRAM ADMINISTRATION

1 TAC §§379.614, 379.615, 379.626, 379.628

The Texas Health and Human Services Commission is renewing the effectiveness of emergency amended §§379.614, 379.615, 379.626, and 379.628 for a 60-day period. The emergency rules were originally published in the July 24, 2020, issue of the *Texas Register* (45 TexReg 5073).

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TRD-202004623

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Original effective date: July 8, 2020

Expiration date: January 3, 2021

For further information, please call: (512) 206-5646



DIVISION 7. SERVICE DELIVERY

1 TAC §§379.701, 379.709, 379.711, 379.713

The Texas Health and Human Services Commission is renewing the effectiveness of emergency amended §§379.701, 379.709, 379.711, and 379.713 for a 60-day period. The emergency rules were originally published in the July 24, 2020, issue of the *Texas Register* (45 TexReg 5073).

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TRD-202004624

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Original effective date: July 8, 2020

Expiration date: January 3, 2021

For further information, please call: (512) 206-5646



SUBCHAPTER C. SPECIAL NONRESIDENTIAL PROJECTS

DIVISION 2. CONTRACT STANDARDS

1 TAC §379.902

The Texas Health and Human Services Commission is renewing the effectiveness of emergency amended §379.902 for a 60-day period. The emergency rule was originally published in the July 24, 2020, issue of the *Texas Register* (45 TexReg 5073).

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TRD-202004625

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 206-5646



SUBCHAPTER D. NONRESIDENTIAL CENTERS

DIVISION 2. CONTRACT STANDARDS

1 TAC §379.1605

The Texas Health and Human Services Commission is renewing the effectiveness of emergency amended §379.1605 for a 60-day period. The emergency rule was originally published in the July 24, 2020, issue of the *Texas Register* (45 TexReg 5073).

Filed with the Office of the Secretary of State on November 3, 2020.

TRD-202004626

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Original effective date: July 8, 2020

Expiration date: January 3, 2021

For further information, please call: (512) 206-5646



DIVISION 6. PROGRAM ADMINISTRATION

1 TAC §§379.2012, 379.2013, 379.2024, 379.2026, 379.2027

The Texas Health and Human Services Commission is renewing the effectiveness of emergency amended §§379.2012, 379.2013, 379.2024, 379.2026, 379.2027 for a 60-day period. The emergency rules were originally published in the July 24, 2020, issue of the *Texas Register* (45 TexReg 5073).

Filed with the Office of the Secretary of State on November 3, 2020.

TRD-202004627

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Original effective date: July 8, 2020

Expiration date: January 3, 2021

For further information, please call: (512) 206-5646



DIVISION 7. SERVICE DELIVERY

1 TAC §§379.2106, 379.2108, 379.2110

The Texas Health and Human Services Commission is renewing the effectiveness of emergency amended §§379.2106, 379.2108, and 379.2110 for a 60-day period. The emergency rules were originally published in the July 24, 2020, issue of the *Texas Register* (45 TexReg 5073).

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TRD-202004628

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Original effective date: July 8, 2020

Expiration date: January 3, 2021

For further information, please call: (512) 206-5646



TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.24

Introduction. The Texas Board of Nursing (Board) adopts emergency amendments to §217.24, relating to *Telemedicine Medical Service Prescriptions*, pursuant to a finding of imminent peril to the public health, safety, and welfare, which requires adoption in fewer than thirty (30) days' notice, as authorized by Tex. Gov't. Code §2001.034.

Background

On March 13, 2020, the Governor of the State of Texas certified COVID-19 as posing an imminent threat of disaster to the public health and safety and declared a state of disaster in all counties of Texas. On March 23, 2020, the Office of the Governor granted a waiver of 22 Texas Administrative Code §217.24(e)(1), which prohibits an advanced practice registered nurse (APRN) from treating chronic pain with scheduled drugs through the use of telemedicine medical services, unless otherwise permitted under federal and state law. The waiver, however, expired on June 6, 2020.

The Board held a public meeting on June 8, 2020, to consider the adoption of an emergency rule to permit advanced practice registered nurses to treat chronic pain with scheduled drugs through the use of telemedicine medical services under certain conditions during the COVID-19 pandemic. At the conclusion of the meeting, the Board voted to adopt the emergency amendments to 22 Texas Administrative Code §217.24(e)(1). The emergency amendments took effect June 8, 2020; were published in the *Texas Register* on June 19, 2020; and expired on July 7, 2020. Because the continuation of the effects of the COVID-19 pandemic necessitated the continuation of the emergency rule beyond the July 7, 2020 expiration date, the Board held a public meeting on July 6, 2020, and again adopted emergency amendments to §217.24(e)(1). The emergency amendments took effect July 7, 2020; were published in the *Texas Register* on July 17, 2020; and expired on September 4, 2020. The Board again considered the need for the adoption of emergency amendments to §217.24(e)(1) in public meeting on September 4, 2020 and voted to adopt emergency amendments to §217.24(e)(1) at the conclusion of that meeting. The emergency amendments took effect September 5, 2020; were published in the *Texas Register* on September 18, 2020; and expired on November 3, 2020. The Board has determined that the continuation of the effects of the COVID-19 pandemic necessitates the continuation of an emergency rule.

The adoption of emergency amendments to §217.24(e)(1) is immediately necessary to allow APRNs to continue to provide necessary treatment to established patients with chronic pain while mitigating the risk of exposure to COVID-19. Under the emergency amendments, an APRN may treat chronic pain with scheduled drugs through use of telemedicine medical services if a patient is an established chronic pain patient of the APRN, is seeking a telephone refill of an existing prescription, and the APRN determines that the telemedicine treatment is needed due to the COVID-19 pandemic. Further, the medical records must document the exception and the reason that a telemedicine visit was conducted instead of an in-person visit. The APRN must exercise appropriate professional judgment in determining whether to utilize telemedicine medical services for

the treatment of chronic pain with controlled substances. The emergency amendments will only apply to those APRNs whose delegating physicians agree to permit them to issue re-fills for these patients, and the services provided are limited to refills of controlled substances in Schedules III through V. Finally, these emergency amendments will only be in effect for a period of 60 days or the duration of the time period that the Governor's disaster declaration of March 13, 2020, in response to the COVID-19 pandemic is in effect, whichever is shorter.

Statutory Authority. The emergency amendments are adopted under the authority of the Tex. Occ. Code §301.151, which authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing. The emergency amendments are also adopted pursuant to Tex. Gov't. Code §2001.034 and §2001.036(a)(2) on an emergency basis and with an expedited effective date because an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice.

This emergency adoption also affects Texas Occupations Code Chapter 111.

§217.24. *Telemedicine Medical Service Prescriptions.*

(a) - (d) (No change.)

(e) (No change.)

(1) Treatment of chronic pain with scheduled drugs through use of telemedicine medical services is prohibited, unless otherwise allowed under federal and state law. For purposes of this section, "chronic pain" means a state in which pain persists beyond the usual course of an acute disease or healing of an injury. Chronic pain may be associated with a chronic pathological process that causes continuous or intermittent pain over months or years.

(A) Notwithstanding paragraph (e)(1), treatment of chronic pain with scheduled drugs through use of telemedicine medical services is not prohibited by this rule if the patient is an established chronic pain patient of the APRN and is seeking telephone refill of an existing prescription, and the APRN determines that such telemedicine treatment is needed due to the COVID-19 pandemic.

(B) If a patient is treated for chronic pain with scheduled drugs through the use of telemedicine medical services as permitted by (e)(1)(A), the medical records must document the exception and the reason that a telemedicine visit was conducted instead of an in-person visit.

(C) An APRN, when determining whether to utilize telemedicine medical services for the treatment of chronic pain with controlled substances as permitted by (e)(1)(A), shall give due consideration to factors that include, at a minimum, date of the patient's last in-person visit, patient co-morbidities, and occupational related COVID risks. These are not the sole, exclusive, or exhaustive factors an APRN should consider under this rule.

(D) The emergency amendment of this rule effective November 4, 2020, shall be in effect for only 60 days or the duration of the time period that the Governor's disaster declaration of March 13, 2020, in response to the COVID-19 pandemic is in effect, whichever is shorter.

(2) (No change.)

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

Filed with the Office of the Secretary of State on November 4, 2020.

TRD-202004649

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Effective date: November 4, 2020

Expiration date: January 2, 2021

For further information, please call: (512) 305-6822



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 295. OCCUPATIONAL HEALTH SUBCHAPTER C. TEXAS ASBESTOS HEALTH PROTECTION

25 TAC §295.65

The Department of State Health Services is renewing the effectiveness of an emergency amendment to §295.65 for a 60-day period. The text of the emergency rule was originally published in the July 24, 2020, issue of the *Texas Register* (45 TexReg 5078).

Filed with the Office of the Secretary of State on November 5, 2020.

TRD-202004654

Karen Ray

Chief Counsel

Department of State Health Services

Original effective date: July 13, 2020

Expiration date: January 8, 2021

For further information, please call: (512) 834-6608



CHAPTER 448. STANDARD OF CARE SUBCHAPTER I. TREATMENT PROGRAM SERVICES

25 TAC §448.911

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 25 Texas Administrative Code, Chapter 448, Standard of Care, an amendment to §448.911, concerning an emergency rule in response to COVID-19 to expand a licensed chemical dependency treatment facility's ability to provide treatment services through electronic means to adults and adolescents to reduce the risk of COVID-19 transmission. As authorized by Texas Government Code §2001.034, HHSC may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adop-

tion on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this emergency rule amendment to Treatment Services Provided by Electronic Means.

To protect patients and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule amendment to §448.911(a)(1) to temporarily permit a currently licensed chemical dependency treatment facility (CDTF) to provide treatment services through electronic means to both adult and adolescent clients. This emergency rule amendment will reduce the risk of COVID-19 transmission and expand access to treatment for clients.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §464.009. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies

necessary for the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §464.009 authorizes the Executive Commissioner of HHSC to adopt rules governing organization and structure, policies and procedures, staffing requirements, services, client rights, records, physical plant requirements, and standards for licensed CDTFs.

The new emergency rule amendment implements Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 464.

§448.911. Treatment Services Provided by Electronic Means.

(a) A licensed treatment program may provide outpatient chemical dependency treatment program services by electronic means provided the criteria outlined in this section are addressed.

(1) Services ~~[shall]~~ may be provided to adult and adolescent clients ~~[only]~~; and

(2) (No change.)

(b) - (x) (No change.)

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

Filed with the Office of the Secretary of State on November 5, 2020.

TRD-202004655

Karen Ray

Chief Counsel

Department of State Health Services

Effective date: November 8, 2020

Expiration date: March 7, 2021

For further information, please call: (512) 834-4591



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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 2. ENFORCEMENT

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 2 Enforcement, Subchapter A General, Subchapter C Administrative Penalties, and Subchapter D Debarment from Participation in Programs Administered by the Department. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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.

1. Mr. Bobby Wilkinson has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous re-adoption, making changes to the Department's Enforcement activities.
2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.
3. The proposed repeal does not require additional future legislative appropriations.
4. The proposed 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 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 action will repeal an existing regulation, but is associated with a simultaneous re-adoption making changes to an existing activity, the Department's Enforcement activities.
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 this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REG-

ULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this 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. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section 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 November 20, 2020, to December 21, 2020, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Wendy Quackenbush, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email wendy.quackenbush@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, DECEMBER 21, 2020.

SUBCHAPTER A. GENERAL

10 TAC §§2.101 - 2.104

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

§2.101. *Policy and Purpose.*

§2.102. *Definitions.*

§2.103. *General.*

§2.104. *Enforcement Mechanisms.*

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 November 6, 2020.

TRD-202004691

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: December 20, 2020

For further information, please call: (512) 475-1762



SUBCHAPTER C. ADMINISTRATIVE PENALTIES

10 TAC §2.301, §2.302

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

§2.301. *General.*

§2.302. *Administrative Penalty Process.*

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 November 6, 2020.

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: December 20, 2020

For further information, please call: (512) 475-1762



SUBCHAPTER D. DEBARMENT FROM PARTICIPATION IN PROGRAMS ADMINISTERED BY THE DEPARTMENT

10 TAC §2.401

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

§2.401. *General.*

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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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: December 20, 2020

For further information, please call: (512) 475-1762



CHAPTER 2. ENFORCEMENT

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 2 Enforcement, Subchapter A General, Subchapter C Administrative Penalties, and Subchapter D Debarment. The purpose of the proposed new sections is to provide compliance with Tex. Gov't Code §2306.041 and §2306.0504 and to update the rule to: include a definition of "Actively Monitored Development," clarify membership of the Enforcement Committee ensuring that there are no conflicts of interest, align the rule with the Department's current administrative penalties process, update the administrative penalty table to include new Department programs (e.g., Section 811 PRA), clarify standards for increased penalty amounts for responsible parties that have previously paid a penalty for the same finding type, propose changes redefining material and repeated violations for multifamily developments, require that a party undergoing debarment may not participate in new Department financing and assistance opportunities until such debarment is fully resolved, and reclassify some events of noncompliance from "shall debar" to "may debar."

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action. Several revisions do have potential financial costs to a party undergoing enforcement proceedings, however property owners and subrecipients remaining in good standing do not incur these costs and the rule is only selectively applicable to those performing poorly. Such changes include adding findings for new Department programs (e.g., Section 811 PRA), aligning penalty amounts as incentives for resolution, subdividing certain penalty types, and increasing penalty amounts for responsible parties that have previously paid a penalty for the same finding type. Because it is determined that compliance with the rule does not require additional costs and the adjustment of potential penalty amounts is expected to incentivize compliance rather than increase the amount of fines collected, no costs to the rule 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. Wilkinson has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed rule does not create or eliminate a government program. This rule updates definitions, Enforcement Committee membership, the Department's administrative penalties process, and the administrative penalty table. This rule also clarifies standards for increased penalty amounts, stipulates that debarment does not relieve existing Department obligations, and reclassifies some events of noncompliance from "shall debar" to "may debar."

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

4. The proposed rule changes 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 rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

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

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

8. The proposed 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. The Department, in drafting this proposed rule, has 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 §2306.041 and §2306.0504.

1. The Department has evaluated this rule and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the procedures in place for owners and managers of developments participating in Department programs. Other than in the case of a small or micro-business that participates in the Department's programs covered by this rule, no small or microbusinesses are subject to the rule. If a small or micro-business does participate in the program, the rule provides a clear set of regulations for doing so.

3. The Department has determined that because all potential penalties can be avoided by adhering to program rules, 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 proposed 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 proposed rule has no economic effect on local employment. Therefore, no local employment impact statement is required to be prepared for this rule.

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 region affected by this rule..." Considering that the proposed rule has not economic impact on local employment 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. Bobby Wilkinson, Executive Direc-

tor, 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 sections will be an updated and more germane rule. There will not be any economic cost, other than that described above, to any individuals required to comply with the new section because the processes described by the rule have already been in place through the rule found at this section being repealed.

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 based on the Department's history and past experience with penalty collections.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 20, 2020, to December 21, 2020, to receive input on the new proposed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Wendy Quackenbush, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-3359, or email wendy.quackenbush@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, December 21, 2020.

SUBCHAPTER A. GENERAL

10 TAC §§2.101 - 2.104

STATUTORY AUTHORITY. The new sections are proposed 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.

§2.101. Policy and Purpose.

This chapter sets forth the enforcement mechanisms that the Department may use to bring about compliant administration of Department funded programs, state or federal, and exclude or remove from Department programs, Persons who have established, through certain non-compliant behavior that they are either unwilling to act in a compliant manner, or are unable to do so. These enforcement mechanisms are in addition to any available contractual remedies under program agreements.

§2.102. Definitions.

The words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Capitalized words used herein have the meaning assigned in the specific chapters of this title that govern the program associated with the request, in Chapter 1 of this title (relating to Administration), or assigned by federal or state law.

(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, an onsite or desk file monitoring review, an Affirmative Marketing Plan review, or a Written Policies and Procedures Review. UPCS inspections include inspections completed by Department staff, Department contractors and inspectors from the Real Estate Assessment Center through federal alignment efforts.

(2) Consultant--A Person who provides services or advice for a fee in a capacity other than as an employee and does not have Control.

(3) Control (including the terms Controlled and Controlling)--"Control" is defined in §11.1 of this title (relating to General) or as identified in the specific Program rule.

(4) Debarment--A prohibition from future participation in some or all Programs administered by the Department. Except as otherwise stated in the Order, Debarment does not impact existing or ongoing participation in Department Programs, prior to the date of the Debarment, nor does it affect any continuing responsibilities or duties thereunder.

(5) Enforcement Committee ("Committee")--A Committee of employees of the Department appointed by the Executive Director. The voting members of that Committee shall be no fewer than five and no more than nine. Additionally, each voting member shall have an alternate member, also appointed by the Executive Director, in the event that the primary voting member is unavailable. The Committee may be composed of any member of any Department division, but members from the referring division may not be present during deliberations. Alternate members may serve on behalf of any voting member for purposes of assuring a quorum. The Legal Division will designate person(s) to attend meetings and advise the Committee. A Legal Division designee will serve as Secretary to the Committee.

(6) Event of Noncompliance (including the alternate term "Finding of Noncompliance")--Any event for which a Person may be found to be in noncompliance with Texas Government Code Chapters 2105 or 2306, any rule adopted thereunder, any Program Agreement requirement, or federal program requirements.

(7) Legal Requirements--All requirements, as it relates to the particular Department Program, of state, federal, or local statutes, rules, regulations, ordinances, orders, court opinions, official interpretations, policy issuances, OMB Circulars, representations to secure awards, or any similar memorialization of requirement, including contract requirements.

(8) 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.

(9) Person--A legal entity including, without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability corporation, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization or entity of any nature whatsoever, and shall include any group of Persons acting in concert toward a common goal, including individual members of the group.

(10) Program--Includes any activity performed by a Subrecipient, Administrator, Contractor, Development Owner, or other Person under a Program Agreement or activities performed by a third party under a Program Agreement, including but not limited to a Subgrantee or Subcontractor.

(11) Program Agreements include:

(A) agreements between the Department and a Person setting forth Legal Requirements; and

(B) agreements between a Person subject to a Program Agreement and a third party to carry out one or more Legal Requirements.

(12) Responsible Party--Any Person subject to a Program Agreement.

(13) Vendor--A person who is procured by a subrecipient to provide goods or services in any way relating to a Department program or activity.

§2.103. General.

(a) A Responsible Party must comply with all applicable Legal Requirements.

(b) A failure by the Department to identify, address, or take action with respect to any one or more Events of Noncompliance does not constitute a waiver, ratification, or approval of, consent to, or agreement with such noncompliance. It is the responsibility of a Responsible Party to be familiar with the applicable Legal Requirements.

(c) Recordkeeping. Each referring division will keep records in accordance with the Department's record retention schedule and any other state or Federal requirements of all Events of Noncompliance.

(d) As provided for in Texas Government Code, §2306.6719, parties subject to certain compliance requirements must be afforded written notice and a reasonable period to correct identified Events of Noncompliance that are susceptible to being corrected. It is the responsibility of each division to provide any required cure, Corrective Action, or notice period(s) prior to referral of any matter to the Committee under this chapter. Matters should not be referred to the Committee until such cure, Corrective Action, or notice periods have been completed or expired.

(e) For each Event of Noncompliance, the Department will evaluate which Person or Persons had Control of the Development, Program, or activity at the time the Event of Noncompliance occurred. A Person will not be referred for Debarment or assessed a Administrative Penalty because they have newly acquired a Development that has existing Events of Noncompliance, provided that the findings are resolved by transferee within a reasonable timeframe after purchase, in accordance with a plan that is approved by the Department in an ownership transfer request under §10.406 of this title (relating to Ownership Transfers (§2306.6713)).

§2.104. Enforcement Mechanisms.

(a) The enforcement mechanisms referenced in this chapter are not the exclusive mechanisms whereby compliance may be obtained in any particular circumstance. Enforcement mechanisms related to Department programs may include, where applicable, those required or employed by other entities or agencies. With regard to the low-income housing tax credit program, if an identified Event of Noncompliance is required to be reported to the Internal Revenue Service, (IRS) it will be reported by the Compliance Division on form 8823. For federally funded Programs or activities the Department may recommend that a federal funding agency initiate a debarment proceeding under 2 CFR Part 180 or 2 CFR 2424, as applicable. Program Agreements may also include additional enforcement mechanisms, federal reporting, or penalties.

(b) Enforcement mechanisms available to the Department include but are not limited to:

(1) Enforcement of contractual provisions in the Program Agreements including, but not limited to, options to place a Development into receivership, and rights of suspension or termination, and placement on a cost reimbursement status as described in Subchapter B of this chapter (relating to Enforcement for Noncompliance with Program Requirements of Chapters 6 and 7);

(2) Consideration of a reasonable plan for correction, warning letter, informal conference, and assessment of administrative

penalties, as further described in Subchapter C of this chapter (relating to Administrative Penalties); or

(3) Debarment, as described in Subchapter D of this chapter (relating to Debarment from Participation in Programs Administered by the Department).

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 November 6, 2020.

TRD-202004700

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: December 20, 2020

For further information, please call: (512) 475-1762



SUBCHAPTER C. ADMINISTRATIVE PENALTIES

10 TAC §2.301, §2.302

STATUTORY AUTHORITY. The new sections are proposed 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.

§2.301. General.

Department divisions will recommend to the Committee the initiation of proceedings to assess administrative penalties where the Responsible Party or Parties have violated Chapters 2105 or 2306 of the Texas Government Code or a rule or order adopted under Chapters 2105 or 2306 of the Texas Government Code and failed, despite written notice, to take appropriate and timely corrective action or seek and obtain for good cause an extension of the time to take corrective action. In addition, staff from the Compliance or Fair Housing Divisions may recommend to the Committee the initiation of proceedings to assess administrative penalties where the Responsible Party or Parties has an established pattern of repeated substantive and material violations, even if corrected within the applicable corrective action periods.

§2.302. Administrative Penalty Process.

(a) The Executive Director will appoint an Enforcement Committee, as defined in §2.102 of this chapter (relating to Definitions).

(b) This referring division will recommend the initiation of administrative penalty proceedings to the Committee by referral to the secretary of the Committee ("Secretary"). At the time of referral for a multifamily rental Development, the referral letter from the referring Division will require the Responsible Party who Controls the Development to provide a listing of the Actively Monitored Developments in their portfolio. The Secretary will use this information to help determine whether mandatory Debarment should be simultaneously considered by the Enforcement Committee in accordance with §2.401(e)(2) of this section, related to repeated violations.

(c) The Secretary shall promptly contact the Responsible Party. If fully acceptable corrective action documentation is submitted to the referring division before the ("Secretary") sends an informal

conference notice, the referral shall be closed with no further action provided that the Responsible Party is not subject to consideration for Debarment. If the Secretary is not able to facilitate resolution, but receives a reasonable plan for correction, such plan shall be reported to the Committee to determine whether to schedule an informal conference, modify the plan, or accept the plan. If accepted, plan progress shall be regularly reported to the Committee, but an informal conference will not be held unless the approved plan is substantively violated, or an informal conference is later requested by the Committee or the Responsible Party. Plan examples include but are not limited to: a rehabilitation plan with a scope of work or contracts already in place, plans approved by EARAC as part of an ownership transfer or funding application, plans approved by the Executive Director, plans approved by the Asset Management Division, and/or plans relating to newly transferred Developments with unresolved Events of Non-compliance originating under prior ownership. Should the Secretary and Responsible Party fail to come to, an agreement or closer of the referral, or if the Responsible Party or ownership group's prior history of administrative penalty referrals does not support closure, or if consideration of Debarment is appropriate, the Secretary will schedule an informal conference with the Responsible Party to attempt to reach an agreed resolution.

(d) When an informal conference is scheduled, a deadline for submitting Corrective Action documentation will be included, providing a final opportunity for resolution. If compliance is achieved at this stage, the referral will be closed with a warning letter provided that factors, as discussed below, do not preclude such closure. Closure with a warning letter shall be reported to the Committee. Factors that will determine whether it is appropriate to close with a warning letter include, but are not limited to:

(1) Prior Enforcement Committee history relating to the Development or other properties in the ownership group;

(2) Prior Enforcement Committee history regarding similar federal or state Programs;

(3) Whether the deadline set by the Secretary in the informal conference notice has been met;

(4) Whether the Committee has set any exceptions for certain finding types; and

(5) Any other factor that may be relevant to the situation.

(e) If an informal conference is held:

(1) Notwithstanding the Responsible Party's attendance or presence of an authorized representative, the Enforcement Committee may proceed with the informal conference;

(2) The Responsible Party may, but is not required to be, represented by legal counsel of their choosing at their own cost and expense;

(3) The Responsible Party may bring to the meeting third parties, employees, and agents with knowledge of the issues;

(4) Assessment of an administrative penalty and Debarment may be considered at the same informal conference; and

(5) In order to facilitate candid dialogue, informal conference will not be open to the public; however, the Committee may include such other persons or witnesses as the Committee deems necessary for a complete and full development of relevant information and evidence.

(f) An informal conference may result in the following, which shall be reported to the Executive Director:

(1) An agreement to dismiss the matter with no further action;

(2) A compliance assistance notice issued by the Committee, available for Responsible Parties appearing for the first time before the Committee for matters which the Committee determines do not necessitate the assessment of an administrative penalty, but for which the Committee wishes to place the Responsible Party on notice with regard to possible future penalty assessment;

(3) An agreement to resolve the matter through corrective action without penalty. If the agreement is to be included in an order, a proposed agreed order will be prepared and presented to the Board for approval;

(4) An agreement to resolve the matter through corrective action with the assessment of an administrative penalty which may be probated in whole or in part, and may, where appropriate, include additional action to promote compliance such as requirements to obtain training. In this circumstance, a proposed agreed order will be prepared and presented to Department's Governing Board for approval;

(5) A recommendation by the Committee to the Executive Director to determine that a violation occurred, and to issue a report to the Board and a Notice of Violation to the Responsible Party, seeking the assessment of administrative penalties through a contested case hearing with the State Office of Administrative Hearings ("SOAH"); or

(6) Other action as the Committee deems appropriate.

(g) Upon receipt of a recommendation from the Committee regarding the issuance of a report and assessment of an administrative penalty under subsection (f)(5), the Executive Director shall determine whether a violation has occurred. If needed, the Executive Director may request additional information and/or return the recommendation to the Committee for further development. If the Executive Director determines that a violation has occurred, the Executive Director will issue a report to the Board in accordance with §2306.043 of the Texas Government Code.

(h) Not later than fourteen (14) days after issuance of the report to the Board, the Executive Director will issue a Notice of Violation to the Responsible Party. The Notice of Violation issued by the Executive Director will include:

(1) A summary of the alleged violation(s) together with reference to the particular sections of the statutes and rules alleged to have been violated;

(2) A statement informing the Responsible Party of the right to a hearing before the SOAH, if applicable, on the occurrence of the violation(s), the amount of penalty, or both;

(3) Any other matters deemed relevant; and

(4) The amount of the recommended penalty. In determining the amount of a recommended administrative penalty, the Executive Director shall take into consideration the statutory factors at Tex. Gov't Code §2306.042 the penalty schedule shown in the tables in subsection (k) of this section and in the instance of a proceeding to assess administrative penalties against a Responsible Party administering CDBG, CSBG, or LIHEAP, whether the assessment of such penalty will interfere with the uninterrupted delivery of services under such program(s). The Executive Director shall further take into account whether the Department's purposes may be achieved or enhanced by the use of full or partial probation of penalties subject to adherence to specific requirements and whether the violation(s) in question involve disallowed costs.

(i) Not later than 20 days after the Responsible Party receives the Notice of Violation, the Responsible Party may accept the requirements of the Notice of Violation or request a SOAH hearing.

(j) If the Responsible Party requests a hearing or does not respond to the Notice of Violation, the Executive Director, with the approval of the Board, shall cause the hearing to be docketed before a SOAH administrative law judge in accordance with §1.13 of this title (relating to Contested Case Hearing Procedures), which outlines the remainder of the process.

(k) Penalty schedules.

Figure 1: 10 TAC §2.401(k)

Figure 2: 10 TAC §2.401(k)

Figure 3: 10 TAC §2.401(k)

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 November 6, 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



SUBCHAPTER D. DEBARMENT FROM PARTICIPATION IN PROGRAMS ADMINISTERED BY THE DEPARTMENT

10 TAC §2.401

STATUTORY AUTHORITY. The new sections are proposed 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.

§2.401. General.

(a) The Department may debar a Responsible Party, a Consultant and/or a Vendor who has exhibited past failure to comply with any condition imposed by the Department in the administration of its programs. A Responsible Party, Consultant or Vendor may be referred to the Committee for Debarment for any of the following:

(1) Refusing to provide an acceptable plan to implement and adhere to procedures to ensure compliant operation of the program after being placed on Modified Cost Reimbursement;

(2) Refusing to repay disallowed costs;

(3) Refusing to enter into a plan to repay disallowed costs or egregious violations of an agreed repayment plan;

(4) Meeting any of the ineligibility criteria referenced in §11.202 of this title (relating to Ineligible Applicants and Applications) or other ineligibility criteria outlined in a Program Rule, with the exception of: ineligibility related to conflicts of interest disclosed to the Department for review, and ineligibility identified in a previous participation review in conjunction with an application for funds or resources (unless otherwise eligible for Debarment under this Subchapter D);

(5) Providing fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresent-

tation or omission with regard to any documentation, certification or other representation made to the Department;

(6) Failing to correct Events of Noncompliance as required by an order that became effective after the effective date of this rule, and/or failing to pay an administrative penalty as required by such order, within six months of a demand being issued by the Department. In this circumstance, if the Debarment process is initiated but the Responsible Party fully corrects the findings of noncompliance to the satisfaction of the referring division and pays the administrative penalty as required by the order before the Debarment is finalized by the Board, the Debarment recommendation may be cancelled or withdrawn by Committee recommendation and Executive Director concurrence. This type of referral would be initiated by the Secretary;

(7) Controlling a multifamily Development that was foreclosed after the effective date of this rule, where the foreclosure or deed in lieu of foreclosure terminates a subordinate TDHCA LURA;

(8) Controlling a multifamily Development and allowing a change in ownership after the effective date of this rule, without Department approval;

(9) Transferring a Development, after the effective date of this rule, without regard for a Right of First Refusal requirement;

(10) Being involuntary removed, or replaced due to a default by the General Partner under the Limited Partnership Agreement, after the effective date of this rule;

(11) Refusing to comply with conditions approved by the Board that were recommended by the Executive Award Review Advisory Committee after the effective date of this rule;

(12) Having any Event of Noncompliance that occur after the effective date of this rule that causes the Department to be required to repay federal funds to any federal agency including, but not limited to the U.S. Department of Housing and Urban Development; and/or

(13) Submitting a written certification that non-compliance has been corrected when it is determined that the Event of Noncompliance was not corrected. For certain Events of Noncompliance, in lieu of documentation, the Compliance Division accepts a written certification that noncompliance has been corrected. If it is determined that the Event of Noncompliance was not corrected, a Person who signed the certification may be recommended for debarment;

(14) Refusing to provide an amenity required by the LURA after the effective date of this rule;

(15) Failing to reserve units for Section 811 PRA participants after the effective date of this rule;

(16) Failing to notify the Department of the availability of 811 PRA units after the effective date of this rule;

(17) Taking "choice limiting" actions prior to receiving HUD environmental clearance (24 CFR §58.22);

(18) Substandard construction, as defined by the Program, and repeated failure to conduct required inspections;

(19) Repeated failure to provide eligible match. 24 CFR §92.220, 24 CFR §576.201, and as required by NOFA;

(20) Repeated failure to report program income. 24 CFR §570.500, 24 CFR §576.407(c), 2 CFR Part 215 (if applicable), and 10 TAC §20.9, or as defined by Program Rule;

(21) Participating in activities leading to or giving the appearance of "Conflict of Interest". 2 CFR Part 215 (if applicable), 24

CFR §84.42, §92.356 (if applicable), §570.489, §576.404, 10 TAC §20.9, or as defined by Program Rule;

(22) Repeated material financial system deficiencies. 24 CFR §§84.21, 84.43, 85.20, 85.22, 85.36, 92.205, 92.206, 92.350, 92.505, and 92.508 (if applicable), OMB A-110 Relocated to 2 CFR Part 215 (if applicable), OMB A-87 Relocated to 2 CFR Part 225 (if applicable), OMB A-122 Relocated to 2 CFR Part 230 (if applicable), 10 TAC §20.9 and Uniform Grant Management Standards (if applicable) and as defined by Program Rule.

(23) Repeated violations of Single Audit or other programmatic audit requirements;

(24) Failure to remain a CHDO for Department committed HOME funds;

(25) Commingling of funds, Misapplication of funds;

(26) Refusing to submit a required Audit Certification Form, Single Audit, or other programmatic audit;

(27) Refusing to timely respond to reports/provide required correspondence;

(28) Failure to timely expend funds; and

(29) A Monitoring Event determines that 50% or more of the client or household files reviewed do not contain required documentation to support income eligibility or indicate that the client or household is not income eligible.

(b) The Department shall debar any Responsible Party, Consultant, or Vendor who is debarred from participation in any program administered by the United States Government.

(c) Debarment for violations of the Department's Multifamily Programs. The Department shall debar any Responsible Party who has materially or repeatedly violated any condition imposed by the Department in connection with the administration of a Department program, including but not limited to a material or repeated violation of a land use restriction agreement (LURA). Subsection (d) of this section provides the criteria the Department will use to determine if there has been a material violation of a LURA. Subsections (e)(1) and (e)(2) of this section provide the criteria the Department shall use to determine if there have been repeated violations of a LURA.

(d) Material violations of a LURA. A Responsible Party will be considered to have materially violated a LURA, Program Agreement, or condition imposed by the Department and shall be referred to the committee for mandatory Debarment if they;

(1) Control a Development that has, on more than one occasion scored 50 or less on a UPCS inspection;

(2) Refuse to allow a monitoring visit when proper notice was provided or failed to notify residents resulting in inspection cancellation, or otherwise fails to make units and records available;

(3) Refuse to reduce rents to less than the highest allowed under the LURA;

(4) Fail to meet minimum set aside by the end of the first year of the credit period (HTC Developments only) after the effective date of this rule; or

(5) Excluding an individual or family from admission to the Development solely because the household participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1-437), or other federal, state, or local government rental assistance program after the effective date of this rule.

(e) Repeated Violations of a LURA that shall be considered grounds for Debarment.

(1) A Responsible Party shall be referred to the Committee for mandatory Debarment if they Control a Development that during two consecutive Monitoring Events is found to be out of compliance with the following Events of Noncompliance:

(A) No evidence of, or failure to certify to, material participation of a non-profit or HUB, if required by the Land Use Restriction Agreement;

(B) Uniform Physical Condition Standards Violations that result in a score of 70 or below in sequential UPCS inspections after the effective date of this rule;

(C) Refuse to submit all or parts of the Annual Owner's Compliance Report for two consecutive years after the effective date of this rule; or

(D) Gross rents exceed the highest rent allowed under the LURA or other deed restriction.

(2) Repeated violations in a portfolio. Persons who control five or more Actively Monitored Developments will be considered for Debarment based on repeated violations in a portfolio. A Person shall be referred to be committee for mandatory will be referred for Debarment if an inspection or referral, after the effective date of this rule, indicates the following:

(A) 50% or more of the Actively Monitored Developments in the portfolio have been referred to the Enforcement Committee; or,

(B) 50% or more of the Actively Monitored Developments in the portfolio score a 70 or less during a Uniform Physical Conditions Standards inspection.

(f) Debarment for violations of all other Department Programs, with the exception of the Non-Discretionary funds in the Community Services Block Grant program. Material or repeated violations of conditions imposed in connection with the administration of Programs administered by the Department. Administrators, Subrecipients, Responsible Parties, contractors, multifamily owners, and related parties shall be referred to the Committee for consideration for Debarment for violations including but not limited to:

(1) 50% or more loan defaults in the first 12 months of the loan agreement after the effective date of this rule;

(4) The following Davis Bacon Act Violations:

(A) Refusing to pay restitution (underpayment of wages). 29 CFR §5.31.

(B) Refusing to pay liquidated damages (overtime violations). 29 CFR §5.8.

(C) Repeated failure to pay full prevailing wage, including fringe benefits, for all hours worked. 29 CFR §5.31.

(2) The following violations of the Uniform Relocation Act and requirements of §104(d):

(A) Repeated failure to provide the General Information Notice to tenants prior to application. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352 and HUD Handbook 1378.

(B) Repeated failure to provide all required information in the General Information Notice. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352 and HUD Handbook 1378.

(C) Repeated failure to provide the Notice of Eligibility and/or Notice of Non-displacement on or before the Initiation of Negotiations date. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352, and 24 CFR §570.606.

(D) Repeated failure to provide all required information in the Notice of Eligibility and/or Notice of Non-displacement. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352, and 24 CFR §570.606.

(E) Repeated failure to provide 90 Day Notices to all "displaced" tenants and/or repeated failure to provide 30 Day Notices to all "non-displaced" tenants. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352, and 24 CFR §570.606.

(F) Repeated failure to perform and document "decent, safe and sanitary" inspections of replacement housing. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352, and 24 CFR §570.606.

(G) Refusing to properly provide Uniform Relocation Act or §104(d) assistance. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §570.606 and §104(d) of the Housing & Community Development Act of 1974 - 24 CFR Part 42.

(3) Refusing to reimburse excess cash on hand;

(4) Using Department funds to demolish a homeowner's dwelling and then refusing to rebuild;

(5) Drawing down Department funds for an eligible use and then refusing to pay a properly submitted request for payment to a subgrantee or vendor with the drawn down funds.

(g) The referring division shall provide the Responsible Party with written notice of the referral to the Committee, setting forth the facts and circumstances that justify the referral for Debarment consideration.

(h) The Secretary shall then offer the Responsible Party the opportunity to attend an Informal Conference with the Committee to discuss resolution of the. In the event that the Debarment referral was the result of a violated agreed order or a determination that 50% or more of the Actively Monitored Developments in their portfolio have been referred to the Enforcement Committee, the above written notice of the referral to the Committee and the informal conference notice shall be combined into a single notice issued by the Secretary.

(i) A Debarment Informal Conference may result in the following, which shall be reported to the Executive Director:

(1) A determination that the Department did not have sufficient information and/or that the Responsible Party does not meet any of the criteria for Debarment;

(2) An agreed Debarment, with a proposed agreed order to be prepared and presented to the Board for approval;

(3) A recommendation by the Committee to the Executive Director for Debarment;

(4) A request for further information, to be considered during a future meeting; or,

(5) If Debarment is not mandatory, an agreement to dismiss the matter with no further action, an agreement to dismiss the matter with corrective action being taken, or any other action as the Committee deems appropriate, which will then be reported to the Executive Director.

(j) The Committee's recommendation to the Executive Director regarding Debarment shall include a recommended period of Debarment. Recommended periods of Debarment will be based on material factors such as repeated occurrences, seriousness of underlying issues,

presence or absence of corrective action taken or planned, including corrective action to install new responsible persons and ensure they are qualified and properly trained. Recommended periods of Debarment if based upon HUD Debarment, shall be for the period of the remaining HUD Debarment; or, if based upon criminal conviction, shall be up to ten (10) years or until fulfillment of all conditions of incarceration and/or probation, whichever is greater.

(k) The Executive Director shall accept, reject, or modify the Debarment recommendation by the Committee and shall provide written notice to the Responsible Party of the determination, and an explanation of the determination if different than the Committee's recommendation, including the period of Debarment, if any. The Responsible Party may appeal the Debarment determination in writing to the Board as described in §1.7 of this title (relating to Appeals Process).

(l) The Debarment recommendation will be brought to the next Board meeting for which the matter can be properly posted. The Board reserves discretion to impose longer or shorter Debarment periods than those recommended by staff based on its finding that such longer or shorter periods are appropriate when considering all factors and/or for the purposes of equity or other good cause. An action on a proposed Debarment of an Eligible Entity under the CSBG Act will not become final until and unless proceedings to terminate Eligible Entity status have occurred, resulting in such termination and all rights of appeal or review have run or Eligible Entity status has been voluntarily relinquished.

(m) Until the Responsible Party's Debarment referral is fully resolved, the Responsible Party may not participate in new Department financing and assistance opportunities.

(n) Any person who has been debarred is prohibited from participation as set forth in the final order of Debarment for the term of their Debarment. Unless specifically stated in the order of Debarment, Debarment does not relieve a Responsible Party from its current obligations, or prohibit it from continuing its participation in any existing engagements funded through the Department, nor limit its responsibilities and duties thereunder. The Board will not consider modifying the terms of the Debarment after the issuance of a final order of Debarment.

(o) If an Eligible Entity under the CSBG Act meets any of the criteria for Debarment in this rule, the Department may recommend the Eligible Entity for Debarment. However, that referral or recommendation shall not proceed until the termination of the Eligible Entity's status under the CSBG Act has concluded, and no right of appeal or review remains.

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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Bobby Wilkinson
Executive Director

Texas Department of Housing and Community Affairs
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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 117. MASSAGE THERAPY

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 117, Subchapter C, §117.20 and §117.24, Subchapter D, §117.30 and §117.31, Subchapter F, §117.64, Subchapter G, §117.82, Subchapter H, §117.90 - §117.92; and new rule at Subchapter D, §117.35 regarding the Massage Therapy Program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 117 implement Texas Occupations Code, Chapter 455.

The proposed rules are necessary to implement House Bill (HB) 2059, 86th Legislature, Regular Session (2019). HB 2059 requires massage therapists and other health care practitioners to complete a human trafficking prevention training course in order to renew their license. The Executive Commissioner of the Health and Human Services Commission (HHSC) approves human trafficking prevention courses, including at least one course that is available without charge, and posts a list of approved courses on the HHSC website. The statutory provisions created by HB 2059 are located in Texas Occupations Code, Chapter 116. The proposed rules implement this training requirement and allow the training to count for up to three hours of continuing education during each license term. The proposed rules also clearly require that a new written consent be obtained before each session involving breast massage of a female client. Additionally, the proposed rules make clean-up and clarification changes designed to update the rules and make them easier to understand.

The proposed rules were presented and discussed at the Massage Therapy Advisory Board at its meeting on October 29, 2020. The Advisory Board did not make any changes to the proposed rules. The Advisory Board voted and recommended that the proposed rules be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §117.20 by requiring massage therapist applicants to ensure that a certified transcript or other record of all relevant coursework is submitted to the Department. This change allows for massage schools in Texas to send a record of coursework electronically to the Department, through the new PALMS system for reporting hours and enrolled students. The proposed change also allows applicants from out-of-state schools to send the Department a certified transcript.

The proposed rules amend §117.24 by requiring massage therapists to complete an HHSC-approved human trafficking prevention training and provide proof of completion to renew their massage therapist license. This training must be completed before each license renewal.

The proposed rules amend §117.30 by correcting a typographical error.

The proposed rules amend §117.31 by re-wording subsection (a) for clarity.

The proposed rules add new §117.35, which would allow an HHSC-approved human trafficking prevention training course to count for up to three hours of continuing education credit each license term. Providers of an HHSC-approved human trafficking prevention training course would not be required to obtain department approval as a continuing education provider and would not be required to comply with the requirements of §117.34.

The proposed rules amend §117.64 to require massage schools to provide certified, rather than certified or original, copies of student transcripts on request, for a reasonable charge, if the student has fulfilled the financial obligation to the school.

The proposed rules amend §§117.82, 117.90, and 117.92 to refer to the new written consent that must be obtained before each massage therapy session involving breast massage of a female client.

The proposed rules amend §117.91 to clearly require a new written consent be obtained before each session involving breast massage of a female client. The proposed rules also re-title §117.91 to refer to written consent.

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. The proposed rules will not affect the amount of resources or personnel needed by the Department, and local governments do not enforce or administer the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules. The proposed rules will not increase or decrease the amount of fees paid to the Department, and local governments do not enforce or administer the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Texas Government Code §2001.022. The human trafficking prevention training course required by HB 2059 and the proposed rules is applicable to all geographical areas of Texas and may be completed without cost to the licensee. Additionally, the proposed rules will not change the process of becoming a massage therapist or obtaining a massage therapist license and will not change the number of individuals who are seeking to become licensed massage therapists. Therefore, the proposed rules will not have an impact on local employment.

PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be training licensees to identify the signs of human trafficking and assist in the prevention of human trafficking. Additionally, several rule language corrections and improvements will make the rules clearer and easier to understand. The proposed changes also take into account that Texas massage schools will submit electronic records of coursework to the Department, and the proposed rules clarify that massage schools must make available certified transcripts rather than the original transcript itself. Fi-

nally, the proposed rules add language to clearly require a new written consent before each session involving breast massage of a female client. This sets clear expectations regarding each session for both the client and the licensee.

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 are no anticipated economic costs to persons who are required to comply with the proposed rules. HB 2059 requires HHSC to approve at least one human trafficking prevention course that is available free of charge. Other changes in the proposed rules are designed to correct errors and clarify and update the rule language. They will not impose costs on any person or entity. Additionally, the Department does not anticipate any economic costs as a result of the requirement for a new written consent before each session involving breast massage of a female client. The Department does not prescribe a particular format for the written consent, and not all massage therapists offer this service. Any costs associated with updating forms or documents would be discretionary in nature, and costs would be minimal if the form is needed.

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

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. The Department regulates massage therapists, massage establishments, schools, and continuing education course providers, some of which may operate a micro or small business.

The proposed rules do not impose additional fees on these businesses, nor do they create requirements that would cause small or micro-businesses to expend funds for equipment, staff, supplies, or infrastructure, other than printing a form if a breast massage will be performed on a female client. It is not anticipated that this will have any adverse economic effect. Moreover, although massage therapists will be required to expend time completing a human trafficking training, this requirement is imposed by HB 2059, and any cost of attending the required course once every two years will not have an adverse impact on a small or micro-business or rural community. Finally, the proposed rules will not decrease the availability of licensed massage therapists in rural communities or increase the cost of their services in these communities. Since the agency has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do create a new regulation. The proposed rules add new §117.35, which would allow an HHSC-approved human trafficking prevention training course to count for up to three hours of continuing education credit each license term. Providers of an HHSC-approved human trafficking prevention training would not be required to obtain department approval as a continuing education provider and would not be required to comply with §117.34.
6. The proposed rules do expand, limit, or repeal an existing regulation. The proposed rules implement HB 2059 by expanding the renewal requirements for massage therapists. Licensed massage therapists must complete human trafficking prevention training for each license renewal. Additionally, the proposed rules expand the written consent requirements relating to breast massage. Under the proposed rules, a new written consent must be obtained before each session involving breast massage of a female client.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Vanessa Vasquez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER C. LICENSED MASSAGE THERAPIST AND STUDENT PERMIT

16 TAC §117.20, §117.24

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 455, 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 455. No other statutes, articles, or codes are affected by the proposed rules.

§117.20. *Massage Therapist License--General Requirements and Application.*

(a) To be eligible for a Massage Therapist license an applicant must:

- (1) submit a completed application on a department-approved form;
- (2) pay the fee required under §117.100;
- (3) be at least 18 years of age;
- (4) ensure that a certified transcript or other record of all relevant course work is submitted to the department [~~submit a transcript(s) of all relevant course work; acceptable to the department~~];
- (5) provide proof of successfully passing the required exam;
- (6) provide proof of successfully passing the jurisprudence exam;
- (7) successfully pass a criminal history background check performed by the department in accordance with the Act, the department's criminal conviction guidelines, and pursuant to Texas Occupations Code, Chapters 51 and 53; and
- (8) satisfactorily complete massage therapy studies in a minimum 500-hour department approved course at a licensed massage school in which includes at least:

- (A) 200 hours of massage therapy techniques and theory and the practice of manipulation of soft tissue, with at least 125 hours of Swedish massage therapy techniques;
 - (B) 50 hours of anatomy;
 - (C) 25 hours of physiology;
 - (D) 50 hours of kinesiology;
 - (E) 40 hours of pathology;
 - (F) 20 hours of hydrotherapy;
 - (G) 45 hours of massage therapy laws and rules, business practices and professional ethics;
 - (H) 20 hours of health, hygiene, first aid, universal precautions, and cardiopulmonary resuscitation (CPR); and
 - (I) 50-hour internship program.
- (b) - (g) (No change.)

§117.24. *Massage Therapist License Term; Renewals.*

- (a) (No change.)
- (b) To renew a massage therapist license, a licensee must:
 - (1) submit a completed renewal application on a department-approved form;
 - (2) complete all applicable continuing education requirements; [~~and~~]
 - (3) submit all applicable fees as prescribed under §117.100; and [-]

(4) complete the human trafficking prevention training required under Occupations Code, Chapter 116, and provide proof of completion as prescribed by the department. This training must be completed before each renewal.

(c) - (e) (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 November 9, 2020.

TRD-202004773

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: December 20, 2020

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



SUBCHAPTER D. CONTINUING EDUCATION

16 TAC §§117.30, 117.31, 117.35

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 455, 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 455. No other statutes, articles, or codes are affected by the proposed rules.

§117.30. Massage Therapist Continuing Education--Hours.

(a) Massage therapists [therapist] must successfully complete at least twelve hours of approved continuing education per license term.

(b) - (c) (No change.)

§117.31. Massage Therapist--Approved Continuing Education Courses and Providers.

(a) Acceptable continuing education includes attendance at and completion of department-approved [department approved] or -recognized[;] institutes, seminars, workshops, state or national conferences, associations, courses provided by an approved massage therapy school, or college and university academic courses. These programs must be designed to increase and enhance professional knowledge, skills, or competence in the practice of massage therapy. The subject matter must be [that are]:

(1) directly related to the theory or clinical application of theory pertaining to the practice of massage therapy and the manipulation of soft tissue, massage therapy laws and rules, business practices, professional ethics, anatomy, physiology, hydrotherapy, kinesiology, pathology, or health and hygiene; [or]

(2) first aid and/or CPR, not to exceed six hours total each renewal period; or

(3) advanced massage therapy or bodywork techniques acceptable to the department. [; and]

~~{(4) designed to increase and enhance professional knowledge, skills, or competence in the practice of massage therapy.}~~

(b) - (e) (No change.)

§117.35. Continuing Education Credit for Human Trafficking Prevention Training.

(a) Notwithstanding any other provision in this chapter, a human trafficking prevention training course approved by the Health and Human Services Commission (HHSC) in accordance with Occupations Code, Chapter 116, will count as acceptable continuing education.

(b) No more than three hours of credit per license term may be awarded for completing human trafficking prevention training. The number of hours credited will be determined by the number of hours indicated on the certificate of completion, or, if the number of hours is not indicated, by the amount of time the course takes to complete, as determined by the department.

(c) A provider of an HHSC-approved human trafficking prevention training course is not required to obtain department approval as a continuing education provider or comply with the requirements of §117.34.

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 November 9, 2020.

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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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



SUBCHAPTER F. LICENSED MESSAGE SCHOOLS

16 TAC §117.64

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 455, 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 455. No other statutes, articles, or codes are affected by the proposed rules.

§117.64. Massage School Transcripts and Records.

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

(d) Each massage school shall maintain student transcripts of academic records permanently. Certified [Original or eertified] copies of transcripts (official transcripts) shall be available to students and any person authorized by the student at a reasonable charge if the student has fulfilled the financial obligation to the school. Transcripts must be

made available to students who have satisfied the terms of the enrollment agreement within ten (10) calendar days of the date the terms are satisfied. The transcript of a student shall include the following:

- (1) name and license number of massage therapy educational program;
 - (2) the name of the student;
 - (3) student's social security number;
 - (4) student's date of birth;
 - (5) inclusive dates of attendance;
 - (6) list of subjects and number of course hours taken by the student at the massage school;
 - (7) dates of courses;
 - (8) address of student;
 - (9) signature of the school owner or designated contact person; and
 - (10) pass/fail score.
- (c) (No change.)

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

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Brad Bowman
General Counsel
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For further information, please call: (512) 463-3671



SUBCHAPTER G. LICENSED MASSAGE ESTABLISHMENTS

16 TAC §117.82

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 455, 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 455. No other statutes, articles, or codes are affected by the proposed rules.

§117.82. *Massage Establishments--General Requirements.*

- (a) - (g) (No change.)
- (h) A massage establishment shall:
 - (1) properly maintain and secure for each client the initial consultation documents, all session notes, written consent documents, and related billing records; and

(2) maintain a current list of all establishment employees and/or contractors at all times which includes:

- (A) full name; and
- (B) license number and expiration date (if licensed as a massage therapist).

(i) For purposes of this section:

- (1) "Nude" means a person who is:
 - (A) entirely unclothed; or
 - (B) clothed in a manner that leaves uncovered or visible through less than fully opaque clothing any portion of the breasts below the top of the areola of the breasts or any portion of the genitals or buttocks.

(2) "Sexual contact" includes:

- (A) any touching of any part of the genitalia or anus;
- (B) any touching of the breasts of a female client, unless the touching is breast massage that is specifically authorized by the client as required [~~through the signed consultation document referenced~~] in §117.91;

(C) any offer or agreement to engage in any activity described in subparagraph (A) or (B);

(D) kissing;

(E) deviate sexual intercourse, sexual contact, sexual intercourse, indecent exposure, sexual assault, prostitution, and promotion of prostitution as described in Texas Penal Code, Chapters 21, 22, and 43, or any offer or agreement to engage in such activities;

(F) any behavior, gesture, or expression that may reasonably be interpreted as inappropriately seductive or sexual; or

(G) inappropriate sexual comments about or to a client, including sexual comments about a person's body.

(j) - (k) (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 November 9, 2020.

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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-3671



SUBCHAPTER H. RESPONSIBILITIES OF THE LICENSEE AND CODE OF ETHICS

16 TAC §§117.90 - 117.92

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 455, 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 455. No other statutes, articles, or codes are affected by the proposed rules.

§117.90. General Ethical Requirements.

(a) - (t) (No change.)

(u) A licensee shall provide draping and treatment services sufficient to protect a client's safety, comfort, and privacy, and must drape:

(1) the genital area and gluteal cleavage of all clients at all times [time]; and

(2) the breasts of female clients at all times, unless performing breast massage that is [as] specifically authorized by the client as required [through the signed consultation document referenced] in §117.91.

§117.91. Consultation Document and Written Consent.

(a) A licensee shall provide an initial consultation to each client before the first massage therapy session and obtain the signature of the client on the consultation document. The consultation document shall include:

(1) the type of massage therapy services or techniques the licensee anticipates using during the massage therapy session;

(2) the parts of the client's body that will be massaged or the areas of the client's body that will be avoided during the session, including indications and contraindications;

(3) a statement that the licensee shall drape the breasts of all female clients and not engage in breast massage of female clients unless the client gives [without the] written consent before each session involving breast massage [of the client];

(4) a statement that draping of the genital area and gluteal cleavage will be used at all times during the session for all clients;

(5) a statement that if uncomfortable for any reason, the client may ask the licensee to cease the massage and the licensee will end the massage session; and

(6) the signature of both the client and the licensee.

(b) (No change.)

(c) A licensee shall obtain a new written consent, signed and dated by the client, before each session in which breast massage of a female client will be performed. This written consent may be documented on a new consultation document or in a separate document.

§117.92. Sexual Misconduct.

(a) A licensee shall not engage in sexual contact during a session with a client. For the purposes of this section, sexual contact includes:

(1) any touching of any part of the genitalia or anus;

(2) any touching of the breasts of a female client, unless the touching is breast massage that is specifically authorized by the client as required [through the signed consultation document referenced] in §117.91;

(3) any offer or agreement to engage in any activity described in paragraph (1) or (2);

(4) kissing;

(5) deviate sexual intercourse, sexual contact, sexual intercourse, indecent exposure, sexual assault, prostitution, and promotion of prostitution as described in the Texas Penal Code, Chapters 21, 22, and 43, or any offer or agreement to engage in any such activities;

(6) any behavior, gestures, or expressions which may reasonably be interpreted as inappropriately seductive or sexual; or

(7) inappropriate sexual comments about or to a client, including making sexual comments about a person's body.

(b) - (e) (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 November 9, 2020.

TRD-202004777

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 17. RESOURCE PLANNING SUBCHAPTER L. FACILITIES AUDIT

19 TAC §17.113

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 17, Subchapter L, §17.113, concerning the Institutional Audit Cycle. Specifically, this amendment will provide the Coordinating Board and institutions of higher education with greater flexibility regarding the required frequency of facility audits.

Texas Education Code §61.0583 requires the Texas Higher Education Coordinating Board (THECB) to conduct a comprehensive audit of educational and general facilities on the campuses of public senior colleges and universities and the Texas State Technical College System to verify the accuracy of the facilities inventory for each of those institutions. 19 TAC Rule §17.113(b) requires that each institution be audited a minimum of once each five years.

Since the timeline requirement was adopted by rule and not specified in the Education Code, by changing Rule 17.113, the THECB will gain flexibility in the audit timeline for cases of natural disaster or other circumstances resulting in a need for prioritizing audits at an institution during a certain fiscal year. This change would not amend the rule text limiting these audits to not more than once every five years except upon specific request as required under Rule 17.113.

Section 17.113(b) is amended to remove the requirement that institutions must be audited a minimum of once each five years to allow flexibility in the scheduling of the audits.

Section 17.113(c) is amended due to division name changes and provides that staff of the Coordinating Board will publish the schedule rather than specifying a division.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect, there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Emily Cormier has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be greater flexibility regarding the required frequency of facility audits for the Coordinating Board and public institutions of higher education. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Emily Cormier, Assistant Commissioner for Funding, P.O. Box 12788, Austin, Texas 78711, Emily.Cormier@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Education Code, Section 61.0583, which provides the Coordinating Board with the authority to periodically conduct a comprehensive audit of all educational and general facilities on the campuses of public senior colleges and universities and the Texas State Technical College System and Texas Education Code, Section 61.027 which authorizes the Coordinating Board to adopt rules to effectuate the provisions of the Chapter.

The proposed amendment affects Texas Education Code §61.0583.

§17.113. Institutional Audit Cycle.

- (a) (No change.)
- (b) ~~[Each institution of higher education shall be audited a minimum of once each five years.]~~ The Board may conduct an audit [Audits] of an institution [institutions may be conducted] more often

than every five years upon the request of the institution, the Board, the Legislature, or another agency within revenue appropriated for this purpose.

(c) Staff of the Board ~~[The Office of Resource Planning]~~ shall publish a schedule of audits for the succeeding fiscal year.

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 November 3, 2020.

TRD-202004614

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: December 20, 2020

For further information, please call: (512) 427-6548



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 133. HOSPITAL LICENSING SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §133.48

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §133.48, concerning Patient Safety Program.

BACKGROUND AND PURPOSE

The purpose of the proposal is to remove outdated references to the Patient Safety Program. House Bill (H.B.) 1614, 78th Legislature, Regular Session, 2003, amended Texas Health and Safety Code, Chapter 241, by adding Subchapter H, Patient Safety Program, requiring hospitals to report certain medical errors to HHSC. This subchapter expired under its own terms on September 1, 2007; therefore, the reporting requirements associated with H.B. 1614 are defunct. The proposed repeal is necessary to remain consistent with Texas Health and Safety Code, Chapter 241.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §133.48 deletes an unnecessary rule resulting from the expiration of the Patient Safety Program and medical error reporting requirements.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC determined during the first five years the repeal will be in effect:

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

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

Trey Wood has also determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules repeal does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed repeal will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas; does not impose a cost on regulated persons; and is repealed to reduce the burden or responsibilities imposed on regulated persons by the rules.

PUBLIC BENEFIT AND COSTS

David Kostroun, Deputy Executive Commissioner of Regulatory Services, has determined that for each year of the first five years the rule repeal is in effect, the public will benefit from greater clarity of reporting requirements for hospitals and conformity with existing statutes.

Trey Wood has also determined that for each year of the first five years the repeal is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeal, because the repeal of outdated rules ensures HHSC rules are consistent with current existing statutes and removes references to outdated reporting requirements.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day

of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R010" in the subject line.

STATUTORY AUTHORITY

The proposed repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and the Texas Health and Safety Code, §241.026, which requires HHSC to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals.

The repeal implements Texas Government Code §531.0055 and Texas Health and Safety Code, §241.026.

§133.48. *Patient Safety Program.*

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

Filed with the Office of the Secretary of State on November 6, 2020.

TRD-202004717

Karen Ray

Chief Counsel

Department of State Health Services

Earliest possible date of adoption: December 20, 2020

For further information, please call: (512) 834-4591



CHAPTER 135. AMBULATORY SURGICAL CENTERS

SUBCHAPTER A. OPERATING REQUIREMENTS FOR AMBULATORY SURGICAL CENTERS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §135.26, concerning Reporting Requirements, and the repeal of §135.27, concerning Patient Safety Program.

BACKGROUND AND PURPOSE

The purpose of the proposal is to remove outdated references to the Patient Safety Program and update reporting requirements for Ambulatory Surgical Centers (ASCs). House Bill (H.B.) 1614, 78th Legislature, Regular Session, 2003, amended Texas Health and Safety Code, Chapter 243, by adding Subchapter B, Patient Safety Program requiring ASCs to report certain medical errors to HHSC. This subchapter expired under its own terms on September 1, 2007; therefore, the reporting requirements associated with H.B. 1614 are no longer current. The proposed amendment and repeal is necessary to remain consistent with Texas Health and Safety Code, Chapter 243.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §135.26 removes outdated references to the Department of State Health Services and add HHSC Complaint and Incident Intake as the appropriate place to send incident reports.

The proposed repeal of §135.27 deletes an unnecessary rule, resulting from the expiration of the Patient Safety Program and related medical error reporting requirements.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC determined during the first five years the repeal will be in effect:

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

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

Trey Wood has also determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. These Rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed repeal will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules: are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose a cost on regulated persons; and are repealed or amended to reduce the burden or responsibilities imposed on regulated persons by the rules.

PUBLIC BENEFIT AND COSTS

David Kostroun, Deputy Executive Commissioner of Regulatory Services, determined that for each year of the first five years the rules are in effect, the public will benefit from greater clarity regarding reporting requirements for ASCs and conformity with existing statutes.

Trey Wood has also determined that for each year of the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules, because these amendments ensure that HHSC rules are

consistent with current existing statutes and remove references to outdated reporting requirements.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R010" in the subject line.

25 TAC §135.26

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and the Texas Health and Safety Code, §243.010, which requires HHSC to adopt rules for the minimum standards applicable to an ASC.

The amendment implements Texas Government Code §531.0055 and Texas Health and Human Safety Code, §243.010.

§135.26. Reporting Requirements.

(a) The ambulatory surgical center (ASC) shall make a report of the following incidents to the Texas Health and Human Services Commission (HHSC) [department]. An incident report form shall be submitted to HHSC Complaint and Incident Intake [A written letter of explanation with supporting documents shall be mailed to the department] within 10 business days of the incident. [The mailing address is Department of State Health Services, Facility Licensing Group, Post Office Box 149347, Austin, Texas 78714-9347.]

- (1) The death of a patient while under the care of the ASC;
- (2) The transfer of a patient to a hospital;
- (3) Patient development of complications within 24 hours of discharge from the ASC resulting in admission to a hospital; and
- (4) A patient stay exceeding 23 hours.

(b) On an annual basis, the ASC shall report the types and numbers of procedures performed and the average length of stay during the previous 12-month period. The report shall be made using a form to be prescribed by the department.

(c) Any theft of drugs and/or diversion of controlled drugs shall be reported to the local police agency, the Texas State Board of Pharmacy, the Texas Department of Public Safety, and/or the Drug En-

forcement Administration, and HHSC [the Department of State Health Services].

(d) An ASC that performs abortions shall comply with the reporting requirements specified in the Texas Health and Safety Code, Chapters 171 and 245, and Chapter 139 of this title.

(e) The ASC shall submit reports to the Department of State Health Services [department] in accordance with the reporting requirements in Texas Health and Safety Code, §98.103 and §98.1045 (relating to Reportable Infections and Reporting of Preventable Adverse Events), and associated rules.

(f) Occurrences of fire in the ASC shall be reported as specified under §135.41(a)(2) of this title (relating to Fire Prevention and Protection) and §135.43(b)(6) of this title (relating to Handling and Storage of Gases, Anesthetics, and Flammable Liquids).

(g) An ASC that donates human fetal tissue under Texas Health and Safety Code, Chapter 173, shall submit an annual report to the Health and Human Services Commission that includes, for each donation, the specific type of fetal tissue donated and the accredited public or private institution of higher learning that received the donation. The ASC shall submit the annual report no later than January 31st of the subsequent year.

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 November 6, 2020.

TRD-202004718

Karen Ray

Chief Counsel

Department of State Health Services

Earliest possible date of adoption: December 20, 2020

For further information, please call: (512) 834-4591



25 TAC §135.27

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and the Texas Health and Safety Code, §243.010, which requires HHSC to adopt rules for the minimum standards applicable to an ASC.

The repeal implements Texas Government Code §531.0055 and Texas Health and Human Safety Code, §243.010.

§135.27. *Patient Safety Program.*

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

Filed with the Office of the Secretary of State on November 6, 2020.

TRD-202004719

Karen Ray

Chief Counsel

Department of State Health Services

Earliest possible date of adoption: December 20, 2020

For further information, please call: (512) 834-4591



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 510. PRIVATE PSYCHIATRIC HOSPITALS AND CRISIS STABILIZATION UNITS

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §510.47

PROPOSED PREAMBLE

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes to the repeal of §510.47, concerning Patient Safety Program.

BACKGROUND AND PURPOSE

The purpose of the proposal is to remove outdated references to the Patient Safety Program. House Bill (H.B.) 1614, 78th Legislature, Regular Session, 2003, amended Texas Health and Safety Code, Chapter 577, by adding Subchapter B, Patient Safety Program requiring private psychiatric hospitals and crisis stabilization units (PPHCSUs) to report certain medical errors to HHSC. This subchapter expired under its own terms on September 1, 2007; therefore, the reporting requirements associated with H.B. 1614 are defunct. The proposed repeal is necessary to remain consistent with Texas Health and Safety Code, Chapter 577.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §510.47 deletes an unnecessary rule, resulting from the expiration of the Patient Safety Program and related medical error reporting requirements.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed repeal will not create or eliminate a government program;
- (2) implementation of the proposed repeal will not affect the number of HHSC employee positions;
- (3) implementation of the proposed repeal will result in no assumed change in future legislative appropriations;
- (4) the proposed repeal will not affect fees paid to HHSC;

- (5) the proposed repeal will not create a new rule;
- (6) the proposed repeal will limit existing rules;
- (7) the proposed repeal will not change the number of individuals subject to the rules; and
- (8) the proposed repeal will not affect the state's economy.

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

Trey Wood has also determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities related to the proposed rule. The proposed rule repeal does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule.

LOCAL EMPLOYMENT IMPACT

The proposed repeal will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the repeal is necessary to protect the health, safety, and welfare of the residents of Texas; does not impose a cost on regulated persons; and is repealed to reduce the burden or responsibilities imposed on regulated persons by the rule.

PUBLIC BENEFIT AND COSTS

David Kostroun, Deputy Executive Commissioner of Regulatory Services, has determined that for each year of the first five years the repeal is in effect, the public will benefit from greater clarity regarding reporting requirements for PPHCSUs and conformity with existing statutes.

Trey Wood has also determined that for each year of the first five years the repeal is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeal, because the repeal of outdated rules ensures that HHSC rules are consistent with current existing statutes and removes references to outdated reporting requirements.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R010" in the subject line.

STATUTORY AUTHORITY

The proposed repeal is authorized by Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and the Texas Health and Safety Code, §577.010, which requires HHSC to adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility.

The repeal implements Texas Government Code §531.0055 and Texas Health and Safety Code, §577.010.

§510.47. *Patient Safety Program.*

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

Filed with the Office of the Secretary of State on November 6, 2020.

TRD-202004720

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: December 20, 2020

For further information, please call: (512) 834-4591



CHAPTER 742. MINIMUM STANDARDS FOR LISTED FAMILY HOMES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §§742.101, 742.103, 742.105, 742.107, 742.109, 742.111, 742.201, 742.203, 742.301, 742.303, 742.305, 742.307, 742.401, 742.403, 742.405, 742.407, 742.501, 742.503, 742.505, 742.507, 742.509, 742.511, 742.513, 742.601, 742.603, 742.701, 742.703, 742.801, 742.803, 742.805, 742.807, 742.809, 742.811, and 742.813 in Title 26, Texas Administrative Code, new Chapter 742, Minimum Standards for Listed Family Homes.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement the portions of Senate Bill (S.B.) 569, 86th Legislature, Regular Session, 2019, that add Human Resources Code (HRC) §42.042(d-1) and §42.0495, which respectively require HHSC to establish minimum standards and add liability insurance requirements for listed family homes.

S.B. 569 states that the minimum standards must: (1) promote the health, safety, and welfare of children; (2) promote safe, comfortable, and healthy homes for children; (3) ensure adequate supervision of children by capable, qualified, and healthy personnel; and (4) ensure medication is administered in accordance with HRC §42.065. HHSC Child Care Regulation (CCR) will evaluate for compliance with these requirements by investigating complaints of minimum standard deficiencies, which will include an evaluation of the complaint and any obvious standard deficiencies seen during the investigation.

SECTION-BY-SECTION SUMMARY

Proposed new §742.101 states that the purpose of Chapter 742 is to establish the minimum standards for listed family homes.

Proposed new §742.103 defines a listed family home as a home that provides care and supervision to three or fewer children, not related to the primary caregiver, for compensation in the caregiver's own home for a certain amount of time. The home may also not provide care for more than 12 children, including children related to the primary caregiver.

Proposed new §742.105 clarifies that the permit holder of a listed family home, or any home that operates without a permit as described in proposed new §742.103, must ensure compliance with the minimum standards.

Proposed new §742.107 clarifies that a listed family home that receives federal subsidies from the Texas Workforce Commission and only cares for children related to the primary caregiver is not required to comply with these minimum standards.

Proposed new §742.109 defines (1) the pronouns used for the primary caregiver; and (2) the title "Licensing," which is the Child Care Regulation department of HHSC.

Proposed new §742.111 defines the words and terms used in this chapter, including "caregiver," "children related to the primary caregiver," "health-care professional," "infant," "pre-kindergarten age child," "restrictive device," "school-age child," and "toddler."

Proposed new §742.201 defines a "primary caregiver" as the person who (1) ensures compliance with the minimum standards and licensing laws; (2) lives in the home where care is provided; and (3) is the permit holder, unless a business entity is formed to serve as the permit holder for the home.

Proposed new §742.203 (1) requires the primary caregiver to be routinely present in the home during hours of operation; and (2) allows the primary caregiver to be temporarily absent for limited periods of time with the designation of a substitute caregiver who meets the requirements identified in this rule.

Proposed new §742.301 requires a primary caregiver and a substitute caregiver to be at least 18 years old and to meet the background check requirements.

Proposed new §742.303 lists the general responsibilities of caregivers: (1) treating children with courtesy, respect, acceptance, and patience; (2) ensuring children are not abused, neglected, or exploited; (3) releasing children only to a parent or person designated by a parent; (4) demonstrating competency, good judgment, and self-control; (5) knowing and complying with the minimum standards; (6) knowing each child's name and age; (7) supervising children at all times; and (8) interacting with children in a positive manner.

Proposed new §742.305 clarifies that to "supervise children at all times," as it is referenced in proposed new §742.303, requires caregivers to (1) be responsible for the ongoing activity of each child, including appropriate visual and auditory awareness, physical proximity, and knowledge of each child's needs; and (2) intervene when necessary to ensure each child's safety. The proposed rule also specifies factors for the caregiver to take into consideration when deciding how closely to supervise children.

Proposed new §742.307 lists the additional responsibilities of a primary caregiver: (1) requesting background checks on caregivers, household members, and anyone else who requires a background check; (2) obtaining from the parent specific information before admission, including name and age of the child, parent contact information, who the child may be released to,

and any food allergy information; (3) ensuring the capacity of children in care is never exceeded; and (4) ensuring parents are able to visit the home during the hours of operation to observe their child without having to secure prior approval.

Proposed new §742.401 states that a home must notify (1) the Texas Department of Family and Protective Services immediately if: (A) there is suspected abuse, neglect, or exploitation; (B) a child dies while in care; or (C) a child was forgotten in a vehicle or wandered away from the home unsupervised; (2) Licensing immediately if a household member, caregiver, or child in care contracts an illness deemed notifiable by the Texas Department of State Health Services; (3) a child's parent immediately after ensuring the safety of the child, if (A) a child is injured and requires medical treatment or hospitalization; (B) shows signs or symptoms of an illness and requires hospitalization; or (C) the child was forgotten in a vehicle or wandered away from the home unsupervised; (4) the parent of a child of less serious injuries when the parent picks the child up from the home; (5) the parent of each child attending the home in writing within 48 hours after you become aware that a household member, caregiver, or child in care contracts an illness deemed notifiable by the Texas Department of State Health Services; and (6) Licensing within 15 days of relocating or closing the home.

Proposed new §742.403 includes the statutory requirement that a listed family home have liability insurance of at least \$300,000 for each occurrence of negligence that covers injury to a child, unless there is an acceptable reason not to have the insurance. The home must also submit proof of coverage to Licensing each year.

Proposed new §742.405 lists the statutory exceptions for the liability insurance described in proposed new §742.403. The rule also requires a listed family home to provide written notification to Licensing if the home is unable to carry or stops carrying the insurance because of one of the exceptions.

Proposed new §742.407 requires written parental notification if a listed family home cannot carry the required liability insurance. The notification must be (1) before admitting a child; (2) for current children in care, by May 25, 2021, if the listed family home received its permit before April 25, 2021, and cannot obtain the liability insurance by that date; and (3) within 30 days of the liability insurance coverage ending, if the listed family home previously carried the liability insurance and subsequently stopped carrying it. The proposed rule also indicates the listed family home may use the form on the Licensing provider website to notify parents.

Proposed new §742.501 creates the basic care requirements for infants: (1) giving individual attention; (2) holding and comforting; (3) giving prompt attention to physical needs; (4) talking to the infant while interacting; (5) storing objects that could cause choking out of the infant's reach; (6) providing, or having the parent provide, an individual crib or play yard for each non-walking infant younger than 12 months of age; and (7) providing, or having the parent provide, an individual cot, bed, or mat that is waterproof or washable for each walking infant.

Proposed new §742.503 creates the safety requirements for cribs, whether provided by the home or the parent: (1) having a firm, flat mattress designed specifically for the crib without any supplemental pads; and (2) being bare for an infant younger than 12 months of age except for a tight-fitting sheet and mattress cover to protect against wetness. The mattress cover must also be: (1) designed specifically for the mattress; (2) tight-fitting and thin; and (3) not designed to make the sleep surface softer.

Proposed new §742.505 identifies sleeping equipment that is prohibited from being used with infants: (1) a bean bag, waterbed, or foam pad; and (2) a restrictive device used for sleeping.

Proposed new §742.507 creates additional requirements that apply when an infant is sleeping or resting: (1) placing an infant who is not yet able to turn over without assistance in a face-up sleeping position, unless there is a signed medical statement; (2) not laying a swaddled infant down to sleep or rest on any surface at any time, unless there is a signed medical statement; and (3) not covering an infant's head, face, or crib with items such as blankets, linens, or clothing.

Proposed new §742.509 creates the basic care requirements for toddlers: (1) giving individual attention; (2) holding and comforting; (3) maintaining routines; (4) storing objects that could cause choking out of the toddler's reach; and (5) providing or having the parent provide an individual cot, bed, or mat that is waterproof or washable.

Proposed new §742.511 creates the basic care requirements for pre-kindergarten age children: (1) giving individual attention; (2) encouraging the child to communicate and express feelings in appropriate ways; and (3) providing, or having the parent provide, an individual cot, bed, or mat that is waterproof or washable.

Proposed new §742.513 creates the basic care requirements for school-age children: (1) giving individual attention; (2) encouraging the child to converse with adults; and (3) providing physical care routines.

Proposed new §742.601 requires any discipline and guidance to be (1) individualized and consistent; (2) appropriate to the child's level of understanding; (3) directed toward teaching acceptable behavior and self-control; and (4) a positive method that encourages self-esteem, self-control, and self-direction.

Proposed new §742.603 lists the types of punishment, discipline, or guidance that are prohibited: (1) corporal punishment; (2) any harsh, cruel, or unusual treatment; (3) pinching, shaking, or biting; (4) putting anything in or on a child's mouth; (5) humiliating, ridiculing, rejecting, or yelling; (6) harsh, abusive, or profane language; (7) placing a child in a locked or dark room; and (8) requiring a child to remain silent or inactive for inappropriately long periods of time.

Proposed new §742.701 creates the basic food requirements for children: (1) offering a meal or snack every three hours, unless the child is sleeping; (2) allowing parents to provide meals and snacks for their children instead of the listed family home; (3) ensuring drinking water is always available and served at every snack, mealtime, and after active play; (4) ensuring all food and drink is of safe quality and is stored, prepared, distributed, and served under sanitary and safe conditions; and (5) ensuring food is not used as a reward.

Proposed new §742.703 (1) ensures that a child does not have access to foods that will cause the child to have an allergic reaction; and (2) if there is an allergic reaction, requires the home to follow the steps to be taken for an allergic reaction that the parent provided at admission.

Proposed new §742.801 creates requirements to ensure a healthy environment for children: (1) cleaning, repairing, and maintaining the home, grounds, pool, hot tub, and equipment; (2) marking cleaning supplies and hazardous materials and ensuring they are inaccessible to children; (3) washing hands

often; and (4) keeping accessible areas free from hazards. The proposed rule also states that during operating hours people must not consume or be under the influence of alcohol or controlled substances and must not use any e-cigarette, vaporizer, or tobacco product.

Proposed new §742.803 defines "medication" to include prescription and non-prescription medication and creates requirements for administering medication to children: (1) obtaining parental authorization; (2) following the medication's label instructions; (3) obtaining parental reauthorization annually; and (4) only administering medication to a child without parental authorization in a medical emergency to prevent death or serious bodily injury.

Proposed new §742.805 states that if a child has an illness or injury that requires the immediate medical attention of a health-care professional, emergency medical services must be contacted or the child must be taken to the nearest emergency room after ensuring the other children in the home are being supervised.

Proposed new §742.807 creates water activity and swimming requirements: (1) maintaining constant and active supervision when a child is in or around water; (2) ensuring there is one caregiver for each infant or toddler who is wading, bathing, or swimming; (3) taking precautionary measures to protect the safety of a non-swimmer of any age; (4) not allowing children to swim in a lake, pond, river, or similar body of water; (5) allowing children to wade in a wading pool of less than two feet of water if the caregiver is present and has completed a water safety course; and (6) allowing children to swim or wade in a swimming pool or wading pool if there is a lifeguard on duty.

Proposed new §742.809 creates transportation requirements: (1) accounting for all children exiting a vehicle; (2) never leaving a child unattended in a vehicle; (3) using car seats; (4) wearing safety belts; (5) having proof of automobile liability insurance; and (6) carrying a current driver's license.

Proposed new §742.811 requires an emergency preparedness plan that addresses the types of emergencies most likely to occur in the home's area: (1) an evacuation of the home to a designated safe area if there is a fire or gas leak; (2) a relocation of the children and caregivers to a designated, alternate shelter in the case of a flood, hurricane, medical emergency, or communicable disease outbreak; and (3) the sheltering and lock-down of children and caregivers within the home to temporarily protect them from a tornado, a volatile person on the premises, or an endangering person in the area. In addition, the proposed rule requires the practice of the emergency preparedness plan on a routine basis.

Proposed new §742.813 creates fire safety requirements. These safety requirements include having a (1) fire extinguisher; (2) smoke detector; and (3) carbon monoxide detector for most homes.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be an adverse economic effect on small businesses and micro-businesses, but not on rural communities.

Chapter 2006 of the Texas Government Code defines a small business as one that is for-profit with fewer than 100 employees. A micro-business is one that is for-profit with no more than 20 employees. Listed family homes are limited to providing care and supervision to three unrelated children. As of February 28, 2020, there were approximately 2,342 listed family homes. Of those listed family homes, approximately 591 were receiving subsidies from the Texas Workforce Commission and only providing care and supervision to children related to the primary caregiver. The new minimum standards would not apply to those 591 homes. CCR estimates that the 1,751 remaining listed family homes are both small businesses and micro-businesses subject to the proposed rules.

The projected economic impact on small businesses and micro-businesses is limited to proposed new §§742.403, 742.501, 742.509, 742.511, 742.701, 742.807, 742.809, and 742.813.

CCR staff developed the methodologies used to calculate the fiscal impact of these rules. The impact was calculated using cost research conducted by staff and assumptions regarding child-care practices. The key assumptions and methodologies are described in detail below, as these underlie the individual impact calculations that are projected to have a fiscal impact on at least some listed family homes.

Fiscal Impact for Proposed §742.403: This section requires liability insurance coverage in the amount of at least \$300,000 for each occurrence of negligence, unless there is an acceptable reason not to have the insurance under §742.405. The section also requires that the insurance cover injury to a child that occurs either at the listed family home or off the premises while the child is in care. Two insurance companies that were contacted indicated an approximate insurance cost would be between \$400 and \$900 per year. S.B. 569 also requires CCR to begin posting to the HHSC provider website any deficient minimum standards. It is unclear whether this will have a subsequent impact on the cost of the liability insurance. Since listed family homes are limited to providing care and supervision to at most three unrelated children, CCR's assessment is that many listed family homes may determine the insurance to be cost prohibitive. For listed family homes that determine liability insurance to be cost prohibitive, §742.405 lists out acceptable reasons for a listed family home not to have liability insurance. For the homes that do ob-

tain the required insurance, CCR estimates that the insurance costs will be between \$400 and \$900 annually.

Fiscal Impact for Proposed §742.501: This section requires a crib or play yard for each non-walking infant younger than 12 months of age and a waterproof or washable cot, bed, or mat for each walking infant. These items may be provided by the listed family home or the parent. According to online pricing research of major retailers, the general cost for (1) a crib ranges from \$120 to \$300; (2) a play yard ranges from \$42 to \$80; and (3) a cot, bed, or mat ranges from \$10 to \$90. CCR's assessment is that this rule will not be a cost for most listed family homes because (1) some homes do not care for infants; (2) many homes already have the appropriate equipment; or (3) the home will require the parent to provide the appropriate equipment. For the homes that will purchase a crib or play yard, CCR estimates these homes will spend \$55 to \$130 per crib or play yard. For homes that will purchase a cot, bed, or mat, CCR estimates these homes will spend \$25 to \$75 per cot, bed, or mat.

Fiscal Impact for Proposed §742.509: This section requires a waterproof or washable cot, bed, or mat for each toddler. This item may be provided by the listed family home or the parent. According to online pricing research of major retailers, the general cost for a cot, bed, or mat ranges from \$10 to \$90. CCR's assessment is that this rule will not be a cost for most listed family homes because (1) many homes already have the appropriate equipment; or (2) the home will require the parent to provide the appropriate equipment. For homes that will purchase a cot, bed, or mat, CCR estimates these homes will spend \$25 to \$75 per cot, bed, or mat.

Fiscal Impact for Proposed §742.511: This section requires a waterproof or washable cot, bed, or mat for each pre-kindergarten age child. This item may be provided by the listed family home or the parent. According to online pricing research of major retailers, the general cost for a cot, bed, or mat ranges from \$10 to \$90. CCR's assessment is that this rule will not be a cost for most listed family homes because (1) many homes already have the appropriate equipment; or (2) the home will require the parent to provide the appropriate equipment. For homes that will purchase a cot, bed, or mat, CCR estimates these homes will spend \$25 to \$75 per cot, bed, or mat.

Fiscal Impact for Proposed §742.701: This section requires a meal or snack every three hours for the child, unless the child is sleeping. The meals and snacks for a child may be provided by the child's parent. The Child and Adult Care Food Program (CACFP) reimbursement rates for 2019 - 2020 are \$1.33 for breakfast, \$2.49 for lunch or supper, and \$0.74 for snacks. CCR's assessment is that this rule will not be a cost for most listed family homes because (1) many homes already comply with this requirement; or (2) the home will require the parent to provide the meals and snacks. In addition, if a home is eligible, the home may apply to get reimbursed for these costs by CACFP. For those homes that are not eligible for reimbursement or choose not to participate in the program and choose to provide the meals and snacks, the cost will depend upon the time the child is in care. Based on the CACFP reimbursement rates, CCR estimates that the food costs for children in care 3 - 4 hours is \$1.33 per day per child, 5 - 6 hours is \$2.07 per day per child, and 7 - 8 hours is \$4.56 per day per child.

Fiscal Impact for Proposed §742.807: This section allows a child to wade in a wading pool of less than two feet of water if the caregiver is present and has completed an online water safety course. There are several online water safety courses that are

available at no cost. The courses take on the average 30 minutes to complete. The home may also choose not to allow children to wade in wading pools. CCR's assessment is that this rule will be a cost for listed family homes, for the 30 minutes it would take a primary caregiver to take this training online.

Fiscal Impact for Proposed §742.809: This section requires a child safety seat system if the listed family home transports children in care. An appropriate child safety seat will depend upon the age, height, and weight of a child. According to online pricing research of major retailers, the general cost for an infant seat or booster seat ranges from \$50 to \$200, though there are infant seats that cost more. CCR's assessment is that this rule will not be a cost for most listed family homes because (1) many homes already have the appropriate equipment; (2) the home will require the parent to provide the appropriate equipment; or (3) the home will choose not to transport children. For homes that will purchase a safety seat system, CCR estimates these homes will spend \$100 to \$150 per child safety seat.

Fiscal Impact for Proposed §742.813: This section requires a listed family home to have a fire extinguisher, smoke detector, and carbon monoxide detector in most homes. According to online pricing research of major retailers, the general cost for a (1) fire extinguisher ranges from \$13 to \$55; (2) smoke detector ranges from \$10 to \$37; and (3) carbon monoxide detector ranges from \$15 to \$50. CCR's assessment is that many homes will already meet all of these requirements, or at least some of the requirements. Many municipalities already mandate smoke detectors and carbon monoxide detectors in homes. For homes that need to purchase one or more items, CCR estimates these homes will spend \$33 for a fire extinguisher, \$23 for a smoke detector, and \$30 for a carbon monoxide detector.

Regulatory Flexibility Analysis: The requirement for new minimum standards for listed family homes was added to Texas Human Resources Code §42.042 to ensure the health and safety of children in these homes. Considering alternative methods to achieve this purpose for small businesses and micro-businesses would not be consistent with ensuring the health and safety of children. Therefore, a regulatory flexibility analysis is not required.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary (1) to protect the health, safety, and welfare of the residents of Texas; and (2) to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Jean Shaw, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years that the new rules are in effect, the public benefit will be the safety of children in care, improvements in the quality of their care, compliance with statutory requirements, and more consistency in the regulation of listed family homes.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules other than the costs noted under the small businesses and micro-businesses analysis.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Gerry Williams by email at Gerry.Williams@hhsc.state.tx.us.

Written comments on the proposal may be submitted to Gerry Williams, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCLrules@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R021" in the subject line.

SUBCHAPTER A. PURPOSE, SCOPE, AND DEFINITIONS

26 TAC §§742.101, 742.103, 742.105, 742.107, 742.109, 742.111

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC.

The new sections implement Texas Human Resources Code §42.042 and §42.0495.

§742.101. What is the purpose of this chapter?

The purpose of this chapter is to establish minimum standards that apply to listed family homes.

§742.103. What is a listed family home?

For purposes of this chapter, a listed family home:

(1) Provides care and supervision in the primary caregiver's own home:

(A) For compensation;

(B) For three or fewer children who are 13 years of age or younger and not related to the primary caregiver; and

(C) For at least four hours a day:

(i) Three or more days a week, for three or more consecutive weeks; or

(ii) For 40 or more days in a 12-month period; and

(2) May not provide care for more than 12 children, including children related to the primary caregiver.

§742.105. Who is responsible for complying with these minimum standards?

(a) For a listed family home, as described in §742.103 of this subchapter (relating to What is a listed family home?), the permit holder must ensure compliance with all minimum standards in this chapter at all times.

(b) Any home that provides care and supervision, as described in §742.103 of this subchapter, is responsible for meeting the requirements in this chapter. If a home operates a listed family home without a permit, the home is still accountable for failing to meet any requirement in this chapter in addition to the legal consequences for operating without a permit.

§742.107. Is a listed family home that only provides care and supervision for children related to the primary caregiver required to comply with the minimum standards in this chapter?

A listed family home is not required to comply with the minimum standards in this chapter if:

(1) The permit holder is receiving federal subsidies from the Texas Workforce Commission; and

(2) The home only provides care and supervision to children related to the primary caregiver.

§742.109. What do certain pronouns or titles mean when used in this chapter?

The following pronouns and title have the following meanings when used in this chapter:

(1) I, my, you, and your--The primary caregiver in a listed family home, unless otherwise stated.

(2) Licensing--The Child Care Regulation department of the Texas Health and Human Services Commission.

§742.111. What do certain words and terms mean when used in this chapter?

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

(1) Caregiver--A person whose duties include the care, supervision, guidance, and protection of a child or children in care.

(2) Children related to the primary caregiver--Children who are children, grandchildren, siblings, great-grandchildren, first cousins, nieces, or nephews of the primary caregiver. This includes any of those relationships that exist due to common ancestry, adoption, or marriage.

(3) Health-care professional--A licensed physician, a licensed advanced practice registered nurse (APRN), a licensed vocational nurse (LVN), a licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of the license. This does not include physicians, nurses, or other medical personnel who are not licensed in the United States or in the country in which the person practices.

(4) Infant--A child from birth through 17 months.

(5) Pre-kindergarten age child--A child who is three or four years of age before the beginning of the current school year.

(6) Restrictive device--Equipment that places the body of a child in a position that may restrict airflow or cause strangulation; usually, the child is placed in a semi-seated position. Examples of restrictive devices are car seats, swings, bouncy seats, and high chairs.

(7) School-age child--A child who is five years of age or older and is enrolled in or has completed kindergarten.

(8) Toddler-A child from 18 months through 35 months.

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SUBCHAPTER B. CAREGIVERS

26 TAC §742.201, §742.203

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC.

The new sections implement Texas Human Resources Code §42.042 and §42.0495.

§742.201. Who is a primary caregiver?

The primary caregiver is the person responsible for ensuring that the listed family home operates in compliance with these minimum standards and the licensing laws. The primary caregiver must:

(1) Live in the home where care is provided; and

(2) Be the permit holder, unless the primary caregiver forms a business entity that is the permit holder for the home.

§742.203. Must I be present at my home during all hours of operation?

(a) As the primary caregiver, you must routinely be present in your listed family home during the hours of operation.

(b) You may be temporarily absent for limited periods of time only if you designate a substitute caregiver to be in charge of the home during your absence. Substitutes must:

(1) Know they are in charge of the home and for how long;

(2) Know their responsibilities while in charge;

(3) Have access to all information that would be necessary to communicate with parents and state and local authorities; and

(4) Have the responsibility from you to run the home in compliance with the minimum standards.

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SUBCHAPTER C. CAREGIVER QUALIFICATIONS AND RESPONSIBILITIES

26 TAC §§742.301, 742.303, 742.305, 742.307

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC.

The new sections implement Texas Human Resources Code §42.042 and §42.0495.

§742.301. What types of minimum qualifications must caregivers have?

Primary caregivers and substitute caregivers must:

- (1) Be at least 18 years of age;
- (2) Meet the requirements in Chapter 745, Subchapter F of this title (relating to Background Checks).

§742.303. What general responsibilities do caregivers have?

Primary and substitute caregivers:

- (1) Are responsible for seeing that children are:
 - (A) Treated with courtesy, respect, acceptance, and patience;
 - (B) Not abused, neglected, or exploited; and
 - (C) Released only to a parent or a person designated by a parent;
- (2) Must demonstrate competency, good judgment, and self-control in the presence of children;
- (3) Must know and comply with the minimum standards specified in this chapter;
- (4) Must know each child's name and age;
- (5) Must supervise children at all times, as specified in §742.305 of this subchapter (relating to What does "supervise children at all times" mean?); and
- (6) Must interact with children in a positive manner.

§742.305. What does "supervise children at all times" mean?

Supervising children at all times means the primary caregiver and substitute caregiver are accountable for each child's care. This includes responsibility for the ongoing activity of each child, appropriate visual and auditory awareness, physical proximity, and knowledge of each child's needs. The caregiver must intervene when necessary to ensure each child's safety. In deciding how closely to supervise children, the caregiver must take into account the:

- (1) Ages of the children;

- (2) Individual differences and abilities;
- (3) Layout of the home and play area; and
- (4) Neighborhood circumstances, hazards, and risks.

§742.307. What additional responsibilities do primary caregivers have?

Primary caregivers are also responsible for:

(1) Initiating background checks on caregivers, household members, and anyone else who requires a background check, as specified in Chapter 745, Subchapter F of this title (relating to Background Checks);

(2) Obtaining from parents, when admitting a child into care:

- (A) The child's name and date of birth;
- (B) The parent's home address and telephone number;
- (C) The names of other persons the child may be released to; and

(D) A list of each food a child is allergic too, possible symptoms if the child is exposed to the food, and the steps to take if the child has an allergic reaction;

(E) Authorization to give the child medication, if applicable;

(3) Ensuring the following regarding the number of children in care at the home or away from the home:

(A) The number of children not related to the primary caregiver never exceeds three; and

(B) The total number of children, both related and not related to the primary caregiver, never exceeds 12; and

(4) Ensuring parents can visit your home any time during the hours of operation to observe their child, without having to secure prior approval.

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SUBCHAPTER D. NOTIFICATION OF LIABILITY INSURANCE REQUIREMENTS

26 TAC §§742.401, 742.403, 742.405, 742.407

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and

§531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC.

The new sections implement Texas Human Resources Code §42.042 and §42.0495.

§742.401. What are the notification requirements?

(a) A caregiver must notify the Department of Family and Protective Services immediately at 1-800-252-5400 if:

(1) There is any suspected abuse, neglect, or exploitation;

(2) A child dies while in your care; or

(3) A child was forgotten in a vehicle or wandered away from your home or care unsupervised;

(b) You must notify Licensing immediately if you become aware that a household member, caregiver, or child in care contracts an illness deemed notifiable by the Texas Department of State Health Services.

(c) After you ensure the safety of the child, you must notify the parent immediately if the child:

(1) Is injured and the injury requires medical treatment by a health-care professional or hospitalization;

(2) Shows signs or symptoms of an illness that requires hospitalization; or

(3) Was forgotten in a vehicle or wandered away from your home or care unsupervised.

(d) You must notify the parent of a child of less serious injuries when the parent picks the child up from the home. Less serious injuries include, minor cuts, scratches, and bites from other children requiring first aid treatment by caregivers.

(e) You must notify the parent of each child attending the home in writing within 48 hours after you become aware that a household member, caregiver, or child in care contracts an illness deemed notifiable by the Texas Department of State Health Services; or

(f) You must notify Licensing in writing within 15 days of:

(1) Relocating your listed family home; or

(2) Closing the home.

§742.403. What are the liability insurance requirements?

Unless you have an acceptable reason not to have the insurance, you must:

(1) Have liability insurance coverage:

(A) Of at least \$300,000 for each occurrence of negligence; and

(B) That covers injury to a child that occurs while the child is in your care, regardless of whether the injury occurs on or off the premises of your home; and

(2) Provide proof of coverage to Licensing each year by the anniversary date of the issuance of your permit to operate a listed family home.

§742.405. What are acceptable reasons not to have liability insurance?

(a) You do not have to have liability insurance that meets the requirements of §742.403 of this subchapter (relating to What are the liability insurance requirements?) if you are unable to carry the insurance because:

(1) Of financial reasons;

(2) You are unable to locate an underwriter who is willing to issue a policy to the home; or

(3) You have already exhausted the limits of a policy that met the requirements.

(b) If you are unable to carry the liability insurance or stop carrying the insurance because of a reason listed in subsection (a) of this section, you must send written notification to Licensing by the anniversary date of the issuance of your permit to operate a listed family home. Your notification must include the reason that you are unable to carry the insurance.

§742.407. When must I notify parents that I do not carry liability insurance?

(a) If you do not carry liability insurance that meets the requirements of §742.403 of this subchapter (relating to What are the liability insurance requirements?), then you must notify a child's parent in writing that you do not carry liability insurance before you admit a child into your care.

(b) If you received your permit to operate a listed family home before April 25, 2021, and cannot obtain the liability insurance by that date, then you must notify the parents of children in your care that you do not carry the insurance by May 25, 2021.

(c) If you previously carried the liability insurance and you subsequently stop carrying the liability insurance, then you must notify the parent of each child in your care that you do not carry the insurance, in writing, within 30 days after you stop carrying it.

(d) You may use Form 2962, Attachment A, Parental Notification of Lack of Required Liability Insurance, located on Licensing's provider website to notify parents. Regardless of whether you use this form, you must be able to demonstrate that you provided written notice to the parent of each child in your care.

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SUBCHAPTER E. BASIC CARE REQUIREMENTS

26 TAC §§742.501, 742.503, 742.505, 742.507, 742.509, 742.511, 742.513

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and

§531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC.

The new sections implement Texas Human Resources Code §42.042 and §42.0495.

§742.501. What are the basic care requirements for an infant?

Basic care for an infant must include:

- (1) Giving individual attention to the infant including, playing, talking, cuddling, and holding;
- (2) Holding and comforting the infant when the infant is upset;
- (3) Giving prompt attention to the physical needs of the infant, such as feeding and diapering;
- (4) Talking to the infant while you are feeding, changing, and holding the infant, such as naming objects, singing, or saying rhymes;
- (5) Storing objects that could cause choking (objects that are less than 1 and 1/4 inches in diameter) out of the infant's reach;
- (6) Providing or having the parent provide an individual crib or play yard (also known as a play pen) for each non-walking infant younger than 12 months of age to sleep in; and
- (7) Providing or having the parent provide an individual cot, bed, or mat that is waterproof or washable for each walking infant to sleep or rest on.

§742.503. What safety requirements must my cribs meet?

(a) Each crib or play yard (also known as a play pen), whether provided by the home or the child's parent, must have a firm, flat mattress that the manufacturer designed specifically for the crib or play yard model number that snugly fits the sides of the crib or play yard. You may not supplement the mattress with additional foam material or pads.

(b) Each crib or play yard must be bare for an infant younger than 12 months of age, except for a tight-fitting sheet and a mattress cover to protect against wetness. The mattress cover, whether provided by the home or the parent, must:

- (1) Be designed specifically for the size and type of crib and crib mattress that the cover is being used with;
- (2) Be tight fitting and thin; and
- (3) Not be designed to make the sleep surface softer.

§742.505. What types of sleeping equipment am I prohibited from using with infants?

(a) You may not use a bean bag, waterbed, or a foam pad as sleeping equipment for an infant.

(b) An infant may not sleep in a restrictive device, unless you have a signed statement from a health-care professional stating that it is medically necessary for the infant to sleep in a restrictive device. If an infant falls asleep in a restrictive device, you must remove the infant from the device and place the infant in a crib as soon as possible.

§742.507. What additional requirements apply when an infant is sleeping or resting?

(a) You must place an infant who is not yet able to turn over without assistance in a face-up sleeping position, unless you have a signed statement from a health-care professional stating that it is medically necessary for the infant to sleep in a different sleeping position.

(b) You may not lay a swaddled infant down to sleep or rest on any surface at any time, unless you have a signed statement from a

health-care professional stating it is medically necessary for the infant to be swaddled while the infant is sleeping.

(c) An infant's head, face, or crib must not be covered by items such as blankets, linens, or clothing at any time.

§742.509. What are the basic care requirements for a toddler?

Basic care for a toddler must include:

- (1) Giving individual attention to the toddler, including playing, talking, cuddling, and holding;
- (2) Holding and comforting a toddler when the toddler is upset;
- (3) Maintaining routines, such as feeding, diapering, sleeping, and indoor and outdoor play during the same time each day, as closely as possible;
- (4) Storing objects that could cause choking (objects that are less than 1 and 1/4 inches in diameter) out of the toddler's reach; and

(5) Providing, or having the parent provide, an individual cot, bed, or mat that is waterproof or washable for each toddler to sleep or rest on.

§742.511. What are the basic care requirements for a pre-kindergarten age child?

Basic care for a pre-kindergarten age child must include:

- (1) Giving individual attention to the child;
- (2) Encouraging the child to communicate and express feelings in appropriate ways; and
- (3) Providing, or having the parent provide, an individual cot, bed, or mat that is waterproof or washable for each toddler to sleep or rest on.

§742.513. What are the basic care requirements for a school-age child?

Basic care for a school-age child must include:

- (1) Giving individual attention to the child;
- (2) Encouraging the child to converse with adults; and
- (3) Providing physical care routines that are appropriate to the child's developmental needs.

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SUBCHAPTER F. DISCIPLINE AND GUIDANCE

26 TAC §742.601, §742.603

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC.

The new sections implement Texas Human Resources Code §42.042 and §42.0495.

§742.601. What methods of discipline and guidance may I use?

Discipline and guidance must be:

- (1) Individualized and consistent for each child;
- (2) Appropriate to the child's level of understanding;
- (3) Directed toward teaching the child acceptable behavior and self-control; and
- (4) A positive method of discipline and guidance that encourages self-esteem, self-control, and self-direction, including:
 - (A) Using praise and encouragement of good behavior instead of focusing only upon unacceptable behavior;
 - (B) Reminding a child of behavior expectations daily by using clear, positive statements;
 - (C) Redirecting behavior using positive statements; and
 - (D) Using brief supervised separation or time out from the group, when appropriate for the child's age and development, which is limited to no more than one minute per the year of the child's age.

§742.603. What types of punishment, discipline, or guidance are prohibited?

- (a) You may not use or threaten to use corporal punishment with any child in care. Corporal punishment is the infliction of physical pain on a child as a means of controlling or managing behavior, including hitting or spanking a child with a hand or an instrument or slapping or thumping a child.
- (b) In addition to corporal punishment, prohibited discipline or guidance techniques include:
 - (1) Any harsh, cruel, or unusual treatment of any child;
 - (2) Punishment associated with food, naps, or toilet training;
 - (3) Pinching, shaking, or biting a child;
 - (4) Putting anything in or on a child's mouth;
 - (5) Humiliating, ridiculing, rejecting, or yelling at a child;
 - (6) Subjecting a child to harsh, abusive, or profane language;
 - (7) Placing a child in a locked or dark room, bathroom, or closet; and
 - (8) Requiring a child to remain silent or inactive for inappropriately long periods of time for the child's age, including requiring a child to remain in a restrictive device.

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SUBCHAPTER G. NUTRITION AND FOOD

26 TAC §742.701, §742.703

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC.

The new sections implement Texas Human Resources Code §42.042 and §42.0495.

§742.701. What are the basic food requirements?

- (a) You must offer a child a meal or snack every three hours, unless the child is sleeping.
- (b) Parents may provide meals and snacks for their children instead of you providing them.
- (c) You must ensure a supply of drinking water is always available to each child. You must serve water at every snack, mealtime, and after active play.

(d) All food and drinks must be of safe quality. You must store, prepare, distribute, and serve food and drinks under sanitary and safe conditions.

(e) You must not use food as a reward.

§742.703. How should I care for a child with a food allergy?

- (a) If the child has a food allergy, you must ensure the child does not have access to foods that will cause an allergic reaction.
- (b) If a child shows symptoms of an allergic reaction, you must follow the steps to be taken for an allergic reaction that the parent provided at admission.

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SUBCHAPTER H. HEALTH AND SAFETY PRACTICES

26 TAC §§742.801, 742.803, 742.805, 742.807, 742.809, 742.811, 742.813

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC.

The new sections implement Texas Human Resources Code §42.042 and §42.0495.

§742.801. How do I ensure a healthy environment for children at my home?

(a) You must clean, repair, and maintain your listed family home, grounds, pool, hot tub, and equipment to protect the health safety of the children in your care, including:

(1) Keeping all parts of your listed family home used by children well heated, lighted, and ventilated;

(2) Having at least one working sink and flushing toilet in the home; and

(3) Sanitizing toys and equipment that are placed in a child's mouth or are otherwise contaminated by food, body secretions, or excrement.

(b) You must clearly mark cleaning supplies and hazardous materials and ensure that they are inaccessible to children.

(c) Caregivers should wash their hands and children's hands often.

(d) All areas accessible to a child must be free from hazards.

(e) During operating hours, people must not consume or be under the influence of alcohol or controlled substances in the home, during transportation, or on field trips.

(f) During operating hours, people must not smoke any e-cigarette, vaporizer, or tobacco product or otherwise use any tobacco product in your home, in the garage, on the playground, in transportation vehicles, or during field trips.

§742.803. What are the medication requirements?

(a) Medication in this chapter means:

(1) A prescription medication; or

(2) A non-prescription medication, excluding topical ointments such as diaper ointment, insect repellent, or sunscreen.

(b) Before you may give medication to a child in care, the child's parent must authorize you to give the medication to the child. The authorization must be:

(1) In writing, signed, and dated;

(2) In an electronic format that is capable of being viewed and saved; or

(3) By telephone to administer a single dose of a medication.

(c) You must administer medication as required on the medication's label instructions, unless amended in writing by the prescribing health-care professional.

(d) Parental authorization to give medication is only good for one year. The child's parent must give you a new authorization in order for you to continue giving the child medication after the year expires.

(e) You may administer medication to a child without parental authorization in a medical emergency to prevent the death or serious bodily injury of the child.

§742.805. How should I respond to an illness or injury that requires the immediate attention of a health-care professional?

If a child in your care requires the immediate medical attention of a health-care professional, you must contact emergency medical services or take the child to the nearest emergency room after you have ensured the supervision of the other children in the home.

§742.807. What are the water activity and swimming requirements?

(a) You must maintain constant and active supervision when a child is in or around water.

(b) When an infant or toddler is taking part in a water activity, there must always be one caregiver for each infant or toddler who is wading, bathing, or swimming.

(c) You must take precautionary measures to protect the safety of a non-swimmer of any age.

(d) You must not allow children to swim in a lake, pond, river, or similar body of water.

(e) You may allow children to wade in a wading pool of less than two feet of water if you are present and have completed an online water safety course. Otherwise, you may allow children to swim or wade in a swimming pool or wading pool only if a lifeguard is on duty.

§742.809. What are the transportation requirements?

(a) You must account for all children exiting a vehicle before leaving the vehicle unattended.

(b) You must abide by all state laws, including:

(1) Never leaving a child unattended in a vehicle;

(2) Always using a child safety seat system (an infant safety seat, rear-facing convertible safety seat, forward facing safety seat, booster seat), safety vest, harness, or safety belt, as appropriate to the child's age, height, and weight and according to the manufacturer's instructions, for children as required by law;

(3) Always using a safety belt for adults; and

(4) Requiring the driver while transporting children to:

(A) Have proof of automobile liability insurance; and

(B) Carry a current driver's license.

§742.811. What type of emergency preparedness plan must I have?

(a) You must have an emergency preparedness plan that addresses the types of emergencies most likely to occur in your area, including:

(1) An evacuation of your home to a designated safe area in an emergency such as a fire or gas leak;

(2) A relocation of the children and caregivers to a designated, alternate shelter in an emergency such as a flood, a hurricane, medical emergency, or communicable disease outbreak; and

(3) The sheltering and lock-down of children and caregivers within your home to temporarily protect them from situations such as a tornado, volatile person on the premises, or an endangering person in the area.

(b) You must practice the emergency preparedness plan on a routine basis.

§742.813. What are the Fire Safety Requirements?

(a) Your home must have a fire extinguisher that is serviced according to the manufacturer's instructions, or as required by the state or local fire marshal.

(b) Your home must have a smoke detector and you must replace the batteries annually.

(c) If your home uses gas or propane or your garage is directly connected to your home, then your home must have a carbon monoxide detector and you must replace the batteries annually.

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CHAPTER 744. MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTER-SCHOOL PROGRAMS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§744.123, 744.501, 744.2001, 744.2003, 744.2005, 744.2007, 744.2105, 744.2401, 744.2409, 744.2411, and 744.2421; new §744.2002; and the repeal of §§744.2403, 744.2405, 744.2407, 744.2415, and 744.2417 in Title 26, Texas Administrative Code, Chapter 744, Minimum Standards for School-Age and Before or After-School Programs.

BACKGROUND AND PURPOSE

Senate Bill (S.B.) 952, 86th Legislature, Regular Session, 2019, added Subsections 42.042(e-3), (e-4), and (e-5) to the Texas Human Resources Code (HRC). The new Subsections require HHSC Child Care Regulation (CCR) to align the minimum standards for child-care centers and registered child-care homes with standards for physical activity and screen time in Caring for Our Children (CFOC), 4th edition, and with the nutrition standards of the federal Child and Adult Care Food Program (CACFP).

CCR is extending these requirements to School-Age and Before and After-School Programs in Chapter 744 and Licensed Homes in Chapter 747, so that the minimum standards for physical activity, nutrition, and screen time are congruent throughout Chapters 744, 746, and 747.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §744.123 (1) updates language and punctuation for better readability and understanding in the definitions for "before or after-school," "caregiver," "certified life-guard," "CEUs," "clock hour," "high school equivalent," and "special care needs"; (2) updates citations in the definitions for "caregiver," "clock hour," "permit is no longer valid," and "regular"; (3) relocates "director" from after to before "employee" to be consistent with formatting throughout the rule; (4) replaces and up-

dates the definition for "frequently" with "frequent" for consistency with other Licensing chapters; (5) updates the definition for "health-care professional" to clarify the definition excludes only persons not licensed in the U.S. or in the country in which the person practices; (6) updates the definition for "natural environment" to be consistent with the current definition in the Individuals with Disabilities Education Act, and provides an example to aid in clarity; (7) adds definitions for "physical activity (moderate)," "physical activity (vigorous)," and "screen time activity"; (7) adds a definition for "pre-kindergarten age child" to be consistent with other Licensing chapters; (8) deletes "regularly or frequently present at an operation" for consistency with other Licensing chapters; (9) updates the definition for "school-age child" for better understanding and consistency with other Licensing chapters; and (10) updates the numbering of the definitions accordingly.

The proposed amendment to §744.501 (1) updates citations; (2) updates language for better readability and increased consistency throughout the chapter; and (3) corrects the title of the agency.

The proposed amendment to §744.2001 (1) updates the rule title for better readability and understanding; (2) deletes activity requirements for children in care for five or more consecutive hours in a day, as those requirements are now included in proposed §744.2002; and (3) updates the numbering of rules accordingly.

Proposed new §744.2002 outlines the activities a child-care operation must include when a child is in care for five or more consecutive hours in a day. The proposed rule incorporates all the activities that will no longer be in proposed §744.2001.

The proposed amendment to §744.2003: (1) updates the rule title and language throughout the rule for better readability and understanding; (2) adds requirements for child-care operations caring for children under age five, including (A) the addition of procedures addressing outdoor and active play when children are in care more than five consecutive hours in a day, and (B) the inclusion of written operational policies for physical activity that are shared with parents at enrollment and as needed thereafter; and (3) updates the numbering of rules accordingly.

The proposed amendment to §744.2005 (1) updates the rule title for better readability and understanding; (2) updates the rule to require compliance with proposed §§744.2002 and 744.2003(1)(C) when a child is in care for more than five consecutive hours in a day; (3) adds a requirement that a written activity plan include the specific daily activities and approximate times of the activities; (4) requires the child-care operation to follow the plan; (5) adds language regarding screen time activities to specify an activity plan may include one or more screen time activities; and (6) reorganizes language in the rule for better readability and understanding.

The proposed amendment to §744.2007 (1) replaces the phrase "TV/video, computer, or video games" with "screen time activity"; (2) reorganizes and clarifies language in the rule for better readability and understanding; (3) updates citations; (4) adds restrictions to screen time activities offered at the child-care operation, including (A) reducing the amount of allotted screen time from two hours to one hour per day, and (B) requiring that screen time activities relate to educational goals, are not used during meal-times, snack times, naptimes, or rest times, do not include advertising or violence, and are turned off when not in use; and (5) adds flexibility for school-age children to use screen time without restriction for homework.

The proposed amendment to §744.2105 (1) expands the list of prohibited discipline and guidance measures to include withholding active play or keeping a child inside as a consequence for behavior and (2) updates the numbering of rules accordingly.

The proposed amendment to §744.2401 (1) updates the rule title for better readability and understanding; (2) adds the requirement for all child-care operations to follow the meal patterns established by the CACFP; (3) reorganizes and clarifies language in the rule for better readability and understanding; (4) incorporates the requirement to allow second servings from certain food groups previously required in repealed §744.2403; (5) deletes language that allowed child-care operations to follow either CACFP meal patterns or Licensing meal requirements; (6) updates a citation; and (7) updates the numbering of rules accordingly.

The proposed repeal of §744.2403 deletes the rule as no longer necessary, because the content of the rule has been re-proposed in new §744.2403.

Proposed new §744.2403 (1) incorporates requirements from repealed §744.2403 into a chart to reorganize and clarify the rule and (2) restructures certain requirements in repealed §744.2403, regarding how much food to offer based on hours in care.

The proposed repeal of §744.2405 deletes the rule as no longer necessary, because all child-care operations are now required to follow the CACFP meal patterns, as noted in proposed §744.2401.

The proposed repeal of §744.2407 deletes the rule as no longer necessary, because all child-care operations are now required to follow the CACFP meal patterns, as noted in proposed §744.2401.

The proposed amendment to §744.2409 (1) updates grammar and punctuation for consistency throughout the chapter; (2) adds that a parent may sign an addendum to the enrollment agreement so that the parent may provide meals and snacks; and (3) updates a citation.

The proposed amendment to §744.2411 (1) updates the rule title for better readability and understanding; and (2) replaces "physician" with "health-care professional" for consistency throughout the chapter.

The proposed repeal of §744.2415 deletes the rule as no longer necessary, because all child-care operations are now required to follow the CACFP meal patterns, as noted in proposed §744.2401.

The proposed repeal of §744.2417 deletes the rule as no longer necessary, because all child care operations are now required to follow the CACFP meal patterns, as noted in proposed §744.2401.

The proposed amendment to §744.2421: (1) adds a requirement that children feed themselves according to their developmental level to be consistent with current best practice in child-care; and (2) updates the numbering of rules accordingly.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will create new rules;

(6) the proposed rules will expand and repeal existing rules;

(7) the proposed rules will not change the number of individuals subject to the rules; and

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

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

Trey Wood has also determined that there could be an adverse economic effect on small businesses and micro-businesses, but no adverse effect on rural communities.

Chapter 2006 of the Texas Government Code defines a small business as one that is for-profit with fewer than 100 employees. A micro-business is one that is for-profit with fewer than 20 employees. Based on data obtained in July 2020, CCR estimates that there are approximately 1,691 School-Age Programs and Before and After-School Programs required to comply with the rules. CCR conducted a survey of licensed child-care operations in 2019 to determine which operations met the definition of a small or micro-business and received responses and only received a response rate of approximately 1.5 percent of School-Age Programs and 1.1 percent of Before and After-School Programs, which is not statistically significant. However, data in July 2020 indicated that approximately 36.7 percent (or 621 programs) were for profit. In addition, based on a survey conducted in 2010 approximately 98 percent of those programs (or 609 programs) have less than 100 employees and qualify as small businesses and approximately 68 percent of those small businesses (or 414 programs) have less than 20 employees and qualify as micro-businesses.

The projected economic impact on micro-businesses is limited to proposed §744.2003, as this rule requires written procedures and an operational policy to be developed if an operation cares for a child under age five. Some operations have indicated a labor cost to bring the procedures and policy into compliance with the proposed rule. HHSC does not have sufficient information to determine these costs as the proposed rule does not impact all operations and developing the procedures and policy will vary greatly with individual business structure.

HHSC determined that there are no alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities that are consistent with ensuring the health and safety of children attending child-care centers in Texas.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Jean Shaw, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be that the health of children attending child-care in Texas will be supported by physical activity, screen time, and nutrition standards that are aligned with national standards and best practices for early childhood education.

Trey Wood has also determined that for the first five years the rules are in effect, there could be an anticipated cost for persons required to comply with proposed §744.2003. The proposed rule requires child-care operations to develop an operational policy to include physical activity components.

Some operations have indicated a labor cost to bring the policy into compliance with the proposed rule. HHSC does not have sufficient information to determine these costs, as they will vary greatly with operation type and individual business structure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Aimee Belden by email at Aimee.Belden@hhsc.state.tx.us.

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCLRules@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R024" in the subject line.

SUBCHAPTER A. PURPOSE, SCOPE, AND DEFINITIONS

DIVISION 3. DEFINITIONS

26 TAC §744.123

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires

HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§744.123. *What do certain words and terms mean when used in this chapter?*

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or another subchapter or unless the context clearly indicates otherwise. In addition, the following words and terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

(1) Activity space--An area or room used for children's activities, including areas separate from a group's classroom.

(2) Administrative and clerical duties--Duties that involve the administration of an operation, such as bookkeeping, enrolling children, answering the telephone, and collecting fees.

(3) Admission--The process of enrolling a child in an operation. The date of admission is the first day the child is physically present at the operation.

(4) Adult--A person 18 years old and older.

(5) Age-appropriate--Activities, equipment, materials, curriculum, and environment that are developmentally consistent with the chronological age of the child being served.

(6) Attendance--When referring to a child's attendance, the physical presence of a child at the operation on any given day or at any given time, as distinct from the child's enrollment in the operation.

(7) Before or after-school [~~After-school~~] program--An operation that provides care before and after or before or after the customary school day and during school holidays, for at least two hours a day, three days a week, to children who attend pre-kindergarten through grade six.

(8) Caregiver--A person who is counted in the child to caregiver [~~child-caregiver~~] caregiver ratio, whose duties include the supervision, guidance, and protection of a child. As used in this chapter, a caregiver must meet the minimum education, work experience, and training qualifications required under Subchapter D of this chapter (relating to Personnel). A caregiver is usually an employee, but may also be a substitute, volunteer, or contractor, as outlined in Subchapter D, Division 5 of this chapter [~~(see Division 5 of Subchapter D)~~] (relating to Substitutes, Volunteers, and Contractors)[)].

(9) Certified Child-Care Professional Credential--A credential given by the National Early Childhood Program Accreditation to a person working directly with children. The credential is based on assessed competency in several areas of child care and child development.

(10) Certified lifeguard--A person who has been trained in life saving and water safety by a qualified instructor, from a recognized organization that [~~which~~] awards a certificate upon successful completion of the training. The certificate is not required to use the term "lifeguard," but you must be able to document that the certificate represents the type of training described.

(11) CEUs [~~(continuing education units)~~]--Continuing education units. A standard unit of measure for adult education and training activities. One CEU equals 10 [~~ten~~] clock hours of participation in an organized, continuing-education experience, under responsible, qualified direction and instruction. Although a person may obtain a

CEU in many of the same settings as clock hours, the CEU provider must meet the criteria established by the International Association for Continuing Education and Training to be able to offer the CEU.

(12) Child Development Associate Credential--A credential given by the Council for Professional Recognition to a person working directly with children. The credential is based on assessed competency in several areas of child care and child development.

(13) Clock hour--An actual hour of documented:

(A) Attendance at instructor-led training, such as seminars, workshops, conferences, early childhood classes, and other planned learning opportunities, provided by an individual or individuals [individual/s], as specified in §744.1319(a) of this chapter [title] (relating to Must the training for my caregivers and the director meet certain criteria?); or

(B) Self-instructional training that was created by an individual or individuals [individual/s], as specified in §744.1319(a) and (b) of this chapter, or self-study training.

(14) Corporal punishment--The infliction of physical pain on a child as a means of controlling behavior. This includes spanking, hitting, slapping, or thumping a child.

(15) Days--Calendar days, unless otherwise stated.

(16) Director--An adult you designate to have daily, on-site responsibility for your operation, including maintaining compliance with the minimum standards, rules, and laws. As this term is used in this chapter, a director may be an operation director, program director, or site director, unless the context clearly indicates otherwise.

(17) [(16)] Employee--A person an operation employs full-time or part-time to work for wages, salary, or other compensation. Employees are all of the operation staff, including caregivers, kitchen staff, office staff, maintenance staff, the assistant director, all directors, and the owner, if the owner is ever on site at the operation or transports a child.

[(17) Director--An adult you designate to have daily, on-site responsibility for your operation, including maintaining compliance with the minimum standards, rules, and laws. As this term is used in this chapter, a director may be an operation director, program director, or site director, unless the context clearly indicates otherwise.]

(18) Enrollment--The list of names or number of children who have been admitted to attend an operation for any given period of time; the number of children enrolled in an operation may vary from the number of children in attendance on any given day.

(19) Entrap--A component or group of components on equipment that forms angles or openings that may trap a child's head by being too small to allow the child's body to pass through, or large enough for the child's body to pass through but too small to allow the child's head to pass through.

(20) Field trips--Activities conducted away from the operation.

(21) Food service--The preparation or serving of meals or snacks.

(22) Frequent [Frequently]--More than two times in a 30-day period. Note: For [See] the definition of [fœr] "regularly or frequently present at an operation" as it applies to background checks, see [æt] §745.601 of this title (relating to What words must I know to understand this subchapter?).

(23) Garbage--Waste food or items that when deteriorating cause offensive odors and attract rodents, insects, and other pests.

(24) Governing body--A group of persons or officers of a corporation or other type of business entity having ultimate authority and responsibility for the operation.

(25) Group activities--Activities that allow children to interact with other children in large or small groups. Group activities include storytelling, finger plays, show and tell, organized games, and singing.

(26) Health-care professional--A licensed physician, a licensed advanced practice registered nurse (APRN), a licensed vocational nurse (LVN), a licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of the license. This does not include physicians, [medical doctœrs,] nurses, or other medical personnel who are not licensed [to prœctice] in the United States or in the country in which the person practices.

(27) Health check--A visual or physical assessment of a child to identify potential concerns about a child's health, including signs or symptoms of illness and injury, in response to changes in the child's behavior since the last date of attendance.

(28) High school equivalent-- [:]

(A) Documentation of a program recognized by the Texas Education Agency (TEA) or other public educational entity in another state, which offers similar training on reading, writing, and math skills taught at the high school level, such as a General Educational Development (GED) certificate; or

(B) Confirmation that the person received home-schooling that adequately addressed basic competencies such as basic reading, writing, and math skills, which would otherwise have been documented by a high school diploma.

(29) Individual activities--Opportunities for the child to work independently or to be away from the group, but supervised.

(30) Inflatable--An amusement ride or device, consisting of air-filled structures designed for use by children, as specified by the manufacturer, which may include bouncing, climbing, sliding, or interactive play. They are made of flexible fabric, kept inflated by continuous air flow by one or more blowers, and rely upon air pressure to maintain their shape.

(31) Instructor-led training--Training characterized by the communication and interaction that takes place between the student and the instructor. The training must include an opportunity for the student to interact with the instructor to obtain clarifications and information beyond the scope of the training materials. For such an opportunity to exist, the instructor must communicate with the student in a timely fashion, including answering questions, providing feedback on skills practice, providing guidance or information on additional resources, and proactively interacting with students. Examples of this type of training include, classroom training, web-based on-line facilitated learning, video-conferencing, or other group learning experiences.

(32) Janitorial duties--Those duties that involve the cleaning and maintenance of the operation's building, rooms, furniture, etc. Cleaning and maintenance include such duties as cleansing carpets, washing cots, and sweeping, vacuuming, or mopping a restroom or a classroom. Sweeping up after an activity or mopping up a spill in a classroom that is immediately necessary for the children's safety is not considered a janitorial duty.

(33) Local sanitation official--A sanitation official designated by the city or county government.

(34) Multi-site operations--Two or more operations owned by the same person or entity, but the operations have separate permits. These operations may have centralized business functions, record keeping, and leadership.

(35) Natural environment--Settings that are natural or typical [~~normal~~] for all children of the same [~~an~~] age [~~group~~] without regard to ability or disability. For example, a natural environment for learning social skills is a play group of peers. [~~the primary natural group setting for a school-age child with a disability would be a play group, program, or whatever setting exists for school-age children without disabilities.~~]

(36) Nighttime care--Care given on a regular or frequent basis to children who are starting or continuing their night sleep, or to children who spend the night or part of the night at the operation between the hours of 9:00 p.m. and 6:00 a.m.

(37) Operation--A person or entity offering a before or after-school program or school-age program that is subject to Licensing's regulation. An operation includes the building and the premises where the program is offered, any person involved in providing the program, and any equipment used in providing the program.

(38) Operation director--A director at your operation who is not supervised by a program director. An operation that has an operation director cannot have a program director or a site director.

(39) Owner--The sole proprietor, partnership, corporation, or other type of business entity who owns the operation.

(40) Permit holder--The owner of the operation that is granted the permit.

(41) Permit is no longer valid--For purposes of this chapter, a permit remains valid through the renewal process. A permit only becomes invalid when your:

(A) Operation voluntarily closes;

(B) Operation must close because of an enforcement action in Chapter 45, Subchapter L of this title [Chapter 745] (relating to Enforcement Actions);

(C) Permit expires according to §745.481 of this title (relating to When does my permit expire?); or

(D) Operation must close because its permit is automatically revoked according to Texas [~~the~~] Human Resources Code §§42.048(e), 42.052(j), or 42.054(f).

(42) Physical activity (moderate)--Levels of activity for a child that are at intensities faster than a slow walk, but still allow the child to talk easily. Moderate physical activity increases heart rate and breathing rate.

(43) Physical activity (vigorous)--Rhythmic, repetitive physical movement for a child that uses large muscle groups, causing the child to breathe rapidly and only enabling the child to speak in short phrases. Typically, the child's heart rate is substantially increased and the child is likely to be sweating while engaging in the vigorous physical activity.

(44) Pre-kindergarten age child--A child who is three or four years of age before the beginning of the current school year.

(45) [(42)] Premises--Includes the operation, any lots on which the operation is located, any outside ground areas, any outside play areas, and the parking lot.

(46) [(43)] Program--The services and activities provided by an operation.

(47) [(44)] Program director--A director who oversees your program at multi-site operations and supervises a site director at each operation.

(48) [(45)] Regular--On a recurring, scheduled basis. Note: For the definition of "regularly or frequently present at an operation" as it applies to background checks, see §745.601 of this title.

[(46) Regularly or frequently present at an operation--See §745.601 of this title (relating to What words must I know to understand this subchapter?).]

(49) [(47)] Safety belt--A lap belt and any shoulder straps included as original equipment on or added to a vehicle.

(50) [(48)] Sanitize--The use of a product (usually a disinfecting solution) that is registered by the Environmental Protection Agency (EPA) which substantially reduces germs on inanimate objects to levels considered safe by public health requirements. Many bleach and hydrogen peroxide products are EPA-registered. You must follow the product's labelling instructions for sanitizing (paying attention to any instructions regarding contact time and toxicity on surfaces likely to be mouthed by children). For an EPA-registered sanitizing product or disinfecting solution that does not include labelling instructions for sanitizing (a bleach product, for example), you must follow these steps in order:

(A) Washing with water and soap;

(B) Rinsing with clear water;

(C) Soaking in or spraying on a disinfecting solution for at least two minutes. Rinsing with cool water only those items that children are likely to place in their mouths; and

(D) Allowing the surface or item to air-dry.

(51) [(49)] School-age child--A child who is five years of age and older[;] and is enrolled in or has completed kindergarten [~~who will attend school at or away from the operation beginning in August or September of that year~~].

(52) [(50)] School-age program--An operation that provides supervision and recreation, skills instruction, or skills training for at least two hours a day and three days a week to children who attend pre-kindergarten through grade six. A school-age program operates before or after the customary school day and may also operate during school holidays, the summer period, or any other time when school is not in session.

(53) Screen time activity--An activity during which a child views media content on a cell or mobile phone, tablet, computer, television, video, film, or DVD. Screen time activities do not include video chatting with a child's family or assistive and adaptive computer technology used by a child with special care needs on a consistent basis.

(54) [(51)] Self-instructional training--Training designed to be used by one individual working alone and at the individual's own pace to complete lessons or modules. Lessons or modules commonly include questions with clear right and wrong answers. An example of this type of training is web-based training. Self-study training is also a type of self-instructional training.

(55) [(52)] Self-study training--Non-standardized training where an individual reads written materials, watches a training video, or listens to a recording to obtain certain knowledge that is required for annual training. Self-study training is limited to three hours of annual training per year.

(56) [(53)] Site director--A director who has on-site responsibility at a specific operation, but who is supervised by a program director.

(57) [(54)] Special care needs--A child with special care needs is a child who has a chronic physical, developmental, behavioral, or emotional condition and who also requires assistance beyond that required by a child generally to perform tasks that are within the typical chronological range of development, including the movement of large or [and/or] small muscles, learning, talking, communicating, self-help, social skills, emotional well-being, seeing, hearing, and breathing.

(58) [(55)] State or local fire marshal--A fire official designated by the city, county, or state government.

(59) [(56)] Universal precautions--An approach to infection control where all human blood and certain human bodily fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.

(60) [(57)] Water activities--Related to the use of swimming pools, splashing/wading pools, sprinkler play, or other bodies of water.

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 November 6, 2020.

TRD-202004663

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: December 20, 2020

For further information, please call: (512) 438-3269



SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 4. OPERATIONAL POLICIES

26 TAC §744.501

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§744.501. *What written operational policies must I have?*

You must develop written operational policies and procedures that at a minimum address each of the following:

- (1) Hours, days, and months of operation;
- (2) Procedures for the release of children;
- (3) Illness and exclusion criteria;

(4) Procedures for dispensing medication or a statement that medication is not dispensed;

(5) Procedures for handling medical emergencies;

(6) Procedures for parental notifications;

(7) Discipline and guidance that is consistent with Subchapter G of this chapter [title] (relating to Discipline and Guidance). A copy of Subchapter G may be used for your discipline and guidance policy, unless you use disciplinary and training measures specific to a skills-based program, as specified in §744.2109 of this chapter [title] (relating to May I use disciplinary measures that are fundamental to teaching a skill, talent, ability, expertise, or proficiency?);

(8) Suspension and expulsion of children;

(9) Meals and food service practices;

(10) Immunization requirements for children, including tuberculosis screening and testing if required by your regional Texas Department of State Health Services or local health authority;

(11) Enrollment procedures, including how and when parents will be notified of policy changes;

(12) Transportation, if applicable;

(13) Water activities, if applicable;

(14) Field trips, if applicable;

(15) Animals, if applicable;

(16) Procedures for providing and applying, as needed, insect repellent and sunscreen, including what types will be used, if applicable;

(17) Procedures [The procedures] for parents to review and discuss with the director any questions or concerns about the policies and procedures of the operation;

(18) Procedures [The procedures] for parents to visit the operation at any time during your hours of operation to observe their child, program activities, the building, the premises, and equipment without having to secure prior approval;

(19) Procedures [The procedures] for parents to participate in the operation's activities;

(20) Procedures [The procedures] for parents to review a copy of the operation's most recent Licensing inspection report and how the parent may access the minimum standards online;

(21) Instructions on how a parent may contact the local Licensing office, access the Texas Abuse and Neglect Hotline, and access the HHSC [DFPS] website;

(22) Emergency preparedness plan;

(23) Procedures for conducting health checks, if applicable; and

(24) Information on vaccine-preventable [Vaccine-preventable] diseases for employees, unless your operation is in the home of the permit holder, the director, or a caregiver. The policy must address the requirements outlined in §744.2581 of this chapter [title] (relating to What must a policy for protecting children from vaccine-preventable diseases include?).

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 November 6, 2020.

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Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: December 20, 2020

For further information, please call: (512) 438-3269



SUBCHAPTER F. DEVELOPMENTAL ACTIVITIES AND EQUIPMENT DIVISION 1. ACTIVITIES AND ACTIVITY PLANS

26 TAC §§744.2001 - 744.2003, 744.2005, 744.2007

STATUTORY AUTHORITY

The amendments and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

The amendments and new section affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§744.2001. What [Must caregivers provide] planned activities must caregivers provide for children in their care?

[(a)] [Yes.] Caregivers must ensure children receive individual attention and care including:

- (1) Flexible programming according to each child's age, interest, and abilities;
- (2) Encouraging communication and expression of feelings in appropriate ways;
- (3) Study time for those children who choose to work on homework assignments;
- (4) Physical care routines appropriate to each child's developmental needs; and
- (5) A caregiver who is aware of the arrival and departure of each child, including dismissing children who ride the bus or walk home.

[(b)] In addition, the following activities must be included for programs where children are anticipated to be in care five or more consecutive hours in a day:

- [(1)] Outdoor play in which the children make use of both small and large muscles, both in the morning and afternoon, when weather permits;
- [(2)] A balance of active and quiet play, including group and individual activities;
- [(3)] Opportunities for active play both indoors and outdoors. Examples include active games such as tag and Simon says, dancing and creative movement to music and singing, simple games

and dramatic or imaginary play that encourages running, stretching, climbing, and walking;

[(4)] Regular meal and snack times as specified in Subchapter J of this Chapter (relating to Nutrition and Food Service);

[(5)] Supervised naptimes, or a period of rest for those children too old to nap;

[(6)] Both:

[(A)] Child-initiated activities, which are activities that the child chooses on the child's own initiative and that foster the child's independence. Child-initiated activities require equipment, materials, and supplies to be within the reach of a child; and

[(B)] Caregiver-initiated activities, which are activities that are directed or chosen by the caregiver;

[(7)] Sufficient time for activities and routines so that children can progress at their own developmental rate; and

[(8)] No long waiting periods between activities or prolonged periods during which children stand or sit.

[(e)] You must ensure that children who need special care due to disabling or limiting conditions receive the care recommended by a health-care professional or qualified professionals affiliated with the local school district or early childhood intervention program. These basic care requirements must be documented and on file for review at the operation during your hours of operation. Activities must integrate all children with or without special care needs. You may need to adapt equipment and vary methods to ensure that you care for children with special needs in a natural environment.]

§744.2002. What additional activities must caregivers provide when a child is in care for more than five consecutive hours in a day?

You must include the following activities for programs where you anticipate a child will be in care five or more consecutive hours in a day.

(1) Outdoor play in which the child makes use of both small and large muscles, as weather permits;

(2) A balance of active and quiet play, including group and individual activities;

(3) Opportunities for active play both indoors and outdoors. Examples include active games such as tag and Simon Says, dancing and creative movement to music and singing, simple games and dramatic or imaginary play that encourages running, stretching, climbing, and walking;

(4) Child-initiated activities where:

(A) The equipment, materials, and supplies are within reach of the child; and

(B) The child chooses the activity on the child's own initiative;

(5) Caregiver-initiated activities that the caregiver directs or chooses, at least two of which must promote movement;

(6) Regular meal and snack times as specified in Subchapter J of this Chapter (relating to Nutrition and Food Service);

(7) Supervised naptimes or rest times;

(8) Sufficient time for activities and routines so that the child can progress at the child's own developmental rate; and

(9) No long waiting periods between activities or prolonged periods during which a child stands or sits.

§744.2003. *What are the [Are there] additional requirements if my operation cares for a child [children] under the age of five?*

[Yes.] If your operation cares for a child [children] under the age of five, you must:

(1) Have [a] written procedures [plan] that include [includes] the following:

(A) How caregivers will supervise the child [children under the age of five will be supervised] while transitioning the child to and from restrooms, indoor and outdoor activity spaces, and spaces shared by other persons outside of the operation;

(B) How caregivers will meet the unique care needs of the child [children younger than five years old];

(C) How caregivers will meet the outdoor play and physical activity needs in §744.2002(1) and (3) of this division (relating to What additional activities must caregivers provide when a child is in care for more than five consecutive hours in a day), including:

(i) A minimum of two opportunities for outdoor play, weather permitting, for at least 60 total minutes when a child is in care for eight hours, although you may prorate this requirement if a child is in care for less than eight hours; and

(ii) A minimum of 90 minutes of moderate to vigorous active play when a child is in care for eight hours, although you may prorate this requirement if a child is in care for less than eight hours;

(D) [(C)] Under what circumstances the child [children under five years old] will be mixing with older children in the operation; and

(E) [(D)] Any modifications to space or equipment that will be made to accommodate the child [children under five years old].

(2) Have written policies that address the promotion of indoor and outdoor physical activity that are consistent with this division. Your policies must include:

(A) The benefits of physical activity and outdoor play;

(B) The duration of physical activity at your operation, both indoor and outdoor;

(C) The type of physical activity (structured and unstructured) that children may engage in at your operation;

(D) Each setting in which your physical activity program will take place;

(E) The recommended clothing and footwear that a child would require in order to participate in physical activities; and

(F) A plan to ensure physical activity occurs on days when extreme weather conditions prohibit or limit outdoor play.

(3) [(2)] Follow the policies and procedures [plan] and make the policies and procedures [the plan] available for review by:

(A) Licensing [and parents] upon request during your hours of operation; and

(B) Parents at enrollment and as needed thereafter.

§744.2005. *What [Must caregivers have] written activity plans must caregivers follow?*

(a) For programs with a child whom you anticipate to be in care for five or more consecutive hours in a day, you [You] must have a written activity plan that complies with §744.2002 of this division (relating to What additional activities must caregivers provide when a

child is in care for more than five consecutive hours in a day?) and §744.2003(1)(C) of this division (relating to What are the additional requirements if my operation cares for a child under the age of five?) [for programs with children who you anticipate to be in care for five or more consecutive hours in a day. The plan must outline the daily routines and specific activities for each group and the plan must be followed by the caregiver(s) responsible for that group.]

(b) A written activity plan must:

(1) Identify the age group the activity plan is designed for and list the dates (daily, weekly, or monthly) the plan covers;

(2) Outline the daily routines and specific activities for each group and the approximate times those activities will occur;

(3) Be followed by the caregiver or caregivers responsible for the relevant group of children; and

(4) Be inclusive for all children in the group regardless of special care needs.

[(b) The activity plan must be inclusive for all children in the group regardless of disabling or limiting conditions.]

(c) A written activity plan may include one or more screen time activities specified in §744.2007 of this division (relating to May I use a screen time activity with a child?), if you also include alternative activities for children who do not want to participate.

[(c) The plan must indicate the age group it is designed for and dates (daily, weekly, or monthly) the plan covers.]

§744.2007. *May I use a screen time activity [TV/video, computer, or video games for activities] with a child [children]?*

(a) You may use a screen time activity [TV/video, computer, or video games may be used] to supplement, but [may] not [be used] to replace, an activity [the activities] for children described in §744.2001 of this division [title] (relating to What planned activities must caregivers provide for children in their care? [Must caregivers provide planned activities for the children in their care?]) and §744.2002 of this division (relating to What additional activities must caregivers provide when a child is in care for more than five consecutive hours in a day?).

(b) If you use a screen time activity [TV/video, computer, or video games as an activity] for a child at the operation [children], you must ensure that the activity [they]:

(1) Is related to the planned activities that meet educational goals;

(2) Is [Are] age-appropriate; [and]

(3) [(2)] Does [Do] not exceed one hour [two hours] per day;

(4) Is not used during mealtime, snack times, naptimes, or rest times;

(5) Does not include advertising or violence; and

(6) Is turned off when not in use.

(c) A school-age child may use screen time without restriction for homework.

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 November 6, 2020.

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SUBCHAPTER G. DISCIPLINE AND GUIDANCE

26 TAC §744.2105

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§744.2105. *What types of discipline and guidance or punishment are prohibited?*

There must be no harsh, cruel, or unusual treatment of any child. The following types of discipline and guidance are prohibited:

- (1) Corporal punishment or threats of corporal punishment;
- (2) Punishment associated with food, naps, or toilet training;
- (3) Pinching, shaking, or biting a child;
- (4) Hitting a child with a hand or instrument;
- (5) Putting anything in or on a child's mouth;
- (6) Humiliating, ridiculing, rejecting, or yelling at a child;
- (7) Subjecting a child to harsh, abusive, or profane language;
- (8) Placing a child in a locked or dark room, bathroom, or closet; ~~and~~
- (9) Withholding active play or keeping a child inside as a consequence for behavior; and
- (10) [(9)] Requiring a child to remain silent or inactive for inappropriately long periods of time for the child's age.

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 November 6, 2020.

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SUBCHAPTER J. NUTRITION AND FOOD SERVICE

26 TAC §§744.2401, 744.2403, 744.2409, 744.2411, 744.2421

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§744.2401. *What are the basic requirements for meal [~~snack~~] and snack times [~~mealtimes~~]?*

(a) You must serve all children regular meals and morning and afternoon snacks as specified in this subchapter.

(b) The meals and snacks must follow the meal patterns established by the U.S. Department of Agriculture (USDA) Child and Adult Care Food Program (CACFP) that is administered by the Texas Department of Agriculture. You must follow these patterns regardless of whether you are participating in the program for reimbursement.

(c) [(b)] If you serve breakfast [is served], you do not have to serve a morning snack [is not required].

(d) [(e)] A child must not go more than three hours without a meal or snack being offered, unless the child is sleeping.

(e) [(d)] You must serve enough food to allow children a second serving from the vegetable, fruit, grain, and milk groups. [If your operation is participating in the Child and Adult Care Food Program (CACFP) administered by the Texas Department of Agriculture, you may elect to meet those requirements rather than those specified in this section.]

(f) [(e)] You must ensure a supply of drinking water is readily available to each child ~~and is served~~ at every snack, mealtime, and after active play and is served in a safe and sanitary manner.

(g) [(f)] You must not serve beverages with added sugars, such as carbonated beverages, fruit punch, or sweetened milk.

(h) [(g)] You must not use food as a reward.

(i) [(h)] You must not serve a child a food identified on the child's food allergy emergency plan as specified in §744.2667 of this chapter [~~title~~] (relating to What is a food allergy emergency plan?).

§744.2403. *How often must I feed a child in my care?*

You must follow the guidelines in Figure 26 TAC §744.2403 when determining how often to feed a child in your care.

Figure: 26 TAC §744.2403

§744.2409. *May parents provide meals and [and/or] snacks for their child instead of my operation providing them?*

(a) Yes. However [;however], your enrollment agreement, or an addendum to the agreement, signed by the parent must include a statement that the parent:

(1) Is [is] choosing to provide the child's meals and [and/or] snacks from home;[-] and

(2) Understands [the parent understands] the operation is not responsible for its nutritional value or for meeting the child's daily food needs.

(b) If the parent provides a meal but not a snack, you are responsible for providing a snack as specified in this subchapter [§744.2407 of this title (relating to What kind of foods must I serve for snacks?)].

(c) You must provide safe and proper storage and service of the individual meals and snacks provided by parents.

(d) Snacks provided by a parent must not be shared with other children, unless:

(1) A parent is providing baked goods for a celebration or party being held at the operation; and

(2) You ensure that the shared snacks meet the needs of children who require special diets.

§744.2411. *What are the requirements for a child [How should my operation meet the needs of children] who requires [require] a special diet [diets] or does [do] not want to eat foods the operation serves?*

(a) You must have written approval from a health-care professional [physician] or a registered or licensed dietician in the child's records to serve a child a therapeutic or special diet. You must give this information to all employees preparing and serving food.

(b) You must discuss recurring eating problems with the child's parent.

(c) You may encourage but must not force children to eat.

(d) You must not serve nutrient concentrates and supplements such as protein powders, liquid protein, vitamins, minerals, and other nonfood substances without written instructions from a health-care professional [physician].

§744.2421. *Must I serve meals family style?*

(a) No, you do not have to use family-style meal service, although all meals and snack times must:

(1) Be unhurried; [and]

(2) Allow children to feed themselves according to their developmental level; and

(3) [(2)] Include adult supervision of children.

(b) If meals and snacks are served family style, caregivers must supervise children to prevent cross-contamination of the food.

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 November 6, 2020.

TRD-202004668

Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: December 20, 2020
For further information, please call: (512) 438-3269

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26 TAC §§744.2403, 744.2405, 744.2407, 744.2415, 744.2417
STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

The repeal affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§744.2403. *How often must I feed children in my care?*

§744.2405. *How do I know what a child's daily food needs are?*

§744.2407. *What kind of foods must I serve for snacks?*

§744.2415. *May I serve powdered milk?*

§744.2417. *May I serve fruit or vegetable juices?*

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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Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: December 20, 2020
For further information, please call: (512) 438-3269

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CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§746.123, 746.501, 746.2203, 746.2205, 746.2207, 746.2417, 746.2507, 746.2607, 746.2707, 746.2805, 746.3209, 746.3301, 746.3309, 746.3311, and 746.3319; new §746.2206 and §746.3303; and the repeal of §§746.3303, 746.3305, 746.3307, 746.3315 and 746.3316 in Title 26, Texas Administrative Code, Chapter 746, Minimum Standards for Child Care Centers.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Senate Bill (S.B.) 952, 86th Legislature, Regular Session, 2019, which adds Subsections 42.042(e-3), (e-4), and (e-5) to the Texas Human Resources Code (HRC). The new Subsections require HHSC Child

Care Regulation (CCR) to align the minimum standards for child-care centers and registered child-care homes with standards for physical activity and screen time in *Caring for Our Children* (COFC), 4th edition, and with the nutrition standards of the federal Child and Adult Care Food Program (CACFP).

SECTION-BY-SECTION SUMMARY

The proposed amendment to §746.123 (1) updates citations in the definitions for "caregiver," "clock hour," "permit is no longer valid," and "regular"; (2) updates grammar, language, and punctuation for better readability and understanding in the definitions for "certified lifeguard," "CEUs," "clock hour," "entrap," and "special care needs"; (3) updates the definition for "health-care professional" to clarify the definition excludes only persons not licensed in the U.S. or in the country in which the person practices; (4) updates the definition for "natural environment" to be consistent with the current definition in the Individuals with Disabilities Education Act, and provides an example to aid in clarity; (5) adds definitions for "physical activity (moderate)," "physical activity (vigorous)," and "screen time activity"; (6) adds a definition for "pre-kindergarten age child" to be consistent with other Licensing chapters; (7) updates the definition for "school-age child" for better understanding and consistency with other Licensing chapters; and (8) updates the numbering of the definitions accordingly.

The proposed amendment to §746.501 (1) updates citations; (2) updates language for better readability and increased consistency throughout the chapter; (3) adds a requirement for child-care centers to include operational policies for physical activity; (4) corrects the title of the agency; and (5) updates the numbering of rules accordingly.

The proposed amendment to §746.2203 (1) updates the rule title for better readability and understanding; (2) adds "operation" to the list of who may develop a written activity plan; (3) updates the rule to require compliance with proposed §746.2205; (4) deletes the requirement that the plan outline daily routines and specific activities, as that requirement is now included in proposed §746.2205; and (5) updates language regarding children with special needs to be consistent with terminology used elsewhere in the chapter.

The proposed amendment to §746.2205 (1) clarifies in the rule title that an activity plan must be written; (2) adds a requirement that the written activity plan outline the specific daily activities, as required by proposed §746.2206; (3) deletes requirements for outdoor play, active and quiet play, regular meal and snack times, supervised naptimes, and child and caregiver initiated activities, as these requirements are now included in proposed §746.2206; and (4) adds language regarding screen time activities to specify an activity plan may include one or more screen time activities.

Proposed new §746.2206 outlines the activities a child-care center must include in a written activity plan and requires the child-care center to include the approximate times of the activities in the plan. Requirements include outdoor play, moderate to vigorous active play, and caregiver-initiated activities that promote movement. Also included are previous activity requirements for quiet play, child-initiated activities, regular meal and snack times, and supervised naptimes or rest times that were incorporated from proposed §746.2205.

The proposed amendment to §746.2207 (1) replaces the phrase "TV/video, computer, or video games" with "screen time activity";

(2) reorganizes and clarifies language in the rule for better readability and understanding; (3) updates citations; (4) adds restrictions to screen time activities offered at the child-care center, including (A) reducing the amount of allotted screen time from two hours to one hour per day, and (B) requiring that screen time activities relate to educational goals, are not used during meal-times, snack times, naptimes, or rest times, do not include advertising or violence, and are turned off when not in use; and (5) adds flexibility for school-age children to use screen time without restriction for homework.

The proposed amendment to §746.2417 (1) updates the rule title for accuracy; (2) specifies that all required activities, not just outdoor play, be offered daily; (3) adds "weather permitting" to the requirement for outdoor play opportunities to be consistent with similar rules in the chapter; (4) adds a reference to proposed §746.2206 regarding outdoor play requirements; (5) adds a 15 minute time limit on an infant sitting in restricted devices, unless the infant is eating or being transported; (6) adds "supervised tummy time" as a physical activity for an infant and as an example of a large muscle activity; and (7) updates punctuation for consistency throughout the chapter.

The proposed amendment to §746.2507 (1) updates the rule title for accuracy; (2) specifies that all required activities, not just outdoor play, be offered daily; (3) updates language and punctuation for better readability and consistency throughout the chapter; (4) adds a reference to proposed §746.2206 regarding outdoor and active play requirements; and (5) expands active play requirements to include "moderate to vigorous active play."

The proposed amendment to §746.2607 (1) updates the rule title for accuracy; (2) specifies that all required activities, not just outdoor play, be offered daily; (3) updates language and punctuation for better readability and consistency throughout the chapter; (4) adds a reference to proposed §746.2206 regarding outdoor and active play requirements; and (5) expands active play requirements to include "moderate to vigorous active play."

The proposed amendment to §746.2707 (1) updates the rule title for accuracy; (2) specifies that all required activities, not just outdoor play, be offered daily; and (3) updates language and punctuation for better readability and consistency throughout the chapter.

The proposed amendment to §746.2805 (1) expands the list of prohibited discipline and guidance measures to include withholding active play or keeping a child inside as a consequence for behavior and (2) updates the numbering of rules accordingly.

The proposed amendment to §746.3209 (1) updates language for better readability; and (2) adds requirements for screen time activities for children in nighttime care, including (A) a reference to the requirements in proposed §746.2207, and (B) the restriction of screen time activities in a cot, bed, or mattress, or one hour before bedtime.

The proposed amendment to §746.3301 (1) updates the rule title for better readability and understanding; (2) reorganizes and clarifies language in the rule for better readability and understanding; (3) adds the requirement for all child-care centers to follow the meal patterns established by the CACFP; (4) incorporates the requirement to allow second servings from certain food groups previously required in repealed §746.3305; (5) deletes language that allowed child-care centers to follow either CACFP meal patterns or Licensing meal requirements; (6) updates a citation; and (7) updates the numbering of rules accordingly.

The proposed repeal of §746.3303 deletes the rule as no longer necessary, because the content of the rule has been re-proposed in new §746.3303.

Proposed new §746.3303 (1) incorporates requirements from repealed §746.3303 into a chart to reorganize and clarify the rule and (2) restructures certain requirements in repealed §746.3303, regarding how much food to offer based on hours in care.

The proposed repeal of §746.3305 deletes the rule as no longer necessary, because all child-care centers are now required to follow the CACFP meal patterns, as noted in proposed §746.3301.

The proposed repeal of §746.3307 deletes the rule as no longer necessary, because all child-care centers are now required to follow the CACFP meal patterns, as noted in proposed §746.3301.

The proposed amendment to §746.3309 (1) updates grammar and punctuation for consistency throughout the chapter; (2) adds that a parent may sign an addendum to the enrollment agreement so that the parent may provide meals and snacks; and (3) updates a citation.

The proposed amendment to §746.3311 (1) updates the rule title for better readability and understanding and (2) replaces "physician" with "health-care professional" for consistency throughout the chapter.

The proposed repeal of §746.3315 deletes the rule as no longer necessary, because all child care centers are now required to follow the CACFP meal patterns, as noted in proposed §746.3301.

The proposed repeal of §746.3316 deletes the rule as no longer necessary, because all child care centers are now required to follow the CACFP meal patterns, as noted in proposed §746.3301.

The proposed amendment to §746.3319 (1) updates language in the rule for better readability; (2) adds a requirement that children feed themselves according to their developmental level to be consistent with current best practice in child-care; and (3) updates the numbering of rules accordingly.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there could be an adverse economic effect on small businesses and micro-businesses, but no adverse effects on rural communities.

Chapter 2006 of the Texas Government Code defines a small business as one that is for-profit with fewer than 100 employees. A micro-business is one that is for-profit with fewer than 20 employees. Based on data obtained from the 2019 CCR Data Book, there are approximately 8,058 Licensed Child-Care Centers required to comply with the rules. CCR conducted a survey of licensed child-care operations in 2019 to determine which operations met the definition of a small or micro-business and received responses from approximately 9 percent of Licensed Child-Care Centers. Based on the results from that survey, CCR estimates that 59 percent of the centers (or 4,754 centers) are for profit. Of those centers, approximately 99 percent of the centers (or 4,706 centers) have less than 100 employees and qualify as small businesses and approximately 77 percent of those small businesses (or 3,623 centers) have less than 20 employees and qualify as micro-businesses.

The projected economic impact on small business and micro-businesses is limited to proposed §746.501, as this rule requires an operational policy to be developed. Some operations have indicated a labor cost to bring the policy into compliance with the proposed rule. HHSC does not have sufficient information to determine these costs as they will vary greatly with individual business structure.

HHSC determined that there are no alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities that are consistent with ensuring the health and safety of children attending child-care in Texas.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Jean Shaw, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be that the health of children attending child-care in Texas will be supported by physical activity, screen time, and nutrition standards that are aligned with national standards and best practices for early childhood education.

Trey Wood has also determined that for the first five years the rules are in effect, there could be an anticipated cost for persons required to comply with proposed §746.501. This proposed rule requires child-care operations to develop an operational policy to include physical activity components.

Some operations have indicated a labor cost to bring the policy into compliance with the proposed rule. HHSC does not have sufficient information to determine these costs, as they will vary greatly with operation type and individual business structure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Aimee Belden by email at Aimee.Belden@hhsc.state.tx.us.

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCLRules@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R024" in the subject line.

SUBCHAPTER A. PURPOSE, SCOPE, AND DEFINITIONS

DIVISION 3. DEFINITIONS

26 TAC §746.123

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§746.123. What do certain words and terms mean when used in this chapter?

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or another subchapter or unless the context clearly indicates otherwise. In addition, the following words and terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

- (1) Activity space--An area or room used for children's activities, including areas separate from a group's classroom.
- (2) Administrative and clerical duties--Duties that involve the operation of a child-care center, such as bookkeeping, enrolling children, answering the telephone, and collecting fees.
- (3) Admission--The process of enrolling a child in a child-care center. The date of admission is the first day the child is physically present in the center.
- (4) Adult--A person 18 years old and older.

(5) Age-appropriate--Activities, equipment, materials, curriculum, and environment that are developmentally consistent with the chronological age of the child being served.

(6) Alternate care program--A program in which no child is in care for more than five consecutive days, and no child is in care for more than 15 days in one calendar month, regardless of the duration of each stay.

(7) Attendance--When referring to a child's attendance, the physical presence of a child at the child-care center's program on any given day or at any given time, as distinct from the child's enrollment in the child-care center.

(8) Bouncer seat--A stationary seat designed to provide gentle rocking or bouncing motion by an infant's movement, or by battery-operated movement. This type of equipment is designed for an infant's use from birth until the child can sit up unassisted.

(9) Caregiver--A person who is counted in the child to caregiver [child/caregiver] caregiver ratio, whose duties include the supervision, guidance, and protection of a child. As used in this chapter, a caregiver must meet the minimum education, work experience, and training qualifications required under Subchapter D of this chapter (relating to Personnel). A caregiver is usually an employee, but may also be a substitute, volunteer, or contractor, as outlined in Subchapter D, Division 5 of this chapter [(also see Division 5 of Subchapter D)] (relating to Substitutes, Volunteers, and Contractors)[].

(10) Certified Child-Care Professional Credential--A credential given by the National Early Childhood Program Accreditation to a person working directly with children. The credential is based on assessed competency in several areas of child care and child development.

(11) Certified lifeguard--A person who has been trained in life saving and water safety by a qualified instructor, from a recognized organization that [which] awards a certificate upon successful completion of the training. The certificate is not required to use the term "lifeguard," but the permit holder must be able to document that the certificate represents the type of training described.

(12) CEUs [~~(continuing education units)~~]-Continuing education units. A standard unit of measure for adult education and training activities. One CEU equals 10 [ten] clock hours of participation in an organized, continuing-education experience, under responsible, qualified direction and instruction. Although a person may obtain a CEU in many of the same settings as clock hours, the CEU provider must meet the criteria established by the International Association for Continuing Education and Training to be able to offer the CEU.

(13) Child--An infant, a toddler, a pre-kindergarten age child, or a school-age child.

(14) Child-care center--A child-care facility that is licensed to care for seven or more children for less than 24 hours per day, at a location other than the permit holder's home. If you were licensed before September 1, 2003, the location of the center could be in the permit holder's home.

(15) Child-care program--The services and activities provided by a child-care center.

(16) Child Development Associate Credential--A credential given by the Council for Professional Recognition to a person working directly with children. The credential is based on assessed competency in several areas of child care and child development.

(17) Clock hour--An actual hour of documented:

(A) Attendance at instructor-led training, such as seminars, workshops, conferences, early childhood classes, and other planned learning opportunities, provided by an individual or individuals [individual/s] as specified in §746.1317(a) of this chapter [title] (relating to Must the training for my caregivers and the director meet certain criteria?); or

(B) Self-instructional training that was created by an individual or individuals [individual/s], as specified in §746.1317(a) [§746.137(a)] and (b) of this chapter, or self-study training.

(18) Corporal punishment--The infliction of physical pain on a child as a means of controlling behavior. This includes spanking, hitting, slapping, or thumping a child.

(19) Days--Calendar days, unless otherwise stated.

(20) Employee--A person a child-care center employs full-time or part-time to work for wages, salary, or other compensation. Employees are all of the child-care center staff, including caregivers, kitchen staff, office staff, maintenance staff, the assistant director, the director, and the owner, if the owner is ever on site at the center or transports a child.

(21) Enrollment--The list of names or number of children who have been admitted to attend a child-care center for any given period of time; the number of children enrolled in a child-care center may vary from the number of children in attendance on any given day.

(22) Entrap--A component or group of components on equipment that forms angles or openings that may [could] trap a child's head by being too small to allow the child's body to pass through, or large enough for the child's body to pass through but too small to allow the child's head to pass through.

(23) Field trips--Activities conducted away from the child-care center.

(24) Food service--The preparation or serving of meals or snacks.

(25) Frequent--More than two times in a 30-day period. Note: For the definition of "regularly or frequently present at an operation" as it applies to background checks, see §745.601 of this title (relating to What words must I know to understand this subchapter?).

(26) Garbage--Waste food or items that when deteriorating cause offensive odors and attract rodents, insects, and other pests.

(27) Group activities--Activities that allow children to interact with other children in large or small groups. Group activities include storytelling, finger plays, show and tell, organized games, and singing.

(28) Health-care professional--A licensed physician, a licensed advanced practice registered nurse (APRN), a licensed vocational nurse (LVN), a licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of the license. This does not include physicians [medical doctors], nurses, or other medical personnel who are not licensed [to practice] in the United States or in the country in which the person practices.

(29) Health check--A visual or physical assessment of a child to identify potential concerns about a child's health, including signs or symptoms of illness and injury, in response to changes in the child's behavior since the last date of attendance.

(30) High school equivalent--[:]

(A) Documentation of a program recognized by the Texas Education Agency (TEA) or other public educational entity

in another state, which offers similar training on reading, writing, and math skills taught at the high school level, such as a General Educational Development (GED) certificate; or

(B) Confirmation that the person received home-schooling that adequately addressed basic competencies such as basic reading, writing, and math skills, which would otherwise have been documented by a high school diploma.

(31) Individual activities--Opportunities for the child to work independently or to be away from the group, but supervised.

(32) Infant--A child from birth through 17 months.

(33) Inflatable--An amusement ride or device, consisting of air-filled structures designed for use by children, as specified by the manufacturer, which may include bouncing, climbing, sliding, or interactive play. They are made of flexible fabric, kept inflated by continuous air flow by one or more blowers, and rely upon air pressure to maintain their shape.

(34) Instructor-led training--Training characterized by the communication and interaction that takes place between the student and the instructor. The training must include an opportunity for the student to interact with the instructor to obtain clarifications and information beyond the scope of the training materials. For such an opportunity to exist, the instructor must communicate with the student in a timely fashion, including answering questions, providing feedback on skills practice, providing guidance or information on additional resources, and proactively interacting with students. Examples of this type of training include classroom training, web-based on-line facilitated learning, video-conferencing, or other group learning experiences.

(35) Janitorial duties--Those duties that involve the cleaning and maintenance of the child-care center building, rooms, furniture, etc. Cleaning and maintenance include such duties as cleansing carpets, washing cots, and sweeping, vacuuming, or mopping a restroom or a classroom. Sweeping up after an activity or mopping up a spill in a classroom that is immediately necessary for the children's safety is not considered a janitorial duty.

(36) Local sanitation official--A sanitation official designated by the city or county government.

(37) Natural environment--Settings that are natural or typical [normal] for all children of the same [an] age [group] without regard to ability or disability. For example, a natural environment for learning social skills is a play group of peers [the primary natural group setting for a toddler with a disability would be a play group or whatever setting exists for toddlers without disabilities].

(38) Permit is no longer valid--For purposes of this chapter, a permit remains valid through the renewal process. A permit only becomes invalid when your center voluntarily closes or must close because of an enforcement action in Chapter 745, Subchapter L of this title [Chapter 745] (relating to Enforcement Actions).

(39) Physical activity (moderate)--Levels of activity for a child that are at intensities faster than a slow walk, but still allow the child to talk easily. Moderate physical activity increases the child's heart rate and breathing rate.

(40) Physical activity (vigorous)--Rhythmic, repetitive physical movement for a child that uses large muscle groups, causing the child to breathe rapidly and only enabling the child to speak in short phrases. Typically, the child's heart rate is substantially increased, and the child is likely to be sweating while engaging in vigorous physical activity.

(41) Pre-kindergarten age child--A child who is three or four years of age before the beginning of the current school year.

(42) [(39)] Premises--Includes the child-care center, any lots on which the center is located, any outside ground areas, any outside play areas, and the parking lot.

(43) [(40)] Regular--On a recurring, scheduled basis. Note: For the definition of "regularly or frequently present at an operation" as it applies to background checks, see §745.601 of this title [(relating to What words must I know to understand this subchapter?).]

(44) [(41)] Restrictive device--Equipment that places the body of a child in a position that may restrict airflow or cause strangulation; usually, the child is placed in a semi-seated position. Examples of restrictive devices are car seats, swings, bouncy seats, and high chairs.

(45) [(42)] Safety belt--A lap belt and any shoulder straps included as original equipment on or added to a vehicle.

(46) [(43)] Sanitize--The use of a product (usually a disinfecting solution) that is registered by the Environmental Protection Agency (EPA) which substantially reduces germs on inanimate objects to levels considered safe by public health requirements. Many bleach and hydrogen peroxide products are EPA-registered. You must follow the product's labeling instructions for sanitizing (paying particular attention to any instructions regarding contact time and toxicity on surfaces likely to be mouthed by children, such as toys and crib rails). For an EPA-registered sanitizing product or disinfecting solution that does not include labelling instructions for sanitizing (a bleach product, for example), you must follow these steps in order:

- (A) Washing with water and soap;
- (B) Rinsing with clear water;
- (C) Soaking in or spraying on a disinfecting solution for at least two minutes. Rinsing with cool water only those items that children are likely to place in their mouths; and
- (D) Allowing the surface or item to air-dry.

(47) [(44)] School-age child--A child who is five years of age and older[-] and is enrolled in or has completed kindergarten [who will attend school at or away from the child-care center in August or September of that year].

(48) Screen time activity--An activity during which a child views media content on a cell or mobile phone, tablet, computer, television, video, film, or DVD. Screen time activities do not include video chatting with a child's family or assistive and adaptive computer technology used by a child with special care needs on a consistent basis.

(49) [(45)] Self-instructional training--Training designed to be used by one individual working alone and at the individual's own pace to complete lessons or modules. Lessons or modules commonly include questions with clear right and wrong answers. An example of this type of training is web-based training. Self-study training is also a type of self-instructional training.

(50) [(46)] Self-study training--Non-standardized training where an individual reads written materials, watches a training video, or listens to a recording to obtain certain knowledge that is required for annual training. Self-study training is limited to three hours of annual training per year.

(51) [(47)] Special care needs--A child with special care needs is a child who has a chronic physical, developmental, behavioral, or emotional condition and who also requires assistance beyond that required by a child generally to perform tasks that are within the typical

chronological range of development, including the movement of large or [and/or] small muscles, learning, talking, communicating, self-help, social skills, emotional well-being, seeing, hearing, and breathing.

(52) [(48)] State or local fire marshal--A fire official designated by the city, county, or state government.

(53) [(49)] Toddler--A child from 18 months through 35 months.

(54) [(50)] Universal precautions--An approach to infection control where all human blood and certain human bodily fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.

(55) [(51)] Water activities--Related to the use of swimming pools, splashing or wading [splashing/wading] pools, sprinkler play, or other bodies of water.

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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Karen Ray
Chief Counsel

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SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 4. OPERATIONAL POLICIES

26 TAC §746.501

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§746.501. *What written operational policies must I have?*

(a) You must develop written operational policies and procedures that at a minimum address each of the following:

- (1) Hours, days, and months of operation;
- (2) Procedures for the release of children;
- (3) Illness and exclusion criteria;
- (4) Procedures for dispensing medication or a statement that medication is not dispensed;
- (5) Procedures for handling medical emergencies;

- (6) Procedures for parental notifications;
- (7) Discipline and guidance that is consistent with Subchapter L of this chapter [title] (relating to Discipline and Guidance). A copy of Subchapter L may be used for your discipline and guidance policy;
- (8) Suspension and expulsion of children;
- (9) Safe sleep policy for infants from birth through 12 months old [or younger] that is consistent with the rules in Subchapter H of this chapter (relating to Basic Requirements for Infants) that relate to sleep requirements and restrictions, including sleep positioning, and crib requirements and restrictions, including mattresses, bedding, blankets, toys, and restrictive devices;
- (10) Meals and food service practices;
- (11) Immunization requirements for children, including tuberculosis screening and testing if required by your regional Texas Department of State Health Services or local health authority;
- (12) Hearing and vision screening requirements;
- (13) Enrollment procedures, including how and when parents will be notified of policy changes;
- (14) Transportation, if applicable;
- (15) Water activities, if applicable;
- (16) Field trips, if applicable;
- (17) Animals, if applicable;
- (18) Promotion of indoor and outdoor physical activity that is consistent with Subchapter F of this chapter (relating to Developmental Activities and Activity Plan); your policies must include:
 - (A) The benefits of physical activity and outdoor play;
 - (B) The duration of physical activity at your operation, both indoor and outdoor;
 - (C) The type of physical activity (structured and unstructured) that children may engage in at your operation;
 - (D) Each setting in which your physical activity program will take place;
 - (E) The recommended clothing and footwear that a child would require in order to participate in physical activities; and
 - (F) A plan to ensure physical activity occurs on days when extreme weather conditions prohibit or limit outdoor play.
- (19) [(18)] Procedures for providing and applying, as needed, insect repellent and sunscreen, including what types will be used, if applicable;
- (20) [(19)] Procedures [The procedures] for parents to review and discuss with the child-care center director any questions or concerns about the policies and procedures of the child-care center;
- (21) [(20)] Procedures [The procedures] for parents to participate in the child-care center's operation and activities;
- (22) [(21)] Procedures [The procedures] for parents to review a copy of the child-care center's most recent Licensing inspection report and how the parent may access the minimum standards online;
- (23) [(22)] Instructions on how a parent may contact the local Licensing office, access the Texas Abuse and Neglect Hotline, and access the HHSC [DFPS] website;
- (24) [(23)] Your emergency preparedness plan;

(25) [(24)] Your provisions to provide a comfortable place with an adult sized seat in your center or within a classroom that enables a mother to breastfeed her child. In addition, your policies must inform parents that they have the right to breastfeed or provide breast milk for their child while in care;

(26) [(25)] Preventing and responding to abuse and neglect of children, including:

- (A) Required annual training for employees;
- (B) Methods for increasing employee and parent awareness of issues regarding child abuse and neglect, including warning signs that a child may be a victim of abuse or neglect and factors indicating a child is at risk for abuse or neglect;
- (C) Methods for increasing employee and parent awareness of prevention techniques for child abuse and neglect;
- (D) Strategies for coordination between the center and appropriate community organizations; and
- (E) Actions that the parent of a child who is a victim of abuse or neglect should take to obtain assistance and intervention, including procedures for reporting child abuse or neglect;

(27) [(26)] Procedures for conducting health checks, if applicable; and

(28) [(27)] Information on vaccine-preventable [Vaccine-preventable] diseases for employees, unless your center is in the home of the permit holder. The policy must address the requirements outlined in §746.3611 of this chapter [title] (relating to What must a policy for protecting children from vaccine-preventable diseases include?).

(b) You must also inform the parents that:

(1) They may visit the child-care center at any time during your hours of operation to observe their child, the program activities, the building, the premises, and the equipment without having to secure prior approval; and

(2) Under the Texas Penal Code any area within 1,000 [4000] feet of a child-care center is a gang-free zone, where criminal offenses related to organized criminal activity are subject to a harsher penalty. You may inform the parents by:

- (A) Providing this information in the operational policies;
- (B) Distributing the information in writing to the parents; or
- (C) Informing the parents verbally as part of an individual or group parent orientation.

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 F. DEVELOPMENTAL
ACTIVITIES AND ACTIVITY PLAN

26 TAC §§746.2203, 746.2205 - 746.2207

STATUTORY AUTHORITY

The amendments and new section authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

The amendments and new section affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§746.2203. *What ~~[Must caregivers have]~~ written activity plans must caregivers follow?*

(a) ~~[Yes.]~~ Your operation, director, or each caregiver must develop a written activity plan that complies with §746.2205 of this subchapter (relating to What must a written activity plan include?).

(b) The caregivers ~~[plan must outline the daily routines and specific activities for each age group and the plan must be followed by the caregiver(s)]~~ responsible for the relevant ~~[that]~~ group of children must follow the plan.

(c) ~~[(b)]~~ The activity plan must include [be inclusive for] all children in the group regardless of special care needs [disability or limiting conditions].

§746.2205. *What must a [should the] written activity plan include?*

(a) A [The] written activity plan must ~~[include at least the following]~~:

(1) Identify the group the activity plan is designed for and list the dates (daily, weekly, or monthly) the plan covers;

(2) Outline the specific daily [A variety of] activities, as required by §746.2206 of this subchapter (relating to What specific activities must I include in a written activity plan?);

~~[(3) Outdoor play in which the children make use of both small and large muscles; both in the morning and afternoon;]~~

~~[(4) A balance of active and quiet play including group and individual activities both indoors and outdoors;]~~

~~[(5) Regular meal and snack times;]~~

~~[(6) Supervised naptimes;]~~

~~[(7) Both;]~~

~~[(A) Child-initiated activities, which are those activities that the child chooses on the child's own initiative, and that foster the child's independence. Child initiated activities require equipment, materials, and supplies to be within the reach of a child; and as required by §746.2206 of this subchapter;]~~

~~[(B) Caregiver-initiated activities, which are those activities that are directed or chosen by the caregiver;]~~

(3) ~~[(8)]~~ Include sufficient [Sufficient] time for activities and routines so that children can progress at their own developmental rate; and

(4) ~~[(9)]~~ Not include [No] long waiting periods between activities or prolonged periods during which children stand or sit.

(b) A [The] written activity plan may include one or more screen time activities, as specified in §746.2207 of this subchapter (relating to May I use a screen time activity with a child?) [(TV, videos, computer, or video games)], if you also include alternative activities for children who [that] do not want to participate.

§746.2206. *What specific activities must I include in a written activity plan?*

You must include these daily activities and the approximate times they will occur in your written activity plan:

(1) A minimum of two daily opportunities for outdoor play, weather permitting, in which a child makes use of both small and large muscles:

(A) An infant birth through 12 months of age may engage in outdoor play for an amount of time as tolerated by the infant; and

(B) An infant 13 months through 17 months of age, a toddler, or a pre-kindergarten age child must engage in outdoor play for a minimum of 60 total minutes daily;

(2) A balance of active and quiet play that incorporates group and individual activities, both indoors and outdoors, and must include:

(A) A minimum of 60 minutes of moderate to vigorous active play for toddlers; and

(B) A minimum of 90 minutes of moderate to vigorous active play for pre-kindergarten age children;

(3) Child-initiated activities where:

(A) The equipment, materials, and supplies are within reach of the child; and

(B) The child chooses the activity on the child's own initiative;

(4) Caregiver-initiated activities that the caregiver directs or chooses, at least two of which must promote movement;

(5) Regular meal and snack times, as specified in Subchapter Q of this chapter (relating to Nutrition and Food Service); and

(6) Supervised naptimes or rest times.

§746.2207. *May I use a screen time activity [TV/video, computer, or video games for activities] with a child [children]?*

(a) You may not use a screen time activity [Activities using TV/video, computer, or video games are prohibited] for a child [children] under the age of two years.

(b) You may use a screen time activity [TV/video, computer, or video games may be used] to supplement, but [may] not [be used] to replace, an activity for a child who is [the activities for children ages] two years old or [and] older that is [provided as] described in §746.2507 of this chapter [title] (relating to What activities must I provide for a toddler [toddlers]?); §746.2607 of this chapter [title] (relating to What activities must I provide for a pre-kindergarten-age child [children]?); and §746.2707 of this chapter [title] (relating to What activities must I provide for a school-age child [children]?).

(c) If you use a screen time activity [TV/video, computer or video games as an activity] for a child at the center [children], you must ensure that the activity [they]:

(1) Is [Are] related to the planned activities that meet educational goals;

(2) Is [Are] age-appropriate; [and]

(3) Does [Do] not exceed one hour [two hours] per day; [.]

(4) Is not used during mealtime, snack times, naptimes, or rest times;

(5) Does not include advertising or violence; and

(6) Is turned off when not in use.

(d) A school-age child may use screen time without restriction for homework.

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 H. BASIC CARE REQUIREMENTS FOR INFANTS

26 TAC §746.2417

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§746.2417. *What activities must I provide for an infant [infants]?*

Daily activities [Activities] for an infant [infants] must include at least the following:

(1) Opportunities [Daily opportunities] for outdoor play, weather permitting, as specified in §746.2206 of this chapter (relating to What specific activities must I include in a written activity plan?) [as weather permits];

(2) Multiple opportunities to explore [each day] that ensure the infant is: [are]

(A) Outside [outside] of the crib; and

(B) Not seated in any restrictive device for more than 15 minutes, unless the infant is eating or being transported;

(3) Opportunities for physical activity, including supervised tummy time, reaching, grasping, pulling up, creeping, crawling, and walking in a safe, clean, uncluttered area;

(4) Opportunities for visual stimulation through nonverbal communication. Examples of age-appropriate equipment include large pictures of faces and familiar objects;[.] simple, soft, washable books

and toys; [.] unbreakable mirrors or mobiles attached to cribs visible from the baby's position; [.] and brightly patterned crib sheets;

(5) Opportunities for auditory stimulation. Examples of age-appropriate equipment or activities include verbal communication, soothing music, and musical or sounding toys;

(6) Opportunities for sensory stimulation. Examples of age-appropriate equipment include surfaces, fabrics, textured toys, washable dolls, and toy animals;

(7) Opportunities for small-muscle development. Examples of age-appropriate equipment include busy boxes, rattles, teething, grasping toys, shaking or squeezing toys, or cloth toys; and

(8) Opportunities for large-muscle development. Examples of age-appropriate equipment or activities include blankets or quilts for floor or supervised tummy time, crib and play gyms, variety of light-weight balls, and pillows or supportive equipment for those learning to sit up.

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 I. BASIC CARE REQUIREMENTS FOR TODDLERS

26 TAC §746.2507

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§746.2507. *What activities must I provide for a toddler [toddlers]?*

Daily activities [Activities] for a toddler [toddlers] must include at least the following:

(1) Opportunities [Daily morning and afternoon opportunities] for outdoor play, [when] weather permitting, as specified in §746.2206 of this chapter (relating to What specific activities must I include in a written activity plan?) [permits];

(2) Opportunities for thinking skills and sensory development. Examples of age-appropriate equipment or activities include shape or item [shape/item] sorting toys, stacking or nesting toys, puz-

zles with less than six pieces, washable board books, washable blocks, and snapping and take-apart toys;

(3) Opportunities for small-muscle development. Examples of age-appropriate equipment or activities include large-size washable crayons and markers, variety of paper and art materials, table or easel for art, large paintbrushes, non-toxic play-dough, large-sized washable toy transportation vehicles, toy animals, and toy people;

(4) Opportunities for large-muscle development. Examples of age-appropriate equipment or activities include low-climbing structures, small riding toys, toys for pushing or pulling, a variety of light-weight balls for indoor and outdoor play, and rhythm instruments;

(5) Opportunities for moderate to vigorous active play, both indoors and outdoors, as specified in §746.2206 of this chapter. Examples of age-appropriate equipment or activities include music, songs, simple games and dramatic or imaginary play that encourage movement such as dancing, running, climbing, stretching, walking, and marching;

(6) Opportunities for language development. Examples of age-appropriate equipment or activities include washable soft animals or puppets, simple picture books, and pictures of familiar items and places;

(7) Opportunities for social and emotional [social/emotional] development. Examples of age-appropriate equipment or activities include dress-up clothes and accessories, housekeeping equipment, unbreakable mirrors, washable dolls with accessories, items for practicing buttoning, zipping, lacing, and snapping, and baskets, tubs, and tote bags (not plastic bags) for carrying and toting; and

(8) Opportunities to develop self-help skills such as toiletting, hand washing, and self-feeding [feeding].

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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Karen Ray

Chief Counsel

Health and Human Services Commission

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SUBCHAPTER J. BASIC CARE REQUIREMENTS FOR PRE-KINDERGARTEN AGE CHILDREN

26 TAC §746.2607

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the

Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§746.2607. What activities must I provide for a pre-kindergarten age child [ehildren]?

Daily activities [Activities] for a pre-kindergarten age child [ehildren] must include at least the following:

(1) Opportunities [Daily morning and afternoon opportunities] for outdoor play, [when] weather permitting, as specified in §746.2206 of this chapter (relating to What specific activities must I include in a written activity plan?) [permits];

(2) Opportunities for thinking skills and sensory development. Examples of age-appropriate equipment or activities include sand and water [sand/water] play, blocks, framed puzzles with up to 30 pieces, variety of large stringing beads, and simple board games;

(3) Opportunities for small-muscle development. Examples of age-appropriate equipment or activities include large non-toxic crayons, markers, paint, water colors and various size brushes, adjustable easels, collage materials, chalkboard and chalk, clay or dough [clay/dough] and tools, workbench and accessories, round end scissors, glue and paste, different types of music and videos, rhythm instruments, and fingerplays;

(4) Opportunities for large-muscle development. Examples of age-appropriate equipment or activities include small wagons, light-weight balls of all sizes, small wheelbarrows, tricycles, push toys, swings, slides, climbing equipment, balance beam, hanging bars, and outdoor building materials;

(5) Opportunities for moderate to vigorous active play, both indoors and outdoors, as specified in §746.2206 of this chapter. Examples of age-appropriate equipment or activities include active games such as tag and hot potato, dancing and creative movement to music and singing, simple games and dramatic or imaginary play that encourages running, stretching, climbing, walking and marching;

(6) Opportunities for language development. Examples of age-appropriate equipment or activities include flannel board stories, puppets, and variety of storybooks, writing materials, and stories on tape;

(7) Opportunities for social and emotional [social/emotional] development. Examples of age-appropriate equipment or activities include dress-up clothes and accessories, mirrors, dolls, simple props for different themes, puppets, transportation toys, play animals, and table games; and

(8) Opportunities to develop self-help skills such as toiletting, hand washing, returning equipment to storage areas or containers, and serving and self-feeding [feeding].

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 K. BASIC CARE REQUIREMENTS FOR SCHOOL-AGE CHILDREN

26 TAC §746.2707

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§746.2707. What activities must I provide for a school-age child [ehildren]?

Daily activities [Activities] for a school-age child [ehildren] must include at least the following:

- (1) Study time for those children who choose to work on homework [assignments];
- (2) Opportunities [Daily morning and afternoon opportunities] for outdoor play, [when] weather permitting [permits];
- (3) Opportunities for thinking skills and sensory development. Examples of age-appropriate equipment or activities include sand and water play; construction materials and blocks [materials/blocks] blocks; puzzles with 50 or more pieces; pattern-making materials, such as wood, paper, plastic, beads, ceramic tiles, cloth, or cardboard; games that contain rules and require some skill or strategy; specific skill development materials, such as rulers, tape measures, telescopes, weather observation equipment, models of the solar system, and microscopes; books; and magazines;
- (4) Opportunities for small-muscle development. Examples of age-appropriate equipment or activities include art and craft materials, such as paints, markers, colored pencils, crayons, clay, weaving, or braiding materials; music and musical instruments of all types; and tape recorders or CD players [tape/CD recorders and players];
- (5) Opportunities for large-muscle development. Examples of age-appropriate equipment or activities include balls and sports equipment, such as kick balls, baseballs, soccer balls, basketballs, skates, and horseshoes; riding equipment, such as kick scooters or skateboards, with kneepads, elbow pads, and helmets; and outdoor and gym equipment, such as slides, swings, climbing apparatus, and upper-body equipment;
- (6) Opportunities for active play both indoors and outdoors. Examples of age-appropriate equipment or activities include active games such as tag and Simon Says [says], dancing and creative movement to music and singing, simple games and dramatic or imagi-

nary play that encourages running, stretching, climbing, and walking; and

(7) Opportunities for social and emotional [social/emotional] emotional development. Examples of age-appropriate equipment or activities include dolls with detailed, realistic accessories; role-play materials, including real equipment for library, hospital, post office, costumes, makeup and disguise materials; puppets and puppet show equipment; transportation toys, such as small vehicles or models; play and art materials; nature materials; and human and animal figurines.

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 L. DISCIPLINE AND GUIDANCE

26 TAC §746.2805

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§746.2805. What types of discipline and guidance or punishment are prohibited?

There must be no harsh, cruel, or unusual treatment of any child. The following types of discipline and guidance are prohibited:

- (1) Corporal punishment or threats of corporal punishment;
- (2) Punishment associated with food, naps, or toilet training;
- (3) Pinching, shaking, or biting a child;
- (4) Hitting a child with a hand or instrument;
- (5) Putting anything in or on a child's mouth;
- (6) Humiliating, ridiculing, rejecting, or yelling at a child;
- (7) Subjecting a child to harsh, abusive, or profane language;
- (8) Placing a child in a locked or dark room, bathroom, or closet; [and]

(9) Withholding active play or keeping a child inside as a consequence for behavior; and

(10) ~~(9)~~ Requiring a child to remain silent or inactive for inappropriately long periods of time for the child's age, including requiring a child to remain in a restrictive device.

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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Chief Counsel

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SUBCHAPTER P. NIGHTTIME CARE

26 TAC §746.3209

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§746.3209. *Must I provide activities for children in nighttime care?*

(a) ~~[Yes.]~~ Activities and routines must meet the unique needs of children in nighttime care. These may include quiet activities, such as homework, reading, puzzles, or board games; time for personal care routines and preparation for sleep, such as brushing teeth, washing hands and face, toileting, and changing clothes; and an evening meal, breakfast, and ~~[and/or]~~ snack as specified in Subchapter Q of this chapter (relating to Nutrition and Food Service).

(b) Screen time activities:

(1) Must meet the requirements of §746.2207 of this chapter (relating to May I use a screen time activity with a child?); and

(2) May not be used in a cot, bed, or mattress, or one hour before bedtime.

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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Chief Counsel

Health and Human Services Commission

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SUBCHAPTER Q. NUTRITION AND FOOD SERVICE

26 TAC §§746.3301, 746.3303, 746.3309, 746.3311, 746.3319

STATUTORY AUTHORITY

The amendment and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

The amendment and new section affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§746.3301. *What are the basic requirements for meal [~~snack~~] and snack times [~~meal~~times]?*

(a) You must serve all children ~~[ready for table food]~~ regular meals and morning and afternoon snacks as specified in this subchapter.

(b) The meals and snacks must follow the meal patterns established by the U.S. Department of Agriculture (USDA) Child and Adult Care Food Program (CACFP) that is administered by the Texas Department of Agriculture. You must follow these patterns regardless of whether you are participating in the program for reimbursement.

(c) ~~[(b)]~~ If you serve breakfast [is served], you do not have to serve a morning snack [is not required].

(d) ~~[(e)]~~ A child must not go more than three hours without a meal or snack being offered, unless the child is sleeping.

(e) ~~[(d)]~~ You must serve enough food to allow children second servings from the vegetable, fruit, grain, and milk groups. [If your child-care center is participating in the Child and Adult Care Food Program (CACFP) administered by the Texas Department of Agriculture, you may elect to meet those requirements rather than those specified in this section.]

(f) ~~[(e)]~~ You must ensure a supply of drinking water is always available to each child ~~[and is served]~~ at every snack, mealtime, and after active play and is served in a safe and sanitary manner.

(g) ~~[(f)]~~ You must not serve beverages with added sugars, such as carbonated beverages, fruit punch, or sweetened milk except for a special occasion such as a holiday or birthday celebration.

(h) ~~[(g)]~~ You must not use food as a reward.

(i) ~~[(h)]~~ You must not serve a child a food identified on the child's food allergy emergency plan, as specified in §746.3817 of this chapter ~~[title]~~ (relating to What is a food allergy emergency plan?).

§746.3303. *How often must I feed a child in my care?*

You must follow the guidelines in Figure 26 TAC §746.3303 when determining how often to feed a child in your care.

Figure: 26 TAC §746.3303

§746.3309. *May parents provide meals and [and/or] snacks for their child instead of my child-care center providing them?*

(a) Yes. However [~~however~~], your enrollment agreement, or an addendum to the agreement, signed by the parent must include a statement that the parent:

(1) Is [is] choosing to provide the child's meals and [and/or] snacks from home; and

(2) Understands [~~the parent understands~~] the child-care center is not responsible for its nutritional value or for meeting the child's daily food needs.

(b) If the parent provides a meal but not a snack, you are responsible for providing a snack as specified in this subchapter [~~§746.3307 of this title (relating to What kind of foods must I serve for snacks?)~~].

(c) You must provide safe and proper storage and service of the individual meals and snacks provided by parents.

(d) Snacks provided by a parent must not be shared with other children, unless:

(1) A parent is providing baked goods for a celebration or party being held at the center; and

(2) You ensure that the shared snacks meet the needs of children who require special diets.

§746.3311. *What are the requirements for a child [How should my child-care center meet the needs of children] who requires a [require] special diet [diets] or does [do] not want to eat foods that the center serves [we serve]?]*

(a) You must have written approval from a health-care professional, [physician] or a registered or licensed dietician, in the child's records to serve a child a therapeutic or special diet. You must give this information to all employees preparing and serving food.

(b) You must discuss recurring eating problems with the child's parent.

(c) You may encourage but must not force children to eat.

(d) You must not serve nutrient concentrates and supplements such as protein powders, liquid protein, vitamins, minerals, and other nonfood substances without written instructions from a health-care professional [physician].

§746.3319. *Must I serve meals family style?*

(a) You [~~No, you~~] do not have to use family-style meal service, although all meals and snack times must:

(1) Be unhurried;

(2) Allow children to feed themselves according to their developmental level; and

(3) [~~2~~] Include adult supervision of children.

(b) If meals and snacks are served family style, caregivers must supervise children to prevent cross-contamination of the food.

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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◆ ◆ ◆
26 TAC §§746.3303, 746.3305, 746.3307, 746.3315, 746.3316
STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

The amendment repeals affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§746.3303. *How often must I feed a child in my care?*

§746.3305. *How do I know what a child's daily food needs are?*

§746.3307. *What kind of foods must I serve for snacks?*

§746.3315. *May I serve powdered milk?*

§746.3316. *May I serve fruit or vegetable juices?*

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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CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§747.123, 747.501, 747.2103, 747.2105, 747.2317, 747.2407, 747.2507, 747.2607, 747.2705, 747.3009, 747.3101, 747.3109, 747.3111, and 747.3119; new §§747.2102, 747.2104, and 747.3103; and the repeal of §§747.3103, 747.3105, 747.3107, 747.3115 and 747.3116 in Title 26, Texas Administrative Code, Chapter 747, Minimum Standards for Child-Care Homes.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Senate Bill (S.B.) 952, 86th Legislature, Regular Session, 2019, which adds Subsections 42.042(e-3), (e-4), and (e-5) to the Texas Human Resources Code (HRC). The new Subsections require HHSC Child Care Regulation (CCR) to align the minimum standards for child-

care centers and registered child-care homes with standards for physical activity and screen time in *Caring for Our Children* (CFOC), 4th edition, and with the nutrition standards of the federal Child and Adult Care Food Program (CACFP).

CCR is extending these requirements to School-Age and Before and After-School Programs in Chapter 744 and Licensed Homes in Chapter 747, so that the minimum standards for physical activity, nutrition, and screen time are congruent throughout Chapters 744, 746, and 747.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §747.123 (1) updates grammar, language, and punctuation for better readability and understanding in the definitions for "caregiver," "certified lifeguard," "CEUs," "clock hour," "entrap," "high school equivalent," "special care needs," and "water activities"; (2) updates citations in the definitions for "child-care home," "clock hour," "permit is no longer valid," "regular," and "self-study training"; (3) updates the definition for "health-care professional" to clarify the definition excludes only persons not licensed in the U.S. or in the country in which the person practices; (4) updates the definition for "natural environment" to be consistent with the current definition in the Individuals with Disabilities Education Act, and provides an example to aid in clarity; (5) adds definitions for "physical activity (moderate)," "physical activity (vigorous)," and "screen time activity"; (6) adds a definition for "pre-kindergarten age child" to be consistent with other Licensing chapters; (7) updates the definition for "school-age child" for better understanding and consistency with other Licensing chapters; and (8) updates the numbering of the definitions accordingly.

The proposed amendment to §747.501 (1) updates language for better readability and increased consistency throughout the chapter; (2) adds a requirement for child-care homes to include operational policies for physical activity; (3) corrects the title of the agency; (4) updates citations; and (5) updates the numbering of rules accordingly.

Proposed new §747.2102 adds a requirement for child-care homes to develop and follow a written activity plan that includes the components of proposed §747.2103 and includes all children.

The proposed amendment to §747.2103 (1) clarifies in the rule title that an activity plan must be written; (2) updates the rule to require that the written activity plan include the dates of the plan as well as the daily activities that are required by proposed §747.2104; (3) deletes the requirement for creative activities as it is included elsewhere in the chapter; (4) deletes requirements for outdoor play, active and quiet play, regular meal and snack times, supervised naptimes, and child and caregiver initiated activities, as these requirements are now included in proposed §747.2104; and (4) adds language regarding screen time activities to specify an activity plan may include one or more screen time activities.

Proposed new §747.2104 outlines the activities a child-care home must include in a written activity plan and provides options for outdoor and active play based on the number of caregivers and ages of children in care. Requirements include outdoor play, moderate to vigorous active play, and caregiver-initiated activities that promote movement. Also included are previous activity requirements for quiet play, child-initiated activities, regular meal and snack times, and supervised naptimes or rest times that were incorporated from proposed §747.2103.

The proposed amendment to §747.2105 (1) replaces the phrase "TV/video, computer, or video games" with "screen time activity"; (2) prohibits screen time activities for children under age two; (3) reorganizes and clarifies language in the rule for better readability and understanding; (4) updates citations; (5) adds restrictions to screen time activities offered at the child-care home, including (A) reducing the amount of allotted screen time from two hours to one hour per day, and (B) requiring that screen time activities relate to educational goals, are not used during mealtimes, snack times, naptimes, or rest times, do not include advertising or violence, and are turned off when not in use; and (5) adds flexibility for school-age children to use screen time without restriction for homework.

The proposed amendment to §747.2317 (1) updates the rule title for accuracy; (2) specifies that all required activities, not just outdoor play, be offered daily; (3) updates language and punctuation for consistency throughout the chapter; (4) adds a reference to proposed §747.2104 regarding outdoor play requirements; (5) adds a 15 minute time limit on an infant sitting in restricted devices, unless the infant is eating or being transported; and (6) adds "supervised tummy time" as a physical activity for infants and as an example of a large muscle activity.

The proposed amendment to §747.2407 (1) updates the rule title for accuracy; (2) specifies that all required activities, not just outdoor play, be offered daily; (3) updates language and punctuation for better readability and consistency throughout the chapter; (4) adds a reference to proposed §747.2104 regarding outdoor and active play requirements; and (5) expands active play requirements to include "moderate to vigorous active play."

The proposed amendment to §747.2507 (1) updates the rule title for accuracy; (2) specifies that all required activities, not just outdoor play, be offered daily; (3) updates language and punctuation for better readability and consistency throughout the chapter; (4) adds a reference to proposed §747.2104 regarding outdoor and active play requirements; and (5) expands active play requirements to include "moderate to vigorous active play."

The proposed amendment to §747.2607 (1) updates the rule title for accuracy; (2) specifies that all required activities, not just outdoor play, be offered daily; and (3) updates language and punctuation for better readability and consistency throughout the chapter.

The proposed amendment to §747.2705 (1) expands the list of prohibited discipline and guidance measures to include withholding active play or keeping a child inside as a consequence for behavior; and (2) updates the numbering of rules accordingly.

The proposed amendment to §747.3009 (1) updates language for better readability and consistency with other chapters and (2) adds requirements for screen time activities for children in nighttime care, including (A) a reference to the requirements in proposed §747.2105; and (B) the restriction of screen time activities in bed or one hour before bedtime.

The proposed amendment to §746.3101 (1) updates the rule title for better readability and understanding; (2) reorganizes and clarifies language in the rule for better readability and understanding; (3) adds the requirement for all child-care homes to follow the meal patterns established by the CACFP; (4) incorporates the requirement to allow second servings from certain food groups previously required in repealed §747.3105; (5) deletes language that allowed child-care homes to follow either CACFP meal patterns or Licensing meal requirements; (6) updates a citation; and (7) updates the numbering of rules accordingly.

The proposed repeal of §747.3103 deletes the rule as no longer necessary, because the content of the rule has been re-proposed in new §747.3103.

Proposed new §747.3103 (1) incorporates requirements from repealed §747.3103 into a chart to reorganize and clarify the rule and (2) restructures certain requirements in repealed §747.3103, regarding how much food to offer based on hours in care.

The proposed repeal of §747.3105 deletes the rule as no longer necessary, because all child-care homes are now required to follow the CACFP meal patterns, as noted in proposed §747.3101.

The proposed repeal of §747.3107 deletes the rule as no longer necessary, because all child-care homes are now required to follow the CACFP meal patterns, as noted in proposed §747.3101.

The proposed amendment to §747.3109 (1) updates grammar and punctuation for consistency throughout the chapter; (2) adds that a parent may sign an addendum to the enrollment agreement so that the parent may provide meals and snacks; and (3) updates a citation.

The proposed amendment to §747.3111 (1) updates the rule title for better readability and understanding; and (2) replaces "physician" with "health-care professional" for consistency throughout the chapter.

The proposed repeal of §747.3115 deletes the rule as no longer necessary, because all child care homes are now required to follow the CACFP meal patterns, as noted in proposed §747.3101.

The proposed repeal of §747.3116 deletes the rule as no longer necessary, because all child care centers are now required to follow the CACFP meal patterns, as noted in proposed §747.3101.

The proposed amendment to §747.3119 (1) updates language in the rule for better readability; (2) adds a requirement that meals and snack times be unhurried to increase consistency with other chapters; (3) adds a requirement that children feed themselves according to their developmental level, to be consistent with current best practice in child-care; and (4) updates the numbering of rules accordingly.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will expand and repeal existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and

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

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

Trey Wood has also determined that there could be an adverse economic effect on small and micro-businesses, but no adverse economic effect on rural communities.

Chapter 2006 of the Texas Government Code defines a small business as one that is for-profit with fewer than 100 employees. A micro-business is one that is for-profit with fewer than 20 employees. Based on data obtained from the 2019 CCR Data Book, CCR estimates that there are approximately 4,914 Licensed and Registered Child-Care Homes required to comply with the rules. These homes are limited to caring for a maximum of 12 children. CCR assumes that all Licensed and Registered Child-Care Homes (4,914 homes) are for-profit homes with less than 20 employees and qualify as small businesses and micro-businesses.

The projected economic impact on micro-businesses is limited to proposed §747.501, as this rule requires an operational policy to be developed. Some operations have indicated a labor cost to bring the policy into compliance with the proposed rule. HHSC does not have sufficient information to determine these costs as they will vary greatly with individual business structure and experience.

HHSC determined that there are no alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities that are consistent with ensuring the health and safety of children attending child-care in Texas.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Jean Shaw, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be that the health of children attending child-care in Texas will be supported by physical activity, screen time, and nutrition standards that are aligned with national standards and best practices for early childhood education.

Trey Wood has also determined that for the first five years the rules are in effect, there could be an anticipated cost for persons required to comply with proposed §747.501. The proposed rule requires child-care operations to develop an operational policy to include physical activity components.

Some operations have indicated a labor cost to bring the policy into compliance with the proposed rule. HHSC does not have sufficient information to determine these costs, as they will vary greatly with operation type and individual business structure.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist

in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Aimee Belden by email at Aimee.Belden@hhsc.state.tx.us.

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCLRules@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R024" in the subject line.

SUBCHAPTER A. PURPOSE, SCOPE, AND DEFINITIONS

DIVISION 3. DEFINITIONS

26 TAC §747.123

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§747.123. What do certain words and terms mean when used in this chapter?

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or another subchapter or unless the context clearly indicates otherwise. In addition, the following words and terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

- (1) Activity space--An area or room used for children's activities.
- (2) Administrative and clerical duties--Duties that involve the operation of a child-care home, such as bookkeeping, enrolling children, answering the telephone, and collecting fees.
- (3) Admission--The process of enrolling a child in a child-care home. The date of admission is the first day the child is physically present in the home.
- (4) Adult--A person 18 years old and older.

(5) After-school hours--Hours before and after school, and days when school is not in session, such as school holidays, summer vacations, and teacher in-service days.

(6) Age-appropriate--Activities, equipment, materials, curriculum, and environment that are developmentally consistent with the chronological age of the child being served.

(7) Attendance--When referring to a child's attendance, the physical presence of a child at the child-care home on any given day or at any given time, as distinct from the child's enrollment in the child-care home.

(8) Bouncer seat--A stationary seat designed to provide gentle rocking or bouncing motion by an infant's movement, or by battery-operated movement. This type of equipment is designed for an infant's use from birth until the child can sit up unassisted.

(9) Caregiver--A person who is counted in the child to caregiver ~~[child/caregiver]~~ caregiver ratio, whose duties include the supervision, guidance, and protection of a child. As used in this chapter, a caregiver must meet the minimum education, work experience, and training qualifications required under Subchapter D of this chapter (relating to Personnel).

(10) Certified Child-Care Professional Credential--A credential given by the National Early Childhood Program Accreditation to a person working directly with children. The credential is based on assessed competency in several areas of child care and child development.

(11) Certified lifeguard--A person who has been trained in life saving and water safety by a qualified instructor, from a recognized organization that [which] awards a certificate upon successful completion of the training. The certificate is not required to use the term "lifeguard," but you must be able to document that the certificate represents the type of training described.

(12) CEUs [~~(continuing education units)~~]--Continuing education units. A standard unit of measure for adult education and training activities. One CEU equals 10 ~~[ten]~~ clock hours of participation in an organized, continuing-education experience, under responsible, qualified direction and instruction. Although a person may obtain a CEU in many of the same settings as clock hours, the CEU provider must meet the criteria established by the International Association for Continuing Education and Training to be able to offer the CEU.

(13) Child--An infant, a toddler, a pre-kindergarten age child, or a school-age child.

(14) Child-care home--A registered or licensed child-care home, as specified in §747.113 of this chapter ~~[title]~~ (relating to What is a registered child-care home?) or §747.115 of this chapter ~~[title]~~ (relating to What is a licensed child-care home?). This term includes the program, home, grounds, furnishings, and equipment.

(15) Child-care program--The services and activities provided by a child-care home.

(16) Child Development Associate Credential--A credential given by the Council for Professional Recognition to a person working directly with children. The credential is based on assessed competency in several areas of child care and child development.

(17) Clock hour--An actual hour of documented:

(A) Attendance at instructor-led training, such as seminars, workshops, conferences, early childhood classes, and other planned learning opportunities, provided by an individual or individuals ~~[individual/s]~~ as specified in §747.1315(a) of this chapter ~~[title]~~ (relating to Must child-care training meet certain criteria?); or

(B) Self-instructional training that was created by an individual or individuals [individual/s], as specified in §747.1315(a) and (b) of this chapter, or self-study training.

(18) Corporal punishment--The infliction of physical pain on a child as a means of controlling behavior. This includes spanking, hitting, slapping, or thumping a child.

(19) Days--Calendar days, unless otherwise stated.

(20) Employee--An assistant caregiver, substitute caregiver, or any other person a child-care home employs full-time or part-time to work for wages, salary, or other compensation, including kitchen staff, office staff, maintenance staff, or anyone hired to transport a child.

(21) Enrollment--The list of names or number of children who have been admitted to attend a child-care home for any given period of time; the number of children enrolled in a child-care home may vary from the number of children in attendance on any given day.

(22) Entrap--A component or group of components on equipment that forms angles or openings that may trap a child's head by being too small to allow the child's body to pass through, or large enough for the child's body to pass through but too small to allow the child's head to pass through.

(23) Field trips--Activities conducted away from the child-care home.

(24) Food service--The preparation or serving of meals or snacks.

(25) Frequent--More than two times in a 30-day period. Note: For the definition of "regularly or frequently present at an operation" (child-care home) as it applies to background checks, see §745.601 of this title (relating to What words must I know to understand this subchapter?).

(26) Garbage--Waste food or items that when deteriorating cause offensive odors and attract rodents, insects, and other pests.

(27) Group activities--Activities that allow children to interact with other children in large or small groups. Group activities include storytelling, finger plays, show and tell, organized games, and singing.

(28) Health-care professional--A licensed physician, a licensed advanced practice registered nurse (APRN), a licensed vocational nurse (LVN), a licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of the license. This does not include physicians, [medical doctors,] nurses, or other medical personnel who are not licensed [to practice] in the United States or in the country in which the person practices.

(29) Health check--A visual or physical assessment of a child to identify potential concerns about a child's health, including signs or symptoms of illness and injury, in response to changes in the child's behavior since the last date of attendance.

(30) High school equivalent-- [:]

(A) Documentation of a program recognized by the Texas Education Agency (TEA) or other public educational entity in another state, which offers similar training on reading, writing, and math skills taught at the high school level, such as a General Educational Development (GED) certificate; or

(B) Confirmation that the person received home-schooling that adequately addressed basic competencies such as basic reading, writing, and math skills, which would otherwise have been documented by a high school diploma.

(31) Individual activities--Opportunities for the child to work independently or to be away from the group, but supervised.

(32) Infant--A child from birth through 17 months.

(33) Inflatable--An amusement ride or device, consisting of air-filled structures designed for use by children, as specified by the manufacturer, which may include bouncing, climbing, sliding, or interactive play. They are made of flexible fabric, kept inflated by continuous air flow by one or more blowers, and rely upon air pressure to maintain their shape.

(34) Instructor-led training--Training characterized by the communication and interaction that takes place between the student and the instructor. The training must include an opportunity for the student to interact with the instructor to obtain clarifications and information beyond the scope of the training materials. For such an opportunity to exist, the instructor must communicate with the student in a timely fashion, including answering questions, providing feedback on skills practice, providing guidance or information on additional resources, and proactively interacting with students. Examples of this type of training include, classroom training, web-based on-line facilitated learning, video-conferencing, or other group learning experiences.

(35) Janitorial duties--Those duties that involve the cleaning and maintenance of the child-care home, building, rooms, furniture, etc. Cleaning and maintenance include such duties as cleansing carpets, washing cots, and sweeping, vacuuming, or mopping a restroom or a classroom. Sweeping up after an activity or mopping up a spill in a classroom that is immediately necessary for the children's safety is not considered a janitorial duty.

(36) Natural environment--Settings that are natural or typical [normal] for all children of the same [an] age [group] without regard to ability or disability. For example, a natural environment for learning social skills is a play group of peers. [the primary natural group setting for a toddler with a disability would be a play group or whatever setting exists for toddlers without disabilities.]

(37) Permit is no longer valid--For purposes of this chapter, a permit remains valid through the renewal process. A permit only becomes invalid when your:

(A) Home voluntarily closes;

(B) Home must close because of an enforcement action in [Subchapter L of] Chapter 745, Subchapter L of this title (relating to Enforcement Actions);

(C) Permit expires according to §745.481 of this title (relating to When does my permit expire?); or

(D) Home must close because its permit is automatically revoked according to the Human Resources Code §§42.048(e), 42.052(i), or 42.054(f).

(38) Physical activity (moderate)--Levels of activity for a child that are at intensities faster than a slow walk, but still allow the child to talk easily. Moderate physical activity increases the child's heart rate and breathing rate.

(39) Physical activity (vigorous)--Rhythmic, repetitive physical movement for a child that uses large muscle groups, causing the child to breathe rapidly and only enabling the child to speak in short phrases. Typically, the child's heart rate is substantially increased, and the child is likely to be sweating while engaging in vigorous physical activity.

(40) Pre-kindergarten age child--A child who is three or four years of age before the beginning of the current school year.

(41) [(38)] Regular--On a recurring, scheduled basis. Note: For the definition of "regularly or frequently present at an operation" (child-care home) as it applies to background checks, see §745.601 of this title [(relating to What words must I know to understand this subchapter?)].

(42) [(39)] Restrictive device--Equipment that places the body of a child in a position that may restrict airflow or cause strangulation; usually, the child is placed in a semi-seated position. Examples of restrictive devices are car seats, swings, bouncy seats, and high chairs.

(43) [(40)] Safety belt--A lap belt and any shoulder straps included as original equipment on or added to a vehicle.

(44) [(41)] Sanitize--The use of a product (usually a disinfecting solution) that is registered by the Environmental Protection Agency (EPA) which substantially reduces germs on inanimate objects to levels considered safe by public health requirements. Many bleach and hydrogen peroxide products are EPA-registered. You must follow the product's labelling instructions for sanitizing (paying particular attention to any instructions regarding contact time and toxicity on surfaces likely to be mouthed by children, such as toys and crib rails). For an EPA-registered sanitizing product or disinfecting solution that does not include labelling instructions for sanitizing (a bleach product, for example), you must follow these steps in order:

- (A) Washing with water and soap;
- (B) Rinsing with clear water;

(C) Soaking in or spraying on a disinfecting solution for at least two minutes. Rinsing with cool water only those items that children are likely to place in their mouths; and

- (D) Allowing the surface or item to air-dry.

(45) [(42)] School-age child--A child who is five years of age and older[;] and is enrolled in or has completed kindergarten [who will attend school at or away from the child-care home beginning in August or September of that year].

(46) Screen time activity--An activity during which a child views media content on a cell or mobile phone, tablet, computer, television, video, film, or DVD. Screen time activities do not include video chatting with a child's family or assistive and adaptive computer technology used by a child with special care needs on a consistent basis.

(47) [(43)] Self-instructional training--Training designed to be used by one individual working alone and at the individual's own pace to complete lessons or modules. Lessons or modules commonly include questions with clear right and wrong answers. An example of this type of training is web-based training. Self-study training is also a type of self-instructional training.

(48) [(44)] Self-study training--Non-standardized training where an individual reads written materials, watches a training video, or listens to a recording to obtain certain knowledge that is required for annual training. Self-study training is limited to three hours of annual training per year [; see §747.1305(g) and §747.1309(j) of this title (relating to What topics must annual training for caregivers include? and What topics must my annual training include?); respectively].

(49) [(45)] Special care needs--A child with special care needs is a child who has a chronic physical, developmental, behavioral, or emotional condition and who also requires assistance beyond that required by a child generally to perform tasks that are within the typical chronological range of development, including the movement of large or [and/or] small muscles, learning, talking, communicating, self-help, social skills, emotional well-being, seeing, hearing, and breathing.

(50) [(46)] State or local fire marshal--A fire official designated by the city, county, or state government.

(51) [(47)] Toddler--A child from 18 months through 35 months.

(52) [(48)] Universal precautions--An approach to infection control where all human blood and certain human bodily fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.

(53) [(49)] Water activities--Related to the use of swimming pools, splashing or wading [splashing/wading] pools, sprinkler play, or other bodies of water.

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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Karen Ray

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Health and Human Services Commission

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SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 4. OPERATIONAL POLICIES

26 TAC §747.501

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§747.501. *What written operational policies must I have?*

You must develop written operational policies and procedures that at a minimum address each of the following:

- (1) Procedure for the release of children;
- (2) Illness and exclusion criteria;
- (3) Procedures for dispensing medication, or a statement that medication is not dispensed;
- (4) Procedures for handling medical emergencies;
- (5) Discipline and guidance policy that is consistent with Subchapter L of this title (relating to Discipline and Guidance). A copy of Subchapter L may be used for your discipline and guidance policy;
- (6) Safe sleep policy for infants from birth through 12 months old [or younger] that is consistent with the rules in Subchapter

[subchapter] H of this chapter (relating to Basic Requirements for Infants) that relate to sleep requirements and restrictions, including sleep positioning, and crib requirements and restrictions, including mattresses, bedding, blankets, toys, and restrictive devices;

(7) Animals, if applicable;

(8) Promotion of indoor and outdoor physical activity that is consistent with Subchapter F of this chapter (relating to Developmental Activities and Activity Plan). Your policies must include:

(A) The duration of physical activity at your home, both indoor and outdoor;

(B) The recommended clothing and footwear that a child would require to participate in physical activities; and

(C) A plan to ensure physical activity occurs on days when extreme weather conditions prohibit or limit outdoor time.

(9) [(8)] Procedures [The procedures] for parents to visit the child-care home any time during your hours of operation to observe their child, program activities, the home, the premises, and equipment without having to secure prior approval;

(10) [(9)] Procedures [The procedures] for parents to review a copy of the child-care home's most recent Licensing inspection report and how the parent may access the minimum standards online;

(11) [(10)] Instructions on how a parent may contact the local Licensing office, access the Texas Abuse and Neglect Hotline, and access the HHSC [DFPS] website;

(12) [(11)] Your emergency preparedness plan;

(13) [(12)] Procedures for conducting health checks, if applicable; and

(14) [(13)] Information on vaccine-preventable [Vaccine-preventable] diseases for employees, if your licensed child-care home is not located in your own residence. The policy must address the requirements outlined in §747.3411 of this chapter [title] (relating to What must a policy for protecting children from vaccine-preventable diseases include?).

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 F. DEVELOPMENTAL ACTIVITIES AND ACTIVITY PLAN

26 TAC §§747.2102 - 747.2105

STATUTORY AUTHORITY

The amendments and new section authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provi-

sion of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

The amendments and new section affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§747.2102. What written activity plans must I follow?

(a) You must develop and follow a written activity plan that complies with §747.2103 of this subchapter (relating to What must a written activity plan include?).

(b) The activity plan must include all children in the group regardless of special care needs.

§747.2103. What must a written [the] activity plan include?

(a) A written [Your] activity plan must [include at least the following]:

(1) List the dates (daily, weekly, or monthly) the plan covers;

[(1) A variety of creative activities that encourages the use of a child's imagination. Creative activities include dramatic play, block building, stories and books, science and nature activities, and music and art activities;]

(2) Outline the specific daily activities, as required by §747.2104 of this subchapter (relating to What specific activities must I include in a written activity plan?);

[(2) Outdoor play in which the children make use of both small and large musesels, both in the morning and afternoon;]

[(3) A balance of active and quiet play, including group and individual activities both indoors and outdoors;]

[(4) Regular meal and snack times as specified in Subchapter Q of this Chapter (relating to Nutrition and Food Service);]

[(5) Supervised naptimes, or a period of rest for those children too old to nap;]

[(6) A variety of:

[(A) Child-initiated activities, which are those activities that the child chooses on the child's own initiative, and that foster the child's independence. Child initiated activities require equipment, materials, and supplies to be within the reach of a child; and]

[(B) Caregiver-initiated activities, which are those activities that are directed or chosen by the caregiver;]

(3) [(7)] Include sufficient [Sufficient] time for activities and routines so that children can progress at their own developmental rate; and

(4) [(8)] Not include [No] long waiting periods between activities or prolonged periods during which children stand or sit.

(b) A written [The] activity plan may include one or more screen time activities, as specified in §747.2105 of this subchapter (relating to May I use a screen time activity with a child?) [(T.V., videos, computer, or video games)], if you also include alternative activities for children who [that] do not want to participate.

§747.2104. What specific activities must I include in a written activity plan?

(a) You must include these daily activities in your written activity plan:

(1) A minimum of two daily opportunities for outdoor play, weather permitting, in which a child makes use of both small and large muscles;

(2) A balance of active and quiet play that incorporates group and individual activities both indoors and outdoors;

(3) Child-initiated activities where:

(A) The equipment, materials, and supplies are within reach of the child; and

(B) The child chooses the activity on the child's own initiative;

(4) Caregiver-initiated activities that the caregiver directs or chooses, at least two of which must promote movement;

(5) Regular meal and snack times as specified in Subchapter Q of this Chapter (relating to Nutrition and Food Service); and

(6) Supervised naptimes or rest times.

(b) Your written activity plan must also include the approximate times that each child may engage in outdoor play and moderate to vigorous active play, as provided in Figure 26 TAC §747.2104(b). Figure: 26 TAC §747.2104(b)

(c) Children in your care must be able to engage in outdoor and active play for the times provided in subsection (b) of this section if your home:

(1) Has more than one caregiver; or

(2) Only cares for one age range of children described in subsection (b)(1) and (b)(2) of this section. For example, if your home does not care for an infant birth through 12 months of age, you must allow the children in your care to engage in outdoor play for 60 total minutes.

(d) If your home only has one caregiver and cares for more than one age range of children described in subsection (b)(1) and (b)(2) of this section, children in care must engage in outdoor and active play for the time required for the younger age group.

§747.2105. May I use a screen time activity [TV/video, computer, and video games for activities] with a child [children]?

(a) You may not use a screen time activity for a child under the age of two years.

(b) [(a)] You may use a screen time activity [TV/video, computer, and video games may be used] to supplement, but [may] not [be used] to replace, an activity with [the activities for] a child who is two years old or older that is [children] described in [§747.2317 of this title (relating to What activities must I provide for infants?); §747.2407 of this chapter [title] (relating to What activities must I provide for a toddler [toddlers]?), §747.2507 of this chapter [title] (relating to What activities must I provide for a pre-kindergarten age child [children]?), and §747.2607 of this chapter [title] (relating to What activities must I provide for a school-age child [children]?).

(c) [(b)] If you use a screen time activity [TV/video, computer, or video games as an activity] for a child at your home [children], you must ensure that the activity [they]:

(1) Is [Are] related to the planned activities that meet educational goals;

(2) Is age-appropriate; [Are age appropriate; and]

(3) Does [Do] not exceed one hour [two hours] per day;

(4) Is not used during mealtime, snack times, naptimes, or rest times;

(5) Does not include advertising or violence; and

(6) Is turned off when not in use.

(d) A school-age child may use screen time without restriction for homework.

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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Karen Ray

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SUBCHAPTER H. BASIC CARE REQUIREMENTS FOR INFANTS

26 TAC §747.2317

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§747.2317. What activities must I provide for an infant [infants]?

Daily activities [Activities] for an infant [infants] must include at least the following:

(1) Opportunities [Daily opportunities] for outdoor play, [as] weather permitting, as specified in §747.2104 of this chapter (relating to What specific activities must I include in a written activity plan?) [permits];

(2) Multiple opportunities to explore [each day] that ensure the infant is: [are]

(A) Outside [outside] of the crib; and

(B) Not seated in any restrictive device for more than 15 minutes, unless the infant is eating or being transported;

(3) Opportunities for physical activity, including supervised tummy time, reaching, grasping, pulling up, creeping, crawling, and walking in a safe, clean, uncluttered area;

(4) Opportunities for visual stimulation through nonverbal communication. Examples of age-appropriate equipment include large pictures of faces and familiar objects; [s] simple, soft, washable books and toys; [s] unbreakable mirrors or mobiles attached to cribs visible from the baby's position; [s] and brightly patterned crib sheets;

(5) Opportunities for auditory stimulation. Examples of age-appropriate equipment or activities include verbal communication, soothing music, and musical or sounding toys;

(6) Opportunities for sensory stimulation. Examples of age-appropriate equipment include surfaces, fabrics, textured toys, [øf] washable dolls, and toy animals;

(7) Opportunities for small-muscle development. Examples of age-appropriate equipment or activities include busy boxes, rattles, teethingers, grasping toys, shaking or squeezing toys, or cloth toys; and

(8) Opportunities for large-muscle development. Examples of age-appropriate equipment or activities include blankets or quilts for floor or supervised tummy time, crib and play gyms, variety of light-weight balls, or pillows or supportive equipment for those learning to sit up.

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 I. BASIC CARE REQUIREMENTS FOR TODDLERS

26 TAC §747.2407

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§747.2407. *What activities must I provide for a toddler [toddlers]?*

Daily activities [Activities] for a toddler [toddlers] must include at least the following:

(1) Opportunities [Daily morning and afternoon opportunities] for outdoor play, [when] weather permitting, as specified in §747.2104 of this chapter (relating to What specific activities must I include in a written activity plan?) [permits];

(2) Opportunities for thinking skills and sensory development. Examples of age-appropriate equipment or activities include shape or item [shape/item] sorting toys, stacking or nesting toys, puzzles with less than six pieces, washable board books, washable blocks, snapping and take apart toys;

(3) Opportunities for small-muscle development. Examples of age-appropriate equipment or activities include large-size washable crayons and markers, variety of paper and art materials, table or easel for art, large paintbrushes, non-toxic play-dough, toddler-sized washable cars and trucks, toy animals, and toy people;

(4) Opportunities for large-muscle development. Examples of age-appropriate equipment or activities include low climbing structures, small riding toys, toys for pushing or pulling, variety of light-weight balls for indoor [indoors] and outdoor [outdoors] play, and rhythm instruments;

(5) Opportunities for moderate to vigorous active play, both indoors and outdoors, as specified in §747.2104 of this chapter. Examples of age-appropriate activities include music, songs, simple games and dramatic or imaginary play that encourage movement such as dancing, running, climbing, stretching, walking, and marching;

(6) Opportunities for language development. Examples of age-appropriate equipment or activities include washable, soft animals or puppets, simple picture books, and pictures of familiar items and places;

(7) Opportunities for social and emotional [social/emotional] development. Examples of age-appropriate equipment or activities include dress-up [dress up] clothes and accessories, housekeeping equipment, unbreakable mirrors, washable dolls with accessories, items for practicing buttoning, zipping, lacing, and snapping, and baskets, tubs, and tote bags (not plastic bags) for carrying and toting; and

(8) Opportunities to develop self-help skills such as toiletting, hand washing, and self-feeding [feeding themselves].

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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Karen Ray

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SUBCHAPTER J. BASIC CARE REQUIREMENTS FOR PRE-KINDERGARTEN AGE CHILDREN

26 TAC §747.2507

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§747.2507. *What activities must I provide for a pre-kindergarten age child [ehildren]?*

Daily activities [Activities] for a pre-kindergarten age child [ehildren] must include at least the following:

(1) Opportunities [Daily morning and afternoon opportunities] for outdoor play, [when] weather permitting, as specified in §747.2104 of this chapter (relating to What specific activities must I include in a written activity plan?) [permits];

(2) Opportunities for thinking skills and sensory development. Examples of age-appropriate equipment or activities include sand and water [sand/water] play, blocks, framed puzzles with up to 30 pieces, variety of large[-] stringing beads, and simple board games;

(3) Opportunities for small-muscle development. Examples of age-appropriate equipment or activities include large non-toxic crayons, markers, paint, water colors and various size brushes, adjustable easels, collage materials, chalkboard and chalk, clay or dough [clay/dough] and tools, workbench and accessories, round-end scissors, glue and paste, different types of music and videos, rhythm instruments, and fingerplays [finger plays];

(4) Opportunities for large-muscle development. Examples of age-appropriate equipment or activities include small wagons, light-weight balls of all sizes, small wheelbarrows, tricycles, push toys, swings, slides, climbing equipment, balance beam, hanging bars, and outdoor building materials;

(5) Opportunities for moderate to vigorous active play, both indoors and outdoors, as specified in §747.2104 of this chapter. Examples of age-appropriate active play include active games such as tag and hot potato, dancing and creative movement to music and singing, simple games and dramatic or imaginary play that encourages running, stretching, climbing, walking, and marching;

(6) Opportunities for language development. Examples of age-appropriate equipment or activities include flannel board stories, puppets, and variety of storybooks, writing materials, and stories on tape;

(7) Opportunities for social and emotional [social/emotional] emotional development. Examples of age-appropriate equipment or activities include dress up clothes and accessories, mirrors, dolls, simple props for different themes, puppets, transportation toys, toy animals, and table games; and

(8) Opportunities to develop self-help skills such as toileting, hand washing, returning equipment to storage areas or containers, and serving and self-feeding [feeding themselves].

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 November 6, 2020.

TRD-202004698

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: December 20, 2020

For further information, please call: (512) 438-3269



SUBCHAPTER K. BASIC CARE REQUIREMENTS FOR SCHOOL-AGE CHILDREN

26 TAC §747.2607

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§747.2607. *What activities must I provide for a school-age child [ehildren]?*

Daily activities [Activities] for a school-age child [ehildren] must include at least the following:

(1) Study time for those who choose to do homework;

(2) Opportunities [Daily morning and afternoon opportunities] for outdoor play, [when] weather permitting [permits];

(3) Opportunities for thinking skills and sensory development. Examples of age-appropriate equipment or activities include sand and water play; construction materials and blocks [materials/blocks]; puzzles with 50 or more pieces; pattern-making materials, such as wood, paper, plastic, beads, ceramic tiles, cloth, or cardboard; games that contain rules and require some skill or strategy; specific skill development materials such as rulers, tape measures, telescopes, weather observation equipment, models of the solar system, and microscopes; books; and magazines;

(4) Opportunities for small-muscle development. Examples of age-appropriate equipment or activities include art and craft materials, such as paints, markers, colored pencils, crayons, clay, weaving, or braiding materials; music and musical instruments of all types; and tape recorders or CD [tape/CD recorders and] players;

(5) Opportunities for large-muscle development. Examples of age-appropriate equipment or activities include [through] balls and sports equipment, such as kick balls, baseballs, soccer balls, basketballs, skates, and horseshoes; riding equipment, such as kick scooters or skateboards [-; skate boards], with knee pads, elbow pads, and helmets; and outdoor and gym equipment, such as slides, swings, climbing apparatus, and upper-body equipment;

(6) Opportunities for active play both indoors and outdoors. Examples of age-appropriate active play include active games such as tag and Simon Says [says], dancing and creative movement to music and singing, simple games, and dramatic or imaginary play that encourages running, stretching, climbing, and walking; and

(7) Opportunities for social and emotional [social/emotional] development. Examples of age-appropriate equipment or activities include dolls with detailed, realistic accessories; role-play materials, including real equipment for library, hospital, post office, costumes, makeup, and disguise materials; puppets and puppet show equipment; transportation toys, such as small vehicles or models; play and art materials; nature materials; and human and animal figurines.

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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Karen Ray

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Health and Human Services Commission

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For further information, please call: (512) 438-3269



SUBCHAPTER L. DISCIPLINE

26 TAC §747.2705

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§747.2705. What types of discipline and guidance or punishment are prohibited?

There must be no harsh, cruel, or unusual treatment of any child. The following types of discipline and guidance are prohibited:

- (1) Corporal punishment or threats of corporal punishment;
- (2) Punishment associated with food, naps, or toilet training;
- (3) Pinching, shaking, or biting a child;
- (4) Hitting a child with a hand or instrument;
- (5) Putting anything in or on a child's mouth;
- (6) Humiliating, ridiculing, rejecting, or yelling at a child;
- (7) Subjecting a child to harsh, abusive, or profane language;
- (8) Placing a child in a locked or dark room, bathroom, or closet; and
- (9) Withholding active play or keeping a child inside as a consequence for behavior; and

(10) ~~(9)~~ Requiring a child to remain silent or inactive for inappropriately long periods of time for the child's age, including requiring a child to remain in a restrictive device.

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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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



SUBCHAPTER P. NIGHTTIME CARE

26 TAC §747.3009

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§747.3009. Must I provide activities for children in nighttime care?

(a) Activities and routines must meet the unique needs of children in nighttime [~~night~~] care. These may include quiet activities, such as homework, reading, puzzles, or board games; time for personal care routines and preparation for sleep, such as brushing teeth, washing hands and face, toileting, and changing clothes; and an evening meal, breakfast, and [~~and/or~~] snack as specified in Subchapter Q of this chapter (relating to Nutrition and Food Service).

(b) Screen time activities:

(1) Must meet the requirements in §747.2105 of this chapter (relating to May I use a screen time activity with a child?); and

(2) May not be used in a cot, bed, or mattress, or one hour before bedtime.

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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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



SUBCHAPTER Q. NUTRITION AND FOOD SERVICE

26 TAC §§747.3101, 747.3103, 747.3109, 747.3111, 747.3119

STATUTORY AUTHORITY

The amendments and new section are authorized by Texas Government Code §531.0055, which provides that the Executive

Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

The amendments and new section affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§747.3101. What are the basic requirements for meal [snack] and snack times [mealtimes]?

(a) You must serve all children ~~[ready for table food]~~ regular meals and morning and afternoon snacks as specified in this subchapter.

(b) The meals and snacks must follow the meal patterns established by the U.S. Department of Agriculture (USDA) Child and Adult Care Food Program (CACFP) that is administered by the Texas Department of Agriculture. You must follow these patterns regardless of whether you are participating in the program for reimbursement.

(c) ~~[(1)]~~ If you serve breakfast [is served], you do not have to serve a morning snack [is not required].

(d) ~~[(2)]~~ A child must not go more than three hours without a meal or snack being offered, unless the child is sleeping.

~~[(3) If your child-care home is participating in the Child and Adult Care Food Program (CACFP) administered by the Texas Department of Agriculture, you may elect to meet those requirements rather than those specified in this subsection.]~~

(e) You must serve enough food to allow children second servings from the vegetable, fruit, grain, and milk groups.

(f) ~~[(b)]~~ You must ensure a supply of drinking water is always available to each child [and is served] at every snack, mealtime, and after active play and is served in a safe and sanitary manner.

(g) ~~[(e)]~~ You must not serve beverages with added sugars, such as carbonated beverages, fruit punch, or sweetened milk except for a special occasion such as a holiday or birthday celebration.

(h) ~~[(d)]~~ You must not use food as a reward.

(i) ~~[(e)]~~ You must not serve a child a food identified on the child's food allergy emergency plan as specified in §747.3617 of this chapter [title] (relating to What is a food allergy emergency plan?).

§747.3103. How often must I feed a child in my care?

You must follow the guidelines in Figure 26 TAC §747.3103 when determining how often to feed a child in your care.

Figure: 26 TAC §747.3103

§747.3109. May parents provide meals and [and/or] snacks for their children instead of my child-care home providing them?

(a) Yes. However [; however], your enrollment agreement, or an addendum to the agreement, signed by the parent must include a statement that the parent:

(1) Is [is], choosing to provide the child's meals and [and/or] snacks from home; and

(2) Understands [the parent understands] the child-care home is not responsible for its nutritional value or for meeting the child's daily food needs. [;]

(b) If the parent provides a meal but not a snack, you are responsible for providing a snack as specified in this subchapter. [§747.3107 of this title (relating to What kind of foods must I serve for snacks?);]

(c) You must provide safe and proper storage and service of the individual meals and snacks provided by parents. [; and]

(d) Snacks provided by a parent must not be shared with other children, unless:

(1) A parent is providing baked goods for a celebration or party being held at the home; and

(2) You ensure that the shared snacks meet the needs of children who require special diets.

§747.3111. What are the requirements for a child [How do I meet the needs of children] who requires a [require] special diet [diets] or does [do] not want to eat foods I serve?

(a) You must have written approval from a health-care professional [physician] or a registered or licensed dietician in the child's records to serve a child a therapeutic or special diet.

(b) You must discuss recurring eating problems with the child's parent.

(c) You may encourage, but not force children to eat.

(d) You must not serve nutrient concentrates and supplements such as protein powders, liquid protein, vitamins, minerals, and other nonfood substances without written instructions from a health-care professional.

§747.3119. Must I serve meals family style?

(a) You [No, you] do not have to use family style meal service, although all meals and snack times must:

(1) Be unhurried;

(2) Allow children to feed themselves according to their developmental level; and

(3) Include [include] adult supervision of children.

(b) If meals and snacks are served family style, you must supervise children to prevent cross-contamination of the food.

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 November 6, 2020.

TRD-202004704

Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



26 TAC §§747.3103, 747.3105, 747.3107, 747.3115, 747.3116

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

The repeals affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§747.3103. *How often must I feed children in my care?*

§747.3105. *How do I know what a child's daily food needs are?*

§747.3107. *What kind of foods must I serve for snacks?*

§747.3115. *May I serve powdered milk?*

§747.3116. *May I serve fruit or vegetable juices?*

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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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES SUBCHAPTER C. PROGRAM SERVICES DIVISION 4. HEALTH CARE SERVICES

37 TAC §380.9183

The Texas Juvenile Justice Department (TJJD) proposes to amend §380.9183, concerning Health Care Services for Youth.

SUMMARY OF CHANGES

The amendments to §380.9183 will clarify the manner in which youth in halfway houses receive medical care, including that: 1) nurses provide case management; 2) medical, psychiatric, and dental services are completed by providers in the community; and 3) fees for services are covered through Medicaid or by TJJD.

Changes to §380.9183 will also: 1) specify that several statements regarding health care arrangements apply to TJJD institutions but not to TJJD halfway houses; 2) clarify that procedures for medical care outside of TJJD's normal criteria must be approved by the TJJD medical director in consultation with the executive director *or designee*; 3) establish that the *facility administrator* (instead of the medical provider or psychiatric provider) may authorize medical and pharmacological intervention when required in a life-threatening situation; and 4) clarify that TJJD staff immediately notifies a youth's parent/guardian if *emergency surgery* is recommended.

In addition, changes in §380.9183 relating to medical concerns reported by youth will include the following: 1) clarifying that at *TJJD institutions*, staff contact a nurse if a youth reports a health

concern or if the staff is concerned about a youth's health; and 2) adding that, at TJJD halfway houses, staff call the primary care physician or 911.

FISCAL NOTE

Emily Anderson, Chief Financial Officer, has determined that, for each year of the first five years the amended rule is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the rule.

PUBLIC BENEFITS/COSTS

Scott LePor, TJJD Medical Director, has determined that, for each year of the first five years the amended rule is in effect, the public benefit anticipated as a result of administering the rule will be to provide for better transitioning of youth from halfway houses back into the community.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. No private real property rights are affected by adoption of this rule.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the amended rule is in effect, the rule will have the following impacts.

- (1) The amended rule does not create or eliminate a government program.
- (2) The amended rule does not require the creation or elimination of employee positions at TJJD.
- (3) The amended rule does not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The amended rule does not impact fees paid to TJJD.
- (5) The amended rule does not create a new regulation.
- (6) The amended rule does not expand, limit, or repeal an existing regulation.
- (7) The amended rule does not increase or decrease the number of individuals subject to the rules' applicability.
- (8) The amended rule will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas, 78711, or via e-mail to policy.proposals@tjtd.texas.gov.

STATUTORY AUTHORITY

The amended rule is proposed under Section 242.003, Human Resources Code, which requires TJJD to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

No other statute, code, or article is affected by this proposal.

§380.9183. *Health Care Services for Youth.*

- (a) Purpose. This rule establishes basic criteria, standards, and guidelines for delivering health care services to youth assigned to residential facilities operated by the Texas Juvenile Justice Department (TJJD) and to certain identified contract-care [eontract care] programs.

(b) Definitions. See §380.9175 of this title for definitions of certain terms in this rule.

(c) Criteria for Medical Care.

(1) Medical providers provide primary medical care according to the following criteria [established by the TJJJ medical director]:

- (A) lifesaving treatment;
- (B) limb-saving treatment;
- (C) reasonable care to relieve pain;
- (D) reasonable care for a degenerative condition;
- (E) preventive services, including age-appropriate immunizations; and
- (F) treatment for medical conditions that, [which] if left untreated, could result in serious bodily harm.

(2) Procedures outside these criteria for medical care must be approved by the TJJJ medical director in consultation with TJJJ's executive director or designee.

(d) Criteria for Dental Care.

(1) The dentist ensures [assures] equitable access to basic preventive services and essential treatment procedures when disease, significant malfunction, or injury occurs. Treatment priorities, in order, are:

- (A) emergency/urgent--treatment for conditions that will worsen or become life-threatening or acute without immediate intervention;[-]
- (B) interceptive--intermediate treatment for asymptomatic advanced hard- or soft-tissue disease or loss of masticatory function;[-]
- (C) rehabilitative--definitive treatment for chronic hard- or soft-tissue disease or loss of masticatory function; and[-]
- (D) elective or special needs.

(2) The attending dentist may deviate from this prioritization if necessary to protect a youth's overall health.

(3) TJJJ provides neither orthodontic braces nor maintenance of orthodontic braces for youth. However, if a youth has orthodontic braces when admitted to TJJJ, TJJJ provides necessary care to prevent injury to the mouth.

(A) The youth's parent/guardian is responsible for the maintenance and adjustment of orthodontic braces after notification of TJJJ policy.

(B) TJJJ staff may assist youth and parents/guardians in making orthodontic appointments, if needed. Appointments are usually made with the treating orthodontist, although a local orthodontist who agrees to examine and treat the youth may be used.

(C) TJJJ staff may provide transportation for orthodontic care if the staff can accommodate traveling the distance required to return a youth to the treating orthodontist.

(e) Services.

(1) TJJJ administers at least the following services, either directly or through contractual arrangements:

- (A) physical examinations and treatment;
- (B) dental examinations and treatment;

- (C) treatment of injuries;
- (D) mental health evaluations;
- (E) immunizations;
- (F) laboratory and diagnostic tests;
- (G) administration of prescription or non-prescription medication for an illness or condition;

(H) substance use disorder [chemical dependency] evaluations; and

(I) examination following use of physical force and/or following decontamination resulting from using oleoresin capsicum spray (pepper spray).

(2) Each TJJJ institution [TJJJ-operated facility] and certain identified contract-care [contract care] programs have a health services administrator designated to act as the local health authority. The local health authority provides coordination and/or supervision of medical services for youth.

(3) Contract health care professionals provide health care services in the infirmary at each TJJJ institution for youth who need increased observation or medical care, but who do not need hospitalization.

(4) At TJJJ [In] institutions:

(A) nurses are available seven days a week to triage youth health concerns and respond to on-site [onsite] emergencies;

(B) nurses conduct a regularly scheduled [regularly-scheduled] sick call five days a week to address non-urgent[;] sick-call requests;

(C) medical and psychiatric providers deliver services on-site [onsite] or via telemedicine or [r] telepsychiatry at least once weekly; and

(D) dental staff provide [provides] services on-site [on site] on a routine basis.

(5) At TJJJ [In] halfway houses:

(A) nurses provide case management; and

~~[(A) nurses provide on-site case management and consultation on a regularly scheduled basis and are available by telephone as needed;]~~

(B) medical, psychiatric, and dental services are completed by providers in the community. Fees for services are covered through Medicaid funding or by TJJJ.

~~[(B) medical and psychiatric providers deliver services to youth via telemedicine/telepsychiatry and/or at the nearest institution as needed; and]~~

~~[(C) dental services are provided at the nearest institution.]~~

(6) When admitted to TJJJ, all youth receive a:

- (A) health screening;
- (B) physical examination, unless a physical examination was performed and documented within the past 90 days;
- (C) mental health screening and evaluation;
- (D) dental screening and examination, unless a dental screening and examination were [have been] performed and documented within the past 180 days; and

(E) vision and hearing screening.

(7) If the vision screening indicates the youth needs a new prescription for eyewear, state-issued prescription eyewear is provided. Youth placed in high-restriction facilities are prohibited from wearing contact lenses, except when medically necessary and when glasses are ineffective for correcting vision.

(8) If the youth fails the hearing screening, the youth is referred to an audiologist for evaluation and treatment as needed.

(9) If the dentist determines a dental cleaning is necessary, the procedure is scheduled, performed by a dental hygienist, and documented in the electronic health [~~medical~~] record.

(10) Youth receive physical and dental examinations annually and treatment as needed, in accordance with (c) and (d) above.

(11) In facilities housing females, obstetrical and gynecological services are available on-site or by referral.

(12) Family planning services are available by referral for youth who request information.

(f) Limitation of Services.

(1) TJJD is not responsible for medical costs incurred by a youth:

(A) on furlough or conditional placement status with a parent, relative, or guardian;

(B) on parole status, unless the youth's placement is in a TJJD-operated/contract residential program;

(C) on escape or abscond [~~escape/abseond~~] status; or

(D) in a detention center or a county facility.

(2) Pharmaceutical, cosmetic, and medical experiments are prohibited. This policy does not preclude individual treatment of a youth who needs a specific medical procedure that is not generally available.

(g) Health Care Requirements.

(1) Facilities housing more than 25 youth must have a central medical room with medical examination facilities.

(2) When youth are in the infirmary, they are supervised by a TJJD staff member at all times.

(3) The physician or dentist at each facility is the decision authority for clinical decisions under their respective areas of responsibility.

(4) The medical provider develops the youth's medical plan of care.

(5) At TJJD institutions, a [A] medical provider is available once each week to provide health care services to youth and to respond to youths' health concerns.

(6) Youth complaints about services they did or did not receive are processed through the youth grievance system in accordance with §380.9331 of this title.

(7) At [In] each TJJD institution [~~TJJD-operated residential program~~], the superintendent, health services administrator, medical provider, and dentist must have regularly scheduled meetings to review health care services at the facility, including any concerns, problems, or barriers related to providing health care. If concerns are identified, a corrective action plan is developed, implemented, and monitored to ensure that issues are adequately addressed.

(8) A youth who, by history or examination, has a serious or life-threatening medical condition may be placed on medical alert status by a medical provider. A nurse may temporarily place a youth on medical alert status until a medical provider can be notified.

(9) The facility administrator [~~medical provider or psychiatric provider~~] may authorize medical and pharmacological intervention when required in a life-threatening situation, consistent with §380.9181 of this title. When intervention requires psychotropic medication, the authorization must meet criteria in §380.9192 of this title.

(10) Each TJJD-operated residential program and certain identified contract-care [~~contract care~~] programs post emergency medical procedures including, but not limited to, how to contact the on-call nurse, if applicable, and medical, dental, and psychiatric providers in an emergency.

(11) Pharmaceutical procedures comply with federal and state laws and accepted industry practices about the acquisition, storage, administration, and documentation of prescription drugs.

(h) Medical Concerns Reported by Youth.

(1) Any youth may request a sick call for the evaluation of health care concerns.

(2) At TJJD institutions, [TJJD] staff [may] contact a nurse if a youth reports a health concern or if the staff is concerned about a youth's health status. At TJJD halfway houses, staff call the primary care physician or 911.

(i) Emergency Room Referrals. At TJJD institutions, emergency [Emergency] room referrals may be authorized only by a medical provider, health services administrator or designee, or the medical or nursing director. In a life-threatening situation, non-medical personnel may contact 911 in accordance with medical emergency procedures.

(j) Notification. TJJD staff immediately notifies a youth's parent/guardian [~~parents or guardians~~] if a serious illness or injury occurs or emergency surgery is recommended.

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 November 3, 2020.

TRD-202004609

Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: December 20, 2020

For further information, please call: (512) 490-7278



PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

37 TAC §651.209

The Texas Forensic Science Commission ("Commission") proposes an amendment to 37 Texas Administrative Code §651.209, which describes the requirements for forensic analyst license reinstatement. The amendments provide an exemption from elevated coursework requirements for license candidates who have expired and are reinstating a license after an indefinite period of absence from employment at an accredited laboratory. Candidates must be employed at an accredited laboratory to be eligible for licensure. Under the current rules, if a person departs employment from an accredited laboratory and his or her license expires, the candidate may be subject to elevated college coursework and other requirements that did not exist when the candidate was initially licensed. The amendments are necessary to reflect adoptions made by the Commission at its October 23, 2020, quarterly meeting. The amendments are made in accordance with the Commission's forensic analyst licensing authority under Code of Criminal Procedure, Article 38.01 §4-a, which directs the Commission to adopt rules to establish the qualifications for a forensic analyst license and the Commission's rulemaking authority under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Code of Criminal Procedure Article 38.01.

Fiscal Note. Leigh M. Tomlin, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the proposed amendment is in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no anticipated effect on local employment or the local economy as a result of the proposal. The amendment does not expand any forensic analyst licensing requirement under the current program, but rather exempts license candidates reinstating a license from any elevated coursework requirements that took effect after the candidate was initially licensed.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the proposed amendment does not impose any direct costs or fees on municipalities in rural communities.

Public Benefit/Cost Note. Leigh M. Tomlin, Associate General Counsel of the Texas Forensic Science Commission has also determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefit will be that licensees with a gap in employment for family reasons, inability to find employment or otherwise, will not be penalized with elevated coursework requirements but will only be subject to requirements in place at the time they were initially licensed.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f). Leigh M. Tomlin, Associate General Counsel of the Texas Forensic Science Commission, has determined that the proposed amendment will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person or laboratory who is required to comply with the rule as proposed. The rule does not propose any change in fees or cost for licensure.

Takings Impact Assessment. Leigh M. Tomlin, Associate General Counsel of the Texas Forensic Science Commission, has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute

a taking or require a takings impact assessment under the Government Code §2007.043.

Government Growth Impact Statement. Leigh M. Tomlin, Associate General Counsel of the Texas Forensic Science Commission, has determined that for the first five-year period, implementation of the proposed amendment will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. Pursuant to the analysis required by Government Code §2001.221(b), 1) the proposed rule does not create or eliminate a government program; 2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions; 3) implementation of the proposed rule does not increase or decrease future legislative appropriations to the agency; 4) the proposed rule does not require an increase or decrease in fees paid to the agency; 5) the proposed rule does not create a new regulation; 6) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and 7) the proposed rule has a neutral effect on the state's economy. The amendment does not expand any forensic analyst licensing requirement under the current program, but rather exempts license candidates reinstating a license from any elevated coursework requirements that took effect after the candidate was initially licensed.

Request for Public Comment. The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by December 20, 2020, to be considered by the Commission.

Statutory Authority. The amendment is proposed under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Article 38.01, and Article 38.01 §4-a(d), which directs the Commission to adopt rules to establish the qualifications for a forensic analyst license.

Cross reference to statute. The adoption affects 37 Texas Administrative Code §651.209.

§651.209. Forensic Analyst and Forensic Technician License Reinstatement.

(a) The Commission may reinstate an inactive or expired [analyst's] Forensic Analyst or Technician License upon fulfillment of the following requirements by the licensee:

(1) submission of a signed Did Not Practice form provided by the Commission, stating that the licensee has not represented himself or herself as a forensic analyst in Texas, whether through testimony, interpretation, technical review or forensic analysis during the inactive license period;

(2) payment of a \$220 license reinstatement fee; and

(3) updating of current continuing forensic education requirements status with the Commission.

(b) Specific Coursework and Minimum Education Requirements. A Forensic Analyst or Technician reinstating a license under this section are subject to specific coursework and minimum education requirements in place at the time the Commission initially granted his or her license.

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 November 4, 2020.

TRD-202004634

Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

Earliest possible date of adoption: December 20, 2020

For further information, please call: (512) 784-0037



37 TAC §651.216

The Texas Forensic Science Commission ("Commission") proposes an amendment to 37 Texas Administrative Code §651.216 which describes disciplinary actions the Commission may take against a license holder or applicant for a license. The amendments specify factors the Commission may consider in determining whether to take adverse action against a license holder or applicant. The amendments are necessary to reflect adoptions made by the Commission at its October 23, 2020, quarterly meeting. The amendments are made in accordance with the Commission's forensic analyst licensing authority under Code of Criminal Procedure, Article 38.01 §4-a, which directs the Commission to adopt rules to establish the qualifications for a forensic analyst license and the Commission's rulemaking authority under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Code of Criminal Procedure Article 38.01.

Fiscal Note. Leigh M. Tomlin, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the proposed amendment is in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no anticipated effect on local employment or the local economy as a result of the proposal. The amendments do not expand any forensic analyst licensing requirement or fee, but rather specify certain factors the Commission may consider in determining the appropriate disciplinary action against a license holder or license applicant who commits misconduct or violates a rule or order of the Commission. Any adverse action taken by the Commission does not include the assessment of fees or fines or impose any additional costs.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the proposed amendment does not impose any direct costs or fees on municipalities in rural communities.

Public Benefit/Cost Note. Leigh M. Tomlin, Associate General Counsel of the Texas Forensic Science Commission has also determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefit will be the establishment of clear notice for license holders and license applicants regarding the factors considered by the Commission in determining whether to assess disciplinary action or deny a license. Any adverse action taken by the Commission does not include the assessment of fees or fines or impose any additional costs.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f). Leigh M. Tomlin, Associate General Counsel of the Texas Forensic Science Commission, has determined that the proposed amendment will not have an ad-

verse economic effect on any small or micro business because there are no anticipated economic costs to any person or laboratory who is required to comply with the rule as proposed. The amendments do not expand any forensic analyst licensing requirement or fee, but rather specify certain factors the Commission may consider in determining the appropriate disciplinary action against a license holder or denial of a license. Any adverse action taken by the Commission does not include the assessment of fees or fines or impose any additional costs.

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

Government Growth Impact Statement. Leigh M. Tomlin, Associate General Counsel of the Texas Forensic Science Commission, has determined that for the first five-year period, implementation of the proposed amendment will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. Pursuant to the analysis required by Government Code §2001.221(b), 1) the proposed rule does not create or eliminate a government program; 2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions; 3) implementation of the proposed rule does not increase or decrease future legislative appropriations to the agency; 4) the proposed rule does not require an increase or decrease in fees paid to the agency; 5) the proposed rule does not create a new regulation; 6) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and 7) the proposed rule has a neutral effect on the state's economy. The amendment do not expand any forensic analyst licensing requirement under the current program, but rather expressly addresses factors already considered in disciplinary action determinations by the Commission to provide better clarity to license holders and license applicants.

Request for Public Comment. The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by December 20, 2020, to be considered by the Commission.

Statutory Authority. The amendment is proposed under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Article 38.01, and Article 38.01 §4-a(d), which directs the Commission to adopt rules to establish the qualifications for a forensic analyst license.

Cross reference to statute. The adoption affects 37 Texas Administrative Code §651.216.

§651.216. Disciplinary Action.

(a) The Commission may take disciplinary action against a license holder or applicant for a license under certain limited circumstances as set forth in Article 38.01, Code of Criminal Procedure.

(b) **Professional Misconduct Finding.** On a determination by the Commission that a license holder or applicant for a license has committed professional misconduct in accordance with the definition provided in §651.202 of this subchapter (relating to Definitions) and under Article 38.01, Code of Criminal Procedure or violated Article 38.01,

Code of Criminal Procedure, or a rule or order of the Commission under Article 38.01, Code of Criminal Procedure, the Commission may:

- (1) revoke or suspend the person's license;
- (2) refuse to renew the person's license;
- (3) reprimand the license holder; or
- (4) deny the person a license.

(c) Probation. The Commission may place on probation a person whose license is suspended. If a license suspension is probated, the Commission may require the license holder to:

- (1) report regularly to the Commission on matters that are the basis of the probation; or
- (2) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the Commission in those areas that are the basis of the probation.

(d) Factors in Determining Possible Adverse Action.

(1) In determining the appropriate disciplinary action against a license holder or in assessing whether a prospective applicant shall be granted a license, the Commission may consider the following factors:

- (A) the seriousness of the violation;
- (B) the prevalence of misconduct by the individual;
- (C) the individual's conduct history, including any investigative history by the Commission;
- (D) the harm or potential harm to the laboratory or criminal justice system as a whole;
- (E) attempted concealment of the act by the individual;
- (F) any other relevant factors.

(2) The Commission considers the following factors in determining whether a less severe or less restrictive disciplinary action is warranted:

- (A) candor in addressing the violation, including self-reported and voluntary admissions of the misconduct or violation;
- (B) acknowledgement of wrongdoing and willingness to cooperate with the Commission;
- (C) changes made by the individual to ensure compliance and prevent future misconduct;
- (D) rehabilitative potential;
- (E) other relevant circumstances reducing the seriousness of the misconduct; or
- (F) other relevant circumstances lessening responsibility for the misconduct.

(3) The license holder or license applicant shall have the burden to present evidence regarding any mitigating factors that may apply.

(4) This rule shall not be construed to deny any licensee or applicant subject to disciplinary action by the Commission the right to introduce mitigating evidence in a hearing before the Judicial Branch Certification Commission. This rule also shall not be construed to deny the Texas Forensic Science Commission the right to introduce any evidence supporting any of the factors described above in a hearing before the Judicial Branch Certification Commission

(e) [(d)] Disciplinary Proceedings by the Judicial Branch Certification Commission. The Commission shall give written notice by certified mail of a determination described by subsection (a) of this section to a license holder who is the subject of the determination. The notice must:

- (1) include a brief summary of the alleged misconduct or violation;
 - (2) state the disciplinary action taken by the Commission;
- and

(3) inform the license holder of the license holder's right to a hearing before the Judicial Branch Certification Commission on the occurrence of the misconduct or violation, the imposition of the disciplinary action, or both.

(f) [(e)] Hearing Request. Not later than the 20th day after the date the license holder receives the notice under subsection (d) of this section, the license holder may request a hearing by submitting a written request to the Judicial Branch Certification Commission. If the license holder fails to timely submit a request, the Commission's disciplinary action becomes final and is not subject to review by the Judicial Branch Certification Commission.

(g) [(f)] Judicial Branch Certification Commission Hearing. If the license holder requests a hearing, the Judicial Branch Certification Commission shall conduct a hearing to determine whether there is substantial evidence to support the determination under subsection (a) of this section that the license holder committed professional misconduct or violated this subchapter or a Commission rule or order under this subchapter. If the Judicial Branch Certification Commission upholds the determination, the Judicial Branch Certification Commission shall determine the type of disciplinary action to be taken. The Judicial Branch Certification Commission shall conduct the hearing in accordance with the procedures provided by Subchapter B, Chapter 153, Government Code, as applicable, and the rules of the Judicial Branch Certification Commission.

(h) [(g)] License Status.

(1) If a license holder makes timely and sufficient application for the renewal of a license, the existing license does not expire until the application has been finally determined by the Commission. If the application is denied or the terms of the new license are limited, the existing license does not expire until the last day for seeking review of a Commission decision or a later date fixed by order of the Judicial Branch Certification Commission or Administrative Regional Presiding Judges.

(2) A revocation, suspension, annulment, or withdrawal of a license is not effective unless, before institution of Commission proceedings:

(A) the Commission gives notice by personal service or by registered or certified mail to the license holder of facts or conduct alleged to warrant the intended action; and

(B) the license holder is given an opportunity to show compliance with all requirements of law for the retention of the license.

(3) A Forensic Analyst License remains valid unless it expires without timely application for renewal, is amended, revoked, suspended, annulled or withdrawn, or the denial of a renewal application becomes final. The term or duration of a license is tolled during the period the license is subjected to review by the Judicial Branch Certification Commission or Administrative Regional Presiding Judges. However, the term or duration of a license is not tolled if, during review by the Judicial Branch Certification Commission or Administra-

tive Regional Presiding Judges, the licensee engages in the activity for which the license was issued.

(i) [(H)] Interpreters for Deaf or Hearing Impaired Parties and Witnesses.

(1) In an appeal of a disciplinary action by the Commission, the Commission shall provide an interpreter whose qualifications are approved by the Texas Department of Assistive and Rehabilitative Services to interpret the proceedings for a party or subpoenaed witness who is deaf or hearing impaired.

(2) In this section, "deaf or hearing impaired" means having a hearing impairment, whether or not accompanied by a speech impairment, that inhibits comprehension of the proceedings or communication with others.

(j) [(H)] Informal Disposition of Disciplinary Action Appeals. Unless precluded by law, an informal disposition may be made of an appeal of a disciplinary action by the Commission by:

- (1) stipulation;
- (2) agreed settlement;
- (3) consent order; or
- (4) default.

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 November 4, 2020.

TRD-202004635

Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

Earliest possible date of adoption: December 20, 2020

For further information, please call: (512) 784-0037



37 TAC §651.221

The Texas Forensic Science Commission ("Commission") proposes an amendment to 37 Texas Administrative Code §651.221, which describes the requirements for a laboratory license issued for purposes of ensuring the availability of uncommon forensic analysis, timeliness of forensic analysis, and/or service to counties with limited access to forensic analysis. Under the current rule, a laboratory (and its employed analysts) may qualify for licensure under this provision where either (1) a Texas customer requests a type of forensic analysis that is not widely available in accredited forensic laboratories; or (2) the request is necessary to ensure the availability of timely forensic analyses in counties for which access to forensic analyses is limited. The Commission amends the provision to remove qualifying provision (2), because the provision is no longer necessary due to prior rule revisions addressing the same issue. The Commission offers a *De Minimis* Texas Casework license program (37 Texas Administrative Code §651.220) that became effective August 24, 2020, for laboratories that may have otherwise qualified under this provision. The Commission also offers a Temporary License (37 Texas Administrative Code §651.211) for forensic analysts who may have otherwise qualified for licensure under this category. The amendments are necessary to reflect adoptions made by the Commission

at its October 23, 2020, quarterly meeting. The amendments are made in accordance with the Commission's forensic analyst licensing authority under Code of Criminal Procedure, Article 38.01 §4-a, which directs the Commission to adopt rules to establish the qualifications for a forensic analyst license and the Commission's rulemaking authority under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Code of Criminal Procedure Article 38.01.

Fiscal Note. Leigh M. Tomlin, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the proposed amendment is in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no anticipated effect on local employment or the local economy as a result of the proposal. The amendment does not expand any forensic analyst licensing requirement under the current program, but rather removes the option for a laboratory (and its employed analysts) to qualify for licensure where a request for the forensic analysis is necessary to ensure the availability of timely forensic analyses in counties for which access to forensic analyses is limited. This option is already available under the *De Minimis* Texas Casework license program and the Commissions Temporary License program.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the proposed amendment does not impose any direct costs or fees on municipalities in rural communities.

Public Benefit/Cost Note. Leigh M. Tomlin, Associate General Counsel of the Texas Forensic Science Commission has also determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefit will be better clarity to laboratories and forensic analysts on the appropriate category of licensure. The Commission offers the *De Minimis* Texas Casework License and the Temporary License for laboratories that may have otherwise qualified under provision (2). There are no anticipated economic costs to persons required to comply with the proposed rule.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f). Leigh M. Tomlin, Associate General Counsel of the Texas Forensic Science Commission, has determined that the proposed amendment will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person or laboratory who is required to comply with the rule as proposed. The costs for licensure either under the removed provision (2) or the *De Minimis* Texas Casework License are the same.

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

Government Growth Impact Statement. Leigh M. Tomlin, Associate General Counsel of the Texas Forensic Science Commission, has determined that for the first five-year period, implementation of the proposed amendment will have no government growth impact as described in Title 34, Part 1, Texas Ad-

ministrative Code §11.1. Pursuant to the analysis required by Government Code §2001.221(b), 1) the proposed rule does not create or eliminate a government program; 2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions; 3) implementation of the proposed rule does not increase or decrease future legislative appropriations to the agency; 4) the proposed rule does not require an increase or decrease in fees paid to the agency; 5) the proposed rule does not create a new regulation; 6) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and 7) the proposed rule has a neutral effect on the state's economy. The amendment does not expand any forensic analyst licensing requirement under the current program, but rather requires a laboratory (and its employed analysts) to qualify for licensure under either the *De Minimis* Texas Casework license program or the Commission's Temporary License program.

Request for Public Comment. The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by December 20, 2020, to be considered by the Commission.

Statutory Authority. The amendment is proposed under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Article 38.01, and Article 38.01 §4-a(d), which directs the Commission to adopt rules to establish the qualifications for a forensic analyst license.

Cross reference to statute. The adoption affects 37 Texas Administrative Code §651.221.

§651.221. Laboratory License for Purpose of Ensuring Availability of Uncommon Forensic Analysis; Timeliness of Forensic Analysis, and/or Service to Counties with Limited Access for Forensic Analysis.

(a) Application. A laboratory may apply to the Commission for a license under this section on a form provided by the Commission. The Commission's Licensing Advisory Committee, and/or the Commission Director or Designee shall review each application and make a determination regarding whether to grant a laboratory license under this section where the laboratory demonstrates[;]

~~[(1)]~~ a Texas customer requests a type of forensic analysis that is not widely available in accredited forensic laboratories. [~~;~~ ~~or~~]

~~[(2)]~~ the request is necessary to ensure the availability of timely forensic analyses in counties for which access to forensic analyses is limited.]

(b) Uncommon Forensic Analysis License for Individual Analysts and Technicians. All forensic analysts and technicians employed by a laboratory determined by the Commission's Licensing Advisory

Committee, and/or the Commission Director or Designee to meet the criteria for a license under this section shall be licensed upon fulfillment of the following requirements of the licensed laboratory:

(1) submit to Commission staff a list of the names of each individual analyst or technician to be licensed indicating the forensic discipline(s) for which each analyst or technician is qualified to perform independent casework; and

(2) certify on a form provided by the Commission that each individual named:

(A) has read and understands the Code of Professional Responsibility in this subchapter;

(B) has completed all training materials related to *Brady v. Maryland* discovery obligations and the Michael Morton Act (Code of Criminal Procedure, Article 39.14) as provided by the Commission; and

(C) has participated in the Mandatory Legal and Professional Responsibility Training described in 651.208(e)(1) - (2) of this subchapter (relating to Forensic Analyst and Forensic Technician License Renewal).

(c) Disclosures Required by Uncommon Forensic Analysis License [~~Analyses, Timeliness of Forensic Analyses, and/or Service to Counties with Limited Access to Forensic Analysis Licensed Laboratories~~]. Laboratories licensed under this section must comply with all disclosure obligations required under this chapter.

(d) License Term. A laboratory license and corresponding licenses granted under this section shall expire two (2) years from the date of issuance.

(e) Fees. A laboratory licensed under this section must pay the requisite license fee for uncommon forensic analyses for all of the laboratory's licensed forensic analysts and technicians as set forth in this subchapter.

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 November 4, 2020.

TRD-202004636

Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

Earliest possible date of adoption: December 20, 2020

For further information, please call: (512) 784-0037



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 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SCHOOL FACILITIES

19 TAC §61.1033

The Texas Education Agency (TEA) withdraws the repeal of §61.1033, concerning school facilities. The repeal was published as proposed in the May 15, 2020 issue of the *Texas Register* (45 TexReg 3190). The repeal would have removed an obsolete rule.

By the end of 2020, TEA intends to propose revisions to the school facilities standards that incorporate additional stakeholder feedback.

Filed with the Office of the Secretary of State on November 9, 2020.

TRD-202004744

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: November 9, 2020

For further information, please call: (512) 457-1497



19 TAC §61.1036, §61.1040

The Texas Education Agency (TEA) withdraws an amendment to §61.1036 and new §61.1040, concerning school facilities. The amendment and new rule were published as proposed in the May 15, 2020 issue of the *Texas Register* (45 TexReg 3190). The proposed amendment and new rule would have provided an end date for the current school facilities standards rule and created a new rule to implement the safety standards required by Senate Bill (SB) 11, 86th Texas Legislature, 2019.

By the end of 2020, TEA intends to propose revisions to the school facilities standards that incorporate additional stakeholder feedback.

Filed with the Office of the Secretary of State on November 9, 2020.

TRD-202004745

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: November 9, 2020

For further information, please call: (512) 457-1497



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 404. PROTECTION OF CLIENTS AND STAFF--MENTAL HEALTH SERVICES

SUBCHAPTER E. RIGHTS OF PERSONS RECEIVING MENTAL HEALTH SERVICES

25 TAC §§404.151 - 404.169

The Department of State Health Services withdraws the proposed repeal of §§404.151 - 404.169, which appeared in the November 6, 2020, issue of the *Texas Register* (45 TexReg 7962).

Filed with the Office of the Secretary of State on November 4, 2020.

TRD-202004643

Nycia Deal

Director, Policy Department Legal Services Division

Department of State Health Services

Effective date: November 4, 2020

For further information, please call: (512) 438-3049



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 320. RIGHTS OF INDIVIDUALS

SUBCHAPTER A. RIGHTS OF INDIVIDUALS RECEIVING MENTAL HEALTH SERVICES

26 TAC §§320.1 - 320.15

The Health and Human Services Commission withdraws the proposed new §§320.1 - 320.15, which appeared in the November 6, 2020, issue of the *Texas Register* (45 TexReg 7963).

Filed with the Office of the Secretary of State on November 4,
2020.

TRD-202004644

Nycia Deal

Director, Policy Department Legal Services Division

Health and Human Services Commission

Effective date: November 4, 2020

For further information, please call: (512) 438-3049



ADOPTED RULES

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 1. ADMINISTRATION

PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 155. RULES OF PROCEDURE

The State Office of Administrative Hearings (SOAH) adopts amendments to the following sections of Texas Administrative Code, Title 1, Part 7, Chapter 155, Rules of Procedure: Subchapter A, §155.5 Definitions; Subchapter B, §155.51 Jurisdiction; §155.53 Request to Docket Case; Subchapter C, §155.101 Filing Documents, §155.103 Public and Confidential Information, and §155.105 Service of Documents on Parties; Subchapter E, §155.201 Representation of the Parties and §155.203 Withdrawal of Counsel; Subchapter G, §155.301 Required Form of Pleadings; Subchapter H, §155.351 Mediation; and Subchapter J, §155.501 Default Proceedings and §155.503 Dismissal Proceedings.

Some of the new rules are adopted with changes to the proposed text as published in the September 4, 2020 issue of the *Texas Register* (45 TexReg 6181) and they will be republished. The rules adopted with changes are §155.5, §155.101, §155.103, and §155.501.

Some of the new rules are adopted without changes to the proposed text as published in the September 4, 2020 issue of the *Texas Register* (45 TexReg 6181) and they will not be republished. The rules adopted without changes are §155.51, §155.53, §155.105, §155.201, §155.203, §155.301, §155.351, and §155.503.

Basis for Rule Adoption

The amendments are adopted as part of a continuing effort to more closely align administrative practice before SOAH with modern legal practices and standards utilized by the Texas judiciary. The adopted rule amendments implement Texas Government Code §2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH, Texas Government Code §2003.0412, which requires the Chief Administrative Law Judge to adopt rules pertaining to *ex parte* consultations, and Texas Government Code §2003.055, which provides that the Chief Administrative Law Judge shall develop and implement the effective use of technological solutions to improve the agency's ability to perform its functions.

The amendments to SOAH's Rules of Procedure include new definitions and clarify and expand the use of electronic filing, including new procedures for the filing of confidential information. Other amendments are adopted to remove obsolete references to the use of fax transmissions and SOAH's legacy email service platform. SOAH's procedural rules regarding default proceed-

ings and dismissals are also amended to provide a uniformly fair default and dismissal practice that promotes greater conformity with the Texas Rules of Civil Procedure.

Comments

SOAH received written comments on the proposed rules from various state agencies, including from the Texas Department of Insurance and the Texas Department of Licensing and Regulation. Each of the comments addressed concerns or recommendations about specific sections of the rules and are addressed as follows:

Comments on §155.5 Definitions.

Comment: One commenter states that the definition of *ex parte* communication as set forth in the proposed §155.5(14)(D) could create confusion insofar as it uses the word "expert" in stating that *ex parte* communication does not include consultation between the presiding judge and "a disinterested expert on the law applicable to a proceeding before the judge." The commenter states that the word "expert" is a term of art in Texas litigation practice and therefore could create confusion for administrative law judges (ALJs) and practitioners. The commenter also alleges that few experts exist in the area of administrative law, and therefore the amended rule could permit an administrative law judge to consult with someone who has advised one of the parties in a contested case. The commenter also states that if ALJs are permitted to consult with outside experts, then the rules should place limits and disclosures on this activity.

Response: SOAH disagrees that the term "expert" is confusing as stated in the rule, or that it would allow a judge to consult with an expert who has advised a party to the proceeding. The term "expert" as included in the proposed rule is restated from Canon 3(b)(8) of the Texas Code of Judicial Conduct regarding exceptions to the *ex parte* prohibition, and expressly states that it applies only to a "disinterested expert." An expert who has served as a consultant for a party to the particular proceeding before the judge would not meet the qualifying requirement of the rule, namely that the expert must be "disinterested."

SOAH further disagrees with the commenter's implication that the variety of experts on legal issues applicable to proceedings at SOAH is so limited in scope as to create a high likelihood that all such experts would be conflicted from providing advice or information to an administrative law judge. It is not necessary for an individual to have a record of appearance as an expert witness in cases at SOAH for the individual to be qualified to provide relevant information to a judge on an area of law applicable to a case. With regard to the comment that SOAH should place limits and disclosures on the practice of an ALJ's ability to consult with outside experts, SOAH agrees and will amend the definition to require the judge to give notice to the parties of the person consulted, the substance of the advice, and afford the

parties a reasonable opportunity to respond. This modification of the rule tracks the analogous provision of Canon 3(b)(8) of the Texas Code of Judicial Conduct. The modified language is also necessary to resolve an ambiguity between §2001.061(c) of the Administrative Procedures Act, which addresses communications with agency employees (including those who may be experts) and applies to SOAH by operation of Tex. Gov't Code, §2003.0412(a). Because §2001.061 limits conference with an expert to only other employees of the same agency, SOAH could confer with an expert if, but only if, it employed an adjunct expert to provide technical information on cases. The term "expert" as expressed in the rule tempers the ability of SOAH to hire and use such a technical expert without notice to the parties.

Comment: One commenter expressed concern that the proposed relocation of the definitions of "confidential information" and "personal identifiers" (now "personal identifying information") from §155.103 regarding confidentiality to the definitions in §155.5 could cause confusion. The commenter recommended insertion of a cross-reference in §155.103 to direct the reader's attention to the definitions of those terms in §155.5.

Response: SOAH will amend §155.103 to include cross-references to the applicable definitions in §155.5 as recommended.

Comment: One commenter states that the definition of "confidential information" in §155.5(8) is too vague in that it references "information made confidential by law" and "information otherwise protected from disclosure by law." Instead, the commenter recommends that the definition should include a specific listing of as many confidential items that must be redacted from public filings as possible. In the alternative, the commenter recommends that the definition should include citations to sources of confidentiality and privacy laws. The commenter opines that specifically naming all items that must be redacted would assist attorneys and unrepresented parties who may lack sufficient knowledge of privacy laws. The commenter also suggests that, by including a specific listing of items, the definition of "confidential information" would be consistent with the definition of "personal identifier" ("personal identifying information").

Response: We understand the commenter's remarks to suggest that, by not providing a specific listing of all types of "confidential information," the rule could impair access to the administrative process if a party does not know how to properly identify and redact "confidential information" from documents submitted for filing. We disagree. In the same manner as Rules 21(f) and 21c(e) of the Texas Rules of Civil Procedure, §155.101(b)(3) of SOAH's Rules of Procedure provides that while SOAH's docketing department may identify filing errors to be corrected and set a deadline for the submission of corrected documents, SOAH may not refuse to file a document that fails to conform with the filing rules. Moreover, attorneys and agency representatives have a duty to be familiar with, and to act in accordance with, the confidentiality and privacy laws that affect their cases. Texas courts have also long-established that *pro se* litigants are not excused from compliance with the same procedural rules and substantive laws as their represented counterparts. Therefore, we decline to modify the definition of "confidential information" as suggested by the commenter.

While we agree that it may be helpful for filers, including unrepresented parties, to be advised of common types of confidential information, we disagree with the commenter's suggestion that an exhaustive categorization of confidential items, or a detailed list of legal citations to confidentiality laws should be incorporated into the definition. The suggestion is simply impractical given the

extensive nature and complexity of state and federal laws affecting confidentiality and privacy, thus making it necessary to define the term "confidential information" broadly. This broad definition can also be distinguished from the more limited definition of "personal identifier" (now "personal identifying information") because the latter term is more narrowly defined by other law. This is further explained in our response to comments on the definition of "personal identifiers."

In lieu of modifying the definition of "confidential information" as used in the rule, SOAH will endeavor to publish guidance on its agency website to inform parties on the common types of confidential information that must be redacted from public filings.

Comment: One commenter asserts that the definition of "personal identifiers" in §155.5(23) includes certain miscellaneous categories of confidential information, such as address and telephone number of commissioned peace officers and expunged criminal records, that do not appear to relate to identity theft or fraud, and recommended that these additional categories of information as described in the definition should be removed.

Response: SOAH agrees that these unrelated types of information should be removed from the definition. The stated intent of the proposed amendment to the definition of "personal identifiers" was to incorporate elements subject to legal protections under Texas Government Code §2054.1125. That law requires state agencies, including SOAH, to protect information subject to the Identity Theft Enforcement and Prevention Act (Chapter 521 of the Texas Business and Commerce Code). Accordingly, SOAH will modify the definition of "personal identifier" to "personal identifying information" and define the term to incorporate the specific items of personal identifying information, sensitive personal information, and sensitive data as used in Tex. Bus. & Comm. Code, §521.002 and Rule 21c(a) of the Texas Rules of Civil Procedure.

Comment: One commenter suggests revising the definition of "redaction" in §155.5(26) to allow for partial redaction of confidential information or personal identifying information.

Response: SOAH does not find it necessary to modify the definition of "redaction" for this purpose. The purpose of including a definition of the term "redaction" is merely to explain the terminology for readers, particularly unrepresented parties, who may not be familiar with its use or meaning. SOAH's reasoned justification for not modifying the rules to expressly permit partial redactions is further explained in our response to comments on §155.103(c)(2)(B).

Comments on §155.101(b)(1)(A) Electronic Filing of Exhibits

Comment: One commenter stated that the proposed §155.101(b)(1)(A), requiring exhibits to be filed electronically, does not include exceptions for physical evidence in the form of material objects that are offered as exhibits. The commenter also states that §155.101(b)(4), by which a judge may allow a party to file documents "in paper or another acceptable form" for good cause shown is inadequate to address this concern.

Response: We do not agree that §155.101(b)(1)(A) requires modification to address physical evidence in the form of exhibits. The procedural rules regarding physical evidence offered as exhibits are addressed in Subchapter I, §155.429. That section is not proposed for amendment at this time. The Subchapter C where §155.101(b)(1)(A) is located relates only to the filing and service of documents. The amendment merely adds "exhibits" as an example of a document type that is required to be filed

in electronic form. The change is also intended for consistency with §155.101(b)(1)(G), which is amended to require written testimony and documentary exhibits offered at the hearing to be electronically filed.

Comments on §155.101(b)(1)(D) Formatting and Submission of Documents Filed Electronically

Comment: One commenter expressed concern regarding the proposed amendment to §155.101(b)(1)(D)(v) requiring filers to ensure that "all service contact information entered in the electronic filing manager is complete and accurate." The alleged concern is that agency records often do not include up-to-date service contact information for respondents. The commenter recommends revising the amendment to instead require service contact information to be "complete and accurate service information known to the parties at the time of filing."

Response: SOAH agrees with the commenter's suggestion. This proposed modification would be consistent with similar statutory requirements that require service to respondents at the last known address on file with the court or the agency. To further ensure that complete service contact information is entered, SOAH will also amend §155.101(b)(1)(D)(v) to require parties represented by counsel to identify a lead attorney when completing the entry of service contact information.

Comment on §155.101(b)(1)(G) Documents offered at a hearing

Comment: One commenter requested clarification of the proposed amendment to §155.101(b)(1)(G) requiring parties to file exhibits introduced at the hearing by the next business day after conclusion of the hearing at which they were presented. The commenter asks whether the rule applies only to documents that were not pre-filed or that were offered in paper form, and whether the requirement applies to documents that were introduced but not admitted due to a sustained objection.

Response: The intent of the rules requiring the filing of exhibits and other documents is to ensure that SOAH's electronic files contain a complete and orderly administrative case record for judicial review. Under the current version of the rule, written testimony, documents, and exhibits offered at a hearing are not required to be filed electronically, and are only maintained at SOAH in hard copy form until the case is concluded, after which they are returned to the referring agency. This results in an incomplete electronic record of the case for judicial review. The hard copy submission of administrative case records is generally no longer accepted by the Travis County District Court and the Third Court of Appeals, which are the principal reviewing courts for contested cases at SOAH. The expectation of the proposed rule is that if written testimony, documents, or exhibits that were not otherwise already filed are introduced at a hearing, then they will promptly be filed electronically for inclusion in the administrative record by not later than the next business day. The rule would encompass any exhibits that were offered but not admitted since rulings on evidentiary objections that are preserved by an offer of proof could be the subject of judicial review. SOAH will clarify the rule accordingly.

Comments on §155.103 Confidential Information

Comment: One commenter expressed concern that the proposed amendments to §155.103 regarding confidential information do not address what should happen, or who should be contacted, in the event that a filer disagrees with the determination of a SOAH docketing clerk regarding the mandatory redaction

of confidential or personal identifying information from a public filing.

Response: §155.101(b)(3) already addresses what happens in the event that non-conforming documents are submitted to SOAH for filing and states that when a filed document fails to conform to SOAH's filing rules, the presiding judge or SOAH's docketing department may identify the errors to be corrected and state a deadline for the person, attorney, or agency to re-submit the document in conforming format. §155.101(b)(3) also states that SOAH's docketing department may not refuse to file a document that fails to conform with SOAH's filing rules. This rule closely tracks the language of Rules 21(f) and 21c(e) of the Texas Rules of Civil Procedure. The adopted amendments to §155.101(b)(3) would add that filers must attempt, in good faith, to resolve filing and service errors in accordance with requisite standards of conduct and decorum towards counsel, opposing parties, the judge, and members of SOAH staff, including through timely correction and resubmission of any non-conforming documents. §155.101(b)(4) further provides that with good cause shown, the presiding judge to permit a party to file documents through other means. Given these various procedures adopted in §155.101(b) for the resolution of filing errors, SOAH does not find it is necessary to prescribe additional procedures for handling disagreements between filers and docketing staff regarding the redaction of confidential information.

Comment: One commenter requests SOAH to clarify §155.103(c)(2)(B) to allow a party to file partially redacted documents. The suggested purpose of such a clarification would be to allow parties to limit the need for confidential filings in public cases. We understand the commenter's request to be based on a premise that, occasionally, a portion of information that would ordinarily be redacted as confidential is necessary to the resolution of a case.

Response: For purposes of clarification, §155.103(c)(2)(B) relates to the threshold requirements for the designation of un-redacted versions of documents filed in a public proceeding as "confidential" in order to protect them from public disclosure, whereas §155.103(c)(2)(A) relates to the general requirements for the redaction of confidential portions of documents that are otherwise open to the public. The partial redaction of confidential or personal identifying information is discouraged. Both the current and proposed versions of SOAH §155.103 require all such information to be redacted from public filings. This is consistent with Rule 4 of the Texas Supreme Court regarding the redaction of information in e-filed documents, which states that, unless the court orders otherwise, e-filed documents should not contain "any part of the actual information" that is subject to redaction. Whether a partial redaction is permissible in any particular situation depends on applicable law, the facts and circumstances of the information contained in the document, and the extent of the redacted material. Rather than modifying §155.103(c) to expressly permit only partial redactions of confidential information, the determination of whether particular partial redactions are permissible is better left to the discretion of the judge on a case-by-case basis, taking into consideration whether less-restrictive means may be available to protect the confidentiality interests asserted and any stipulations of the parties. Accordingly, SOAH will amend §155.103(c)(1) to provide that the redaction of confidential or personal identifying information is required, "unless otherwise ordered by the judge."

Comment: One commenter requests modifying §155.103(g), regarding the imposition of sanctions for improperly filing or offering documents containing confidential information or personal identifying information. The commenter requests that the rule be modified to allow the imposition of sanctions only in cases of intentional or repeated violations of confidentiality protections, and to prohibit judges for imposing sanctions for a party's inadvertent disclosures of confidential information.

Response: The apparent concern raised by the commenter's suggestion is that SOAH judges might use the rule to impose sanctions for minor infractions of filing rules. We disagree. Sanctions can aid in promoting compliance with confidentiality safeguards and serve as an appropriate remedy when violations occur. Procedural safeguards are already built-into SOAH's current sanctioning procedure to avoid the imposition of sanctions without appropriate due process. §155.103(g) requires that any sanctions imposed must adhere to §155.157 of SOAH's Rules of Procedure, and that rule provides that a judge may issue an order imposing sanctions only after notice and an opportunity for a hearing. Thus it is unlikely that SOAH would convene a hearing to impose sanctions for violations of confidentiality unless the incident was sufficiently grave to warrant doing so. Modifying the rule to limit the use of sanctions to only intentional or repeated acts would merely serve to create a safe harbor for parties to engage in the mishandling of confidential information so long as they limit their violations to infrequent occurrences where intent cannot be easily proven. Filing parties should be mindful that most documents electronically filed in public proceedings at SOAH are automatically published online and available to the general public for search and download. Even a negligent failure to properly handle confidential information in accordance with the required safeguards could result in a substantive violation of law and/or harm to the individuals whose privacy interests are at stake. Thus, SOAH finds that it is not necessary or prudent as a matter of procedure to limit the rule as requested by the commenter.

Comments on §155.501 Default Proceedings

Comment: One commenter states that the Texas Department of Insurance (TDI) uses its own default rules as set forth in 28 Texas Administrative Code, §1.88 and §1.89. They also note that these rules are referenced in the statutorily-required Memorandum of Understanding (MOU) between SOAH and TDI set forth in §1.90(f)(6). The commenter is concerned that the proposed default rules in §155.501 conflict with the already existing MOU and the TDI's own rules.

Response: Although SOAH conducts contested case hearings for over 50 state agencies, TDI is one of only two agencies for which a procedural MOU is required by statute. Tex. Ins. Code §40.004 requires adoption by rule of an MOU between SOAH and TDI, and that MOU incorporates TDI's procedural rules. As a result, SOAH is obligated at this time to follow specific provisions of TDI's procedural rules to the extent of any conflict between SOAH's Rules of Procedure and TDI's rules. Because SOAH already has its own procedural rules that apply to all other cases in accordance with Tex. Gov't Code, §2003.050(b), SOAH identified Tex. Ins. Code §40.004 as an unnecessary impediment in its Agency Strategic Plan for state fiscal years 2021-2025.

We note that there are few substantive differences between the SOAH rules and the TDI rules. TDI §1.89(b) and SOAH §155.501(b) both require proof of proper notice and contemplate the granting of default based on facts alleged in the pleadings being deemed admitted as true. Defaults under the §1.89 are

handled through remand and informal disposition by default from the commissioner in accordance with Tex. Gov't Code, §2001.056. This is the same result that would occur under the SOAH rule at §155.501(e)(3) upon motion of TDI for a default dismissal. TDI §1.89(d) and SOAH §155.501(h) include similar provisions regarding motions to set aside a default. It appears that the main substantive difference between the proposed SOAH rules and the TDI rules is that §155.503(b) could permit a respondent to move for default against TDI if TDI failed to appear for a properly noticed hearing, whereas TDI's failure to appear is not addressed by the TDI rules. For the reasons stated, we do not find that these differences require modification of §155.501 at this time. §155.501 is republished herein only to correct minor drafting errors to the wording of §155.501(h).

SUBCHAPTER A. GENERAL

1 TAC §155.5

Statutory Authority

The rule amendments are adopted under: (i) Texas Government Code §2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; (ii) Texas Government Code §2003.0412, which requires the Chief Administrative Law Judge to adopt rules that prescribe the types of alternative dispute resolution procedures in which ex parte consultations are prohibited and the types of alternative dispute resolution procedures in which ex parte consultations are allowed (iii) Texas Government Code §2003.055, which provides that the Chief Administrative Law Judge shall develop and implement the effective use of technological solutions to improve the agency's ability to perform its functions; and (vi) Texas Government Code §2001.004, which requires the adoption of rules of practice setting forth the nature and requirements of formal and informal procedures under the Administrative Procedures Act.

§155.5. Definitions.

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

(1) Administrative law judge or judge--An individual appointed to serve as a presiding officer by SOAH's chief judge under Tex. Gov't Code Chapter 2003.

(2) Alternative Dispute Resolution or ADR--Processes used at SOAH to resolve disputes outside or in connection with contested cases, including mediation, mini-trials, early neutral evaluation, and arbitration.

(3) APA--The Administrative Procedure Act, Tex. Gov't Code Chapter 2001.

(4) Arbitration--A form of ADR, governed by an agreement between the parties or special rules or statutes providing for the process in which a third-party neutral issues a decision after a streamlined and simplified hearing. Arbitrations may be binding or non-binding, depending on the agreement, statutes, or rules. See Chapters 156 and 163 of this title for procedural rules specifically governing the arbitration of certain nursing home and assisted living facility enforcement cases referred by the Texas Department of Aging and Disability Services.

(5) Authorized representative--An attorney authorized to practice law in the State of Texas or, if authorized by applicable law, a non-attorney designated by a party to represent the party.

(6) Business day--A weekday on which state offices are open.

(7) Chief Judge--The chief administrative law judge of SOAH.

(8) Confidential Information--confidential information includes:

(A) information made confidential by law;

(B) information otherwise protected from disclosure by law or order of the presiding judge or a court; and

(C) documents submitted in camera, solely for the purpose of obtaining a ruling on the discoverability or admissibility of such documents.

(9) Discovery--The process of compulsory disclosure by a party, upon another party's request, of information, including facts and documents, relating to a contested case.

(10) Electronic filing or filed electronically--The electronic transmission of documents filed in a contested case referred to SOAH by uploading the documents to the case docket using the electronic filing manager, eFileTexas.gov, established by the Office of Court Administration and an electronic filing service provider certified by the Office of Court Administration, or in another the manner specified on SOAH's website, www.soah.texas.gov.

(11) Electronic Filing Service Provider or EFSP--An online web portal service offered by an independent third-party provider for use in electronically filing documents at SOAH and judicial courts of record, and that acts as the intermediary between the filer and the eFileTexas.gov system. Filers must create an account with an EFSP that is certified by the Office of Court Administration in order to electronically file documents at SOAH. A list of EFSP's that have met the requirements for certification by the Office of Court Administration is available www.efiletexas.gov.

(12) Electronic signature or signed electronically--An electronic version of a person's signature that is the legal equivalent of the person's handwritten signature, unless the document is required to be notarized or sworn. Electronic signature formats include:

(A) an "/s/" and the person's name typed in the space where the signature would otherwise appear;

(B) an electronic graphical image or scanned image of the signature; or

(C) a "digital signature" based on accepted public key infrastructure technology that guarantees the signers identity and data integrity.

(13) Electronic service or served electronically--The electronic transmission of documents filed in a matter referred to SOAH to a party or a party's authorized representative by means of an Electronic Filing Service Provider.

(14) Ex Parte Communication--Direct or indirect communication between a state agency, person, or representative of those entities and the presiding judge or other SOAH hearings personnel in connection with an issue of law or fact in a contested case or arbitration under SOAH's jurisdiction where the other known parties to the proceeding do not have notice of the communication and an opportunity to participate. Ex parte communication does not include:

(A) communication where the parties to the proceeding have notice of the communication and an opportunity to participate;

(B) communication concerning uncontested administrative or uncontested procedural matters;

(C) consultation between the presiding judge and other SOAH judges, SOAH legal counsel, or hearings personnel;

(D) consultation between the presiding judge and another disinterested expert on the law applicable to a proceeding before the judge, if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond;

(E) ex parte communications required for the disposition of an ex parte matter or otherwise expressly authorized by law; and

(F) communications between a state agency, party, person, or representative of those entities and a SOAH mediator made in an effort to evaluate a contested matter for mediation, or to mediate or settle matters.

(15) Evidence--Testimony and exhibits admitted into the record to prove or disprove the existence of an alleged fact.

(16) Exhibits--Documents, records, photographs, and other forms of data compilation, regardless of media, or other tangible objects offered by a party as evidence.

(17) Filed--The receipt and acceptance for filing by SOAH's docketing department.

(18) IDEA--The Individuals with Disabilities Education Act.

(19) Media or media agency--A person or organization regularly engaged in news gathering or reporting, including any newspaper, radio or television station or network, news service, magazine, trade paper, professional journal, or other news reporting or news gathering entity.

(20) Mediation--A confidential, informal dispute resolution process in which an impartial person, the mediator, facilitates communication among the parties to promote settlement, reconciliation, or understanding.

(21) Party--A person named or admitted to participate in a case before SOAH.

(22) Person--An individual, representative, corporation, or other entity, including a public or non-profit corporation, or an agency or instrumentality of federal, state, or local government.

(23) Personal Identifying Information--Information that alone or in conjunction with other information identifies a specific individual, and that, is protected from unlawful use, possession, or disclosure. Personal identifying information includes an individual's:

(A) Social Security number, taxpayer identification number, driver's license number, passport number, or similar government-issued personal identification number;

(B) bank account number, credit card number, or other financial account number;

(C) telecommunication access device as defined by Section 32.51, Penal Code;

(D) date of birth;

(E) mother's maiden name;

(F) full name, if the person is a minor;

(G) unique biometric data, including the individual's fingerprint, voice print, and retina or iris image; and

(H) information that identifies the individual and relates to:

- (i) the physical or mental health or condition of the individual;
- (ii) the provision of health care to the individual; or
- (iii) payment for the provision of health care to the individual.

(24) Pleading--A filed document that requests procedural or substantive relief, makes claims, alleges facts, makes legal argument(s), or otherwise addresses matters involved in the case.

(25) PUC--The Public Utility Commission of Texas.

(26) Redaction--To redact information means to remove confidential references from the document.

(27) Referring agency--A state board, commission, department, agency, or other governmental entity that refers a contested case or other matter to SOAH.

(28) SOAH--The State Office of Administrative Hearings.

(29) Stipulation--A binding agreement among opposing parties concerning a relevant issue or fact.

(30) TAC--The Texas Administrative Code.

(31) TCEQ--The Texas Commission on Environmental Quality.

(32) TRCP--The Texas Rules of Civil Procedure. The TRCP are found on the website of the Texas Supreme Court.

(33) TRE--The Texas Rules of Evidence. The TRE are found on the website of the Texas Supreme Court.

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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State Office of Administrative Hearings

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For further information, please call: (512) 936-6624



SUBCHAPTER B. DOCKETING--FILING A CONTESTED CASE

1 TAC §155.51, §155.53

Statutory Authority

The rule amendments are adopted under: (i) Texas Government Code §2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; (ii) Texas Government Code §2003.0412, which requires the Chief Administrative Law Judge to adopt rules that prescribe the types of alternative dispute resolution procedures in which ex parte consultations are prohibited and the types of alternative dispute resolution procedures

in which ex parte consultations are allowed (iii) Texas Government Code §2003.055, which provides that the Chief Administrative Law Judge shall develop and implement the effective use of technological solutions to improve the agency's ability to perform its functions; and (vi) Texas Government Code §2001.004, which requires the adoption of rules of practice setting forth the nature and requirements of formal and informal procedures under the Administrative Procedures Act.

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SUBCHAPTER C. FILING AND SERVICE OF DOCUMENTS

1 TAC §§155.101, 155.103, 155.105

Statutory Authority

The rule amendments are adopted under: (i) Texas Government Code §2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; (ii) Texas Government Code §2003.0412, which requires the Chief Administrative Law Judge to adopt rules that prescribe the types of alternative dispute resolution procedures in which ex parte consultations are prohibited and the types of alternative dispute resolution procedures in which ex parte consultations are allowed (iii) Texas Government Code §2003.055, which provides that the Chief Administrative Law Judge shall develop and implement the effective use of technological solutions to improve the agency's ability to perform its functions; and (vi) Texas Government Code §2001.004, which requires the adoption of rules of practice setting forth the nature and requirements of formal and informal procedures under the Administrative Procedures Act.

Cross Reference to Statute

The proposed new rule affects Chapters 2001 and 2003 of the Texas Government Code.

§155.101. Filing Documents.

(a) Filing and service required.

(1) All pleadings and other documents shall be filed using one of the methods described in this rule.

(2) On the same date a document is filed, it shall also be served on all other parties as described in §155.105 of this chapter.

(b) Method and format of filing in all cases other than PUC, TCEQ, and IDEA cases, or matters referred for mediation.

(1) Electronic Filing Required.

(A) Except as otherwise provided in this subchapter, attorneys, state agencies, and other governmental entities are required to file all documents, including exhibits, electronically in the manner specified on SOAH's website, www.soah.texas.gov. SOAH may require parties to electronically file documents through the electronic filing manager established by the Office of Court Administration and an electronic filing service provider certified by the Office of Court Administration. Parties not represented by an attorney are strongly encouraged to electronically file documents but may use alternative methods of filing described in paragraph (2) of this subsection.

(B) The electronic version of a document that has been electronically filed at SOAH shall be given the same legal status as the original document.

(C) In addition to the other requirements of this rule, electronic filings must comply with all requirements and procedures set forth on SOAH's website and electronic filing page, and the applicable technology standards of the Judicial Committee on Information Technology if filed through the electronic filing manager established by the Office of Court Administration.

(D) Formatting and submission. A document filed electronically must:

(i) be legible and in text-searchable portable document format (PDF);

(ii) be directly converted to PDF rather than scanned, to the extent possible;

(iii) not be locked;

(iv) include the email address of a party, attorney, or representative who electronically files the document;

(v) be accompanied by the entry in the electronic filing manager of complete and accurate service contact information known to the parties at the time of filing, including the designation of lead counsel if the party is represented by counsel;

(vi) include the SOAH docket number and the name of the case in which it is filed, if not attached to a pleading or document that already contains this information;

(vii) be properly titled or described in the electronic filing manager in a manner that permits SOAH and the parties to reasonably ascertain its contents;

(viii) if the document submitted for filing contains confidential information, comply with the requirements of §155.103 of this chapter and be submitted separately from public pleadings, exhibits, or filings to the extent possible;

(ix) if the document submitted for filing is an exhibit, comply with the requirements of §155.429 of this chapter and be submitted separately from pleadings or other filings, unless the exhibit is attached as a necessary supporting document to a pleading; and

(x) if the document submitted for filing is a motion, the motion will comply with the requirements of §155.305 of this chapter and be submitted separately from pleadings or other filings.

(E) A pleading or document that is filed electronically is considered signed if the document includes an electronic signature.

(F) Time of filing. Unless a document must be filed by a certain time of day, a document is considered timely filed if it is electronically filed at any time before midnight central time on the filing deadline. Once a document has been accepted for filing by SOAH, an electronically filed document is deemed filed on the date when transmitted to the filing party's electronic filing service provider, except:

(i) if a document is transmitted on a Saturday, Sunday, or legal holiday, it is deemed filed on the next business day; and

(ii) if a document requires a motion and an order allowing its filing, the document is deemed filed on the date that the motion is granted.

(G) Documents offered at a hearing.

(i) Any documents, including written testimony and exhibits, offered at a hearing that were not otherwise filed as part of the record shall be filed electronically.

(ii) If the judge sustained an evidentiary objection to a document offered at a hearing that resulted in exclusion of the document, then the excluded document shall be filed in accordance with this section only if there was an offer of proof.

(iii) Documents required to be filed by this section shall be filed electronically by not later than the next business day after the conclusion of the hearing at which they were offered, unless otherwise ordered by the judge.

(2) Filings by unrepresented parties.

(A) Parties who are not represented by an attorney may file documents using any of the following methods:

(i) electronically, in the manner and subject to the requirements specified in paragraph (b)(1) of this subsection and on SOAH's website, www.soah.texas.gov;

(ii) by mail addressed to SOAH at P.O. Box 13025, Austin, Texas 78711-3025;

(iii) by hand-delivery to SOAH at 300 West 15th Street, Room 504;

(iv) by fax to the appropriate SOAH office location;

or

(v) at the SOAH field office where the case is assigned, using the field office address available at SOAH's website.

(B) All documents filed by unrepresented parties must:

(i) include the SOAH docket number and the name of the case in which it is filed;

(ii) include the party's mailing address, email address (if available), and telephone number;

(iii) comply with the requirements of §155.103 of this chapter if the document submitted for filing contains confidential information; and

(iv) comply with the requirements of §155.429 of this chapter if the document submitted for filing is an exhibit.

(C) Time of filing for documents not filed electronically. With respect to documents filed by mail, fax, or hand-delivery, the time and date of filing shall be determined by the file stamp affixed by SOAH. Documents received after 5:00 p.m. or when SOAH is closed shall be deemed filed the next business day.

(3) Filing Errors.

(A) Filers shall attempt, in good faith, to resolve filing and service errors in accordance with requisite standards of conduct and decorum towards counsel, opposing parties, the judge, and members of SOAH staff, including through timely correction and resubmission of any non-conforming documents.

(B) Non-conforming documents. SOAH's docketing department may not refuse to file a document that fails to conform

with this rule. When a filed document fails to conform to this rule, the presiding judge or SOAH's docketing department may identify the errors to be corrected and state a deadline for the person, attorney, or agency to resubmit the document in conforming format.

(C) SOAH shall not be responsible for user or system errors of the filing party occurring in the electronic filing, transmission, or service of electronically filed documents.

(D) Technical failure. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from the presiding judge. If the missed deadline is one imposed by SOAH's electronic filing rules, the filing party must be given a reasonable extension of time to complete the filing.

(4) For good cause, a judge may permit a party to file documents in paper or another acceptable form in a particular case.

(c) Method of filing in cases referred by the PUC.

(1) Except for exhibits offered at a prehearing conference or hearing, the original of all documents shall be filed at the PUC in accordance with the PUC rules.

(2) The party filing a document with the PUC (except documents provided in the discovery process that are not the subject of motions filed in a discovery dispute) shall serve the judge with electronic or hard copies of the document upon request or order of the judge.

(3) The court reporter shall provide the transcript and exhibits to the judge at the same time the transcript is provided to the requesting party. SOAH shall maintain the transcript and exhibits until they are released to the PUC by the judge. If no court reporter was requested by a party, SOAH shall maintain the recording of the hearing and the exhibits until they are released to the PUC by the judge.

(d) Method of filing in cases referred by the TCEQ.

(1) Except for exhibits offered at a prehearing conference or hearing, the original of all documents shall be filed with the TCEQ's chief clerk in accordance with the TCEQ rules.

(2) The time and date of filing of these materials shall be determined by the file stamp affixed by the chief clerk, or as evidenced by the file stamp affixed to the document or envelope by the TCEQ mail room, whichever is earlier.

(3) The party filing a document with the TCEQ (except documents provided in the discovery process that are not the subject of motions filed in a discovery dispute) shall serve the judge with a copy of the document by delivery to SOAH on the same day as the filing by electronically filing the document in accordance with the method and format required by subsection (b) of this section.

(4) The court reporter shall provide the transcript and exhibits to the judge at the time the transcript is provided to the requesting party. SOAH shall maintain the transcript and exhibits until they are released to the TCEQ by the judge. If no court reporter was requested by a party, SOAH shall maintain the recording of the hearing and the exhibits until they are released to the TCEQ by the judge.

(e) Method of filing in matters referred for mediation or mediator evaluation.

(1) Documents or communications relating to matters referred for mediation, or for evaluation by a mediator to determine if mediation is appropriate, shall not be filed with SOAH's docketing department, except to the extent the following items are required for SOAH's administration of alternative dispute resolution procedures:

(A) A request for ADR as described in §155.53 of this chapter, if the matter is initially referred for mediation only;

(B) An order of the judge referring a case for evaluation or mediation, if the matter was initially referred for a contested case hearing;

(C) Any letter or notice issued by a SOAH mediator, providing the parties with notice of assignment of a SOAH mediator and/or setting the date and time for the evaluation or mediation;

(D) Any motion or other request of the parties seeking cancellation of the evaluation or mediation;

(E) The mediator's report, which shall include only the information as described in §155.351(f)(3) of this chapter;

(F) The evaluator's written recommendation described in §155.351(b)(3) of this chapter; and

(G) Any administrative dismissal of the matter from SOAH's docket.

(2) Documents filed with SOAH's docketing department as described in paragraph (1) of this subsection are subject to public disclosure, and shall not contain any confidential information relating to the subject matter of the dispute.

(3) All other documents or communications relating to the mediation or evaluation, except those described in paragraph (1) of this subsection, must be provided to the SOAH mediator and/or exchanged between the parties in a manner approved by the SOAH mediator.

§155.103. Confidential Information.

(a) Records filed as part of a contested case proceeding at SOAH are presumed to be open to the public unless designated as confidential in accordance with this rule. A party filing or offering documents that contain confidential information and/or personal identifying information, as those terms are defined in §155.5, shall comply with this rule to prevent inadvertent public disclosure of such documents.

(b) Documents filed in confidential cases.

(1) Confidential cases. The records of certain contested case proceedings at SOAH are designated as confidential and closed to the public because of the necessity to comply with applicable confidentiality laws. Confidential proceedings include, but are not limited to:

(A) Tax proceedings subject to Tex. Gov't Code, §2003.104 referred by the Comptroller of Public Accounts;

(B) License suspension proceedings referred by the Child Support Division of the Office of the Attorney General;

(C) Child abuse and neglect central registry proceedings referred by the Health and Human Services Commission;

(D) Proceedings involving public retirement system benefits;

(E) Workers' compensation benefits proceedings referred by the Texas Department of Insurance, Division of Workers' Compensation; and

(F) Proceedings related to a petition for correction of a peace officer separation report referred by the Texas Commission on Law Enforcement, unless the petitioner resigned or was terminated due to substantiated incidents of excessive force or violations of law other than traffic offenses.

(2) Filing documents in confidential cases. In addition to the requirements of §155.101 of this chapter, documents filed in confidential cases shall be submitted for filing as follows:

(A) Each page of the document shall be conspicuously marked "CONFIDENTIAL" in bold print, 12-point or larger type.

(B) Attorneys, state agencies, and other governmental entities required to electronically file documents in the manner specified by §155.101 of this chapter shall designate all such documents as "confidential" within the party's electronic filing service provider.

(C) Unless otherwise permitted by order of the presiding judge, only unrepresented parties may file documents in confidential proceedings by mail, hand-delivery, or fax. If filed by mail, fax, or hand-delivery, documents submitted for filing shall be accompanied by an explanatory cover letter that includes:

(i) the docket number and style of the case;

(ii) the filing party's name, address, email address (if available), and telephone number; and

(iii) conspicuous markings identifying the filing as "CONFIDENTIAL" in bold print, 12-point or larger type.

(c) Confidential information filed in public cases.

(1) Redaction required. A person who files documents at SOAH in proceedings designated as open to the public, including exhibits, shall redact from the documents all confidential information and personal identifying information that is unnecessary for resolution of the case. Unless otherwise ordered by the judge, a party may not file an unredacted document containing confidential information or personal identifying information in a proceeding that is open to the public except as provided in subsection (c)(2) of this section.

(2) Confidential documents necessary for resolution of the case. A party may designate an entire document or exhibit as confidential in a proceeding that is open to the public only if:

(A) the entire document or exhibit contains confidential information or includes personal identifying information;

(B) redaction of the document or exhibit would remove confidential information or personal identifying information necessary to the resolution of the case; and

(C) no less restrictive means other than withholding the information from public disclosure will adequately or effectively protect the specific confidentiality interest asserted.

(D) A party may file a motion seeking an order for the protection of confidential information to be filed in a proceeding that is open to the public. Such motion should state with particularity:

(i) the identity of the movant and a brief, but specific description of the nature of the case and the records which are sought to be protected;

(ii) the applicable law or regulation requiring or authorizing the specific information at issue to be protected from public disclosure; and

(iii) any stipulation of the parties with respect to the use or disclosure of confidential information.

(3) Filing confidential documents. In addition to the requirements of §155.101 of this chapter, a party filing confidential documents in a proceeding accessible to the public shall submit documents for filing as follows:

(A) A party shall separate confidential documents or exhibits from non-confidential documents or exhibits at the time the records are submitted for filing. A party may not designate an entire series of documents or exhibits as confidential for purposes of filing if

only a part of the records contains confidential information or personal identifying information.

(B) Each page of the document containing confidential information or personal identifying information shall be conspicuously marked "CONFIDENTIAL" in bold print, 12-point or larger type.

(C) Attorneys, state agencies, and other governmental entities required to electronically file documents in the manner specified by §155.101 of this chapter shall designate all such documents as "confidential" within the party's electronic filing service provider.

(D) Unless otherwise permitted by order of the presiding judge, only unrepresented parties may file documents in confidential proceedings by mail, hand-delivery, or fax. If filed by mail, fax, or hand-delivery, documents submitted for filing shall be accompanied by an explanatory cover letter that includes:

(i) the docket number and style of the case;

(ii) the filing party's name, address, email address (if available), and telephone number; and

(iii) conspicuous markings identifying the filing as "CONFIDENTIAL" in bold print, 12-point or larger type.

(E) Documents filed pursuant to a protective order issued by the judge may be designated as "CONFIDENTIAL, FILED UNDER SEAL" in bold print, 12-point or larger type.

(d) Challenging confidentiality designations. A party may file a motion to challenge the redaction or confidential filing of any information, or the judge can raise the issue. If a confidentiality designation is challenged, the designating party has the burden of showing that the document should remain confidential.

(1) If the judge determines that a confidential filing under subsection (c) of this section is appropriate, the judge may allow the filing to remain inaccessible to the public on SOAH's website, admit the information into the evidentiary record under seal, or employ appropriate protective measures.

(2) If the judge determines that a confidential filing under subsection (c) is not appropriate, the offering party must redact the confidential information or personal identifying information before resubmitting the document.

(e) Designation of a document as confidential in a SOAH proceeding is not determinative of whether that document would be subject to disclosure under Tex. Gov't Code Chapter 552 or other applicable law.

(f) In Camera Inspection. Documents presented for in camera inspection solely for the purpose of obtaining a ruling on their discoverability or admissibility shall not be filed, but shall be submitted only in the manner specified by the judge.

(g) Sanctions. The judge may issue an order imposing sanctions in the manner described in §155.157 of this chapter for the actions of a party in improperly filing or offering documents that contain confidential information or personal identifying information, or for actions that result in the public disclosure of information that is confidential by law.

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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Shane Linkous
General Counsel
State Office of Administrative Hearings
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For further information, please call: (512) 936-6624



SUBCHAPTER E. REPRESENTATION OF PARTIES

1 TAC §155.201, §155.203

Statutory Authority

The rule amendments are adopted under: (i) Texas Government Code §2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; (ii) Texas Government Code §2003.0412, which requires the Chief Administrative Law Judge to adopt rules that prescribe the types of alternative dispute resolution procedures in which ex parte consultations are prohibited and the types of alternative dispute resolution procedures in which ex parte consultations are allowed (iii) Texas Government Code §2003.055, which provides that the Chief Administrative Law Judge shall develop and implement the effective use of technological solutions to improve the agency's ability to perform its functions; and (vi) Texas Government Code §2001.004, which requires the adoption of rules of practice setting forth the nature and requirements of formal and informal procedures under the Administrative Procedures Act.

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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SUBCHAPTER G. PLEADINGS AND MOTIONS

1 TAC §155.301

Statutory Authority

The rule amendments are adopted under: (i) Texas Government Code §2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; (ii) Texas Government Code §2003.0412, which requires the Chief Administrative Law Judge to adopt rules that prescribe the types of alternative dispute resolution procedures in which ex parte consultations are prohibited and the types of alternative dispute resolution procedures

in which ex parte consultations are allowed (iii) Texas Government Code §2003.055, which provides that the Chief Administrative Law Judge shall develop and implement the effective use of technological solutions to improve the agency's ability to perform its functions; and (vi) Texas Government Code §2001.004, which requires the adoption of rules of practice setting forth the nature and requirements of formal and informal procedures under the Administrative Procedures Act.

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SUBCHAPTER H. MEDIATION

1 TAC §155.351

Statutory Authority

The rule amendments are adopted under: (i) Texas Government Code §2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; (ii) Texas Government Code §2003.0412, which requires the Chief Administrative Law Judge to adopt rules that prescribe the types of alternative dispute resolution procedures in which ex parte consultations are prohibited and the types of alternative dispute resolution procedures in which ex parte consultations are allowed (iii) Texas Government Code §2003.055, which provides that the Chief Administrative Law Judge shall develop and implement the effective use of technological solutions to improve the agency's ability to perform its functions; and (vi) Texas Government Code §2001.004, which requires the adoption of rules of practice setting forth the nature and requirements of formal and informal procedures under the Administrative Procedures Act.

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SUBCHAPTER J. DISPOSITION OF CASE

1 TAC §155.501, §155.503

Statutory Authority

The rule amendments are adopted under: (i) Texas Government Code §2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; (ii) Texas Government Code §2003.0412, which requires the Chief Administrative Law Judge to adopt rules that prescribe the types of alternative dispute resolution procedures in which ex parte consultations are prohibited and the types of alternative dispute resolution procedures in which ex parte consultations are allowed (iii) Texas Government Code §2003.055, which provides that the Chief Administrative Law Judge shall develop and implement the effective use of technological solutions to improve the agency's ability to perform its functions; and (vi) Texas Government Code §2001.004, which requires the adoption of rules of practice setting forth the nature and requirements of formal and informal procedures under the Administrative Procedures Act.

§155.501. *Failure to Attend Hearing and Default Proceedings.*

(a) If a party fails to appear for the hearing, the opposing party may move to proceed in that party's absence on a default basis.

(b) A motion for a default proceeding under this section must be supported by adequate proof of the following:

(1) the notice of hearing included a disclosure in at least 12-point, bold-face type that the factual matters asserted in the notice or pleadings could be deemed admitted and that the relief sought might be granted by default against the party that fails to appear at the hearing;

(2) the notice of hearing satisfies the requirements of Tex. Gov't Code §2001.051 and §2001.052, and §155.401 of this chapter; and

(3) the notice of hearing and any pleadings sought to be admitted were:

(A) issued or received by the defaulting party; or

(B) properly served to the defaulting party or their attorney.

(c) In the absence of a motion for default or adequate proof to support a default, the judge shall continue the case and direct the party responsible to provide adequate notice of hearing. If the responsible party persists in failing to provide adequate notice, the judge may dismiss the case from the SOAH docket for want of prosecution.

(d) Upon receiving a motion for default and the required showing of proof to support a default, the judge may grant the motion and issue one of the following:

(1) **Default dismissal.** In default proceedings where SOAH is not authorized by law to render a final decision in the proceeding, upon motion for default dismissal, the judge may issue an order finding adequate notice, granting a default dismissal based on facts deemed to be admitted.

(2) **Default proposal for decision.** In default proceedings where SOAH is not authorized by law to render a final decision in the proceeding, upon motion for a default proposal for decision, the judge may deem admitted the factual matters asserted in the notice of hearing or the non-defaulting party's pleadings and issue a proposal for decision.

(3) **Default decision.** In default proceedings where SOAH is authorized by law to render a final determination in the proceeding, upon motion for a default decision, the judge may deem admitted the

factual matters asserted in the notice of hearing or the non-defaulting party's pleadings and issue a default decision.

(e) **Default dismissals.**

(1) An order of default dismissal issued under subsection (d)(1) of this section shall inform the party of the opportunity to have the default set aside under this subsection by filing an adequate motion no later than 15 days after the issuance of the order of default dismissal.

(2) If a motion to set aside a default dismissal is filed within 15 days after the issuance of an order of default dismissal, the judge will rule on the motion and either:

(A) grant the motion, set aside the default, and reopen the hearing for good cause shown; or

(B) issue an order denying the motion and remand the case to the referring agency for informal disposition on a default basis in accordance with Tex. Gov't Code §2001.056.

(3) In the absence of a timely motion to set aside a default, the case will be remanded to the referring agency for informal disposition on a default basis in accordance with Tex. Gov't Code §2001.056 after the expiration of 15 days from the date of the order of default dismissal.

(4) Dismissal under this section removes the case from the SOAH docket without a decision on the merits.

(f) **Default proposals for decision.** A default proposal for decision issued under subsection (d)(2) of this section is subject to §155.507 of this chapter.

(g) **Default decisions.**

(1) Default decisions are subject to motions for rehearing as provided for in the APA.

(2) A default decision issued under subsection (d)(3) of this section shall inform the party of the opportunity to have the default set aside by filing a motion for rehearing under Tex. Gov't Code Chapter 2001, Subchapter F.

(h) **Motions to Set Aside Default.**

(1) A motion to set aside default under this section shall set forth the grounds for reinstatement or rehearing and must be supported by affidavit of the movant or their attorney that:

(A) the party had no notice of the hearing;

(B) the party had no notice of the consequences for failure to appear; or

(C) although the party had notice, its failure to appear was not intentional or the result of conscious indifference, but due to reasonable mistake or accident that can be supported by adequate proof; and

(D) a statement of whether the motion is opposed, and if the motion is opposed, a list of dates and times for a hearing on the motion that are agreeable to both parties.

(2) Whether or not the motion is opposed, the judge may rule on the motion without setting a hearing or may set a hearing to consider the motion. If the judge finds good cause for the defaulting party's failure to appear, the judge shall vacate the default and reset the case for a hearing.

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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TITLE 7. BANKING AND SECURITIES

PART 8. JOINT FINANCIAL REGULATORY AGENCIES

CHAPTER 151. HOME EQUITY LENDING PROCEDURES

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") adopt amendments to §151.1 (relating to Application for Interpretation); and adopt the repeal of §151.2 (relating to Review of Request), §151.3 (relating to Initiation of Interpretation Procedure), §151.4 (relating to Notice of Proposed Interpretation), §151.5 (relating to Public Comment), §151.6 (relating to Action on Proposed Interpretation), and §151.7 (relating to Adoption of Interpretation) in 7 TAC, Chapter 151, concerning Home Equity Lending Procedures.

The commissions adopt the repeal of §151.2, §151.3, §151.4, §151.5, §151.6, and §151.7 as proposed in the September 4, 2020, issue of the *Texas Register* (45 TexReg 6202). The repeals will not be republished.

The commissions adopt the amendments to §151.1 with changes to the proposed text as published in the September 4, 2020, issue of the *Texas Register* (45 TexReg 6202). The rule will be republished.

The commissions received no written comments on the proposed rule changes to 7 TAC Chapter 151. Comments that the commissions received on proposed amendments to 7 TAC Chapter 153 are discussed separately in this issue of the *Texas Register*.

The rules in 7 TAC Chapter 151 govern the procedures for requesting, proposing, and adopting interpretations of the home equity lending provisions of Texas Constitution, Article XVI, Section 50 ("Section 50"). In general, the purpose of the rule changes to 7 TAC Chapter 151 is to implement changes resulting from the commissions' review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 151 was published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2897). The commissions received no comments in response to that notice.

The rules in 7 TAC Chapter 151 are administered by the Joint Financial Regulatory Agencies ("agencies"), consisting of the Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and Texas Credit Union Department. The agencies distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held an online webinar regarding the

proposed changes. The agencies appreciate the thoughtful input provided by stakeholders.

Adopted amendments to §151.1 amend current procedures for stakeholders to request interpretations of Section 50 from the commissions. Amendments to §151.1 also specify that the commissions will propose and adopt interpretations in accordance with Texas Government Code, Chapter 2001.

Currently, §151.1, §151.2, and §151.3 describe a procedure for an interested person to request an interpretation. Under this procedure, a person submits a request to the general counsel of the Office of Consumer Credit Commissioner, and the request must include legal and factual information supporting the request. The request is evaluated, and the requestor is notified if the commissions initiate an interpretation.

Currently, §151.4, §151.5, §151.6, and §151.7 describe the procedure for the commissions to propose and adopt interpretations. These provisions explain that notice of the proposed interpretation will be published in the *Texas Register* including an explanation that there will be an opportunity for public comment, that the commissions may adopt or decline to adopt the interpretations at a public meeting, and that an adopted interpretation will include a reasoned justification, restatement of affected provisions, and certification of legal authority.

There are three issues with the current procedures in §151.1 through §151.7. First, the procedure for requesting interpretations in current §151.1 through §151.3 has not been commonly used by stakeholders. Instead, most feedback about interpretations has come from informal comments resulting from constitutional amendments, litigation, or rule review. Second, the commissions already have separate rules on petitions for rulemaking, in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001 ("APA"). The Finance Commission's rule on petitions for rulemaking is codified at 7 TAC §9.82 (relating to Petitions to Initiate Rulemaking Proceedings), while the Credit Union Commission's rule is codified at 7 TAC §97.500 (relating to Petitions to Initiate Rulemaking Proceedings). The request procedure in §151.1 through §151.3 contains some, but not all, of the requirements for a formal petition for rulemaking, so it is unclear whether these requests must meet the requirements for a petition for rulemaking. Third, §151.4 through §151.7 describe some, but not all, of the APA's requirements for proposing and adopting rules.

The amendments to §151.1 address these issues and provide clear guidelines on how interpretations are requested, proposed, and adopted. The amendment to §151.1(a) explains that the commissions will propose and adopt interpretations in accordance with the rulemaking requirements of the APA. New subsection (b) explains that the agencies may recommend proposed interpretations to the commissions and may seek informal input from stakeholders. New subsection (c) explains that a person may submit an informal request to the agencies, and describes items the request should include. New subsection (d) explains that an interested person may file a petition to initiate rulemaking, and includes citations to the commissions' other rules that govern these petitions. The adoption removes current subsection (b) as unnecessary because of the new guidelines described in subsections (b) through (d). The title of §151.1 is amended to state "Interpretation Procedures," to properly identify the scope of the rule.

Changes have been made in §151.1(d)(1) and (2) to remove a comma in each of these paragraphs, based on input from staff of the *Texas Register*.

The adoption repeals §151.2 and §151.3. As discussed earlier, these sections currently describe the process used when a stakeholder requests an interpretation, and are unnecessary because of the new guidelines described in the amendments to §151.1. The commissions believe that these amendments provide a balanced approach, enabling stakeholders to use informal requests, while also preserving the important statutory right for an interested person to file a petition for rulemaking under the APA.

The adoption repeals §151.4, §151.5, §151.6, and §151.7. As discussed earlier, these sections currently describe some, but not all, of the requirements for proposing and adopting rules under the APA. These sections are unnecessary because of the updated language in the amendments to §151.1(a). The commissions believe that these changes simplify Chapter 151 to refer to the APA in a more straightforward manner, and ensure that it is not necessary to update Chapter 151 each time the Texas Legislature amends the APA's rulemaking requirements.

7 TAC §151.1

The rule changes are adopted under Texas Finance Code, §11.308 and §15.413, which authorize the commissions to issue interpretations of Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001.

The constitutional and statutory provisions affected by the adoption are contained in Texas Constitution, Article XVI, §50, and Texas Finance Code, Chapters 11 and 15.

§151.1. Interpretation Procedures.

(a) Issuing interpretations. The Finance Commission and Credit Union Commission may on their own motion issue interpretations of Section 50(a)(5) - (7), (e) - (p), and (t), Article XVI of the Texas Constitution. The commissions will propose and adopt interpretations in accordance with the rulemaking requirements of Texas Government Code, Chapter 2001, Subchapter B.

(b) Agency recommendations. The Office of Consumer Credit Commissioner, Department of Banking, or Department of Savings and Mortgage Lending may recommend proposed interpretations to the Finance Commission. The Credit Union Department may recommend proposed interpretations to the Credit Union Commission. The four agencies may seek informal input from stakeholders and the other agencies before recommending a proposed interpretation to the commissions.

(c) Informal request for interpretation. A person may submit an informal request for an interpretation of Section 50(a)(5) - (7), (e) - (p), or (t), Article XVI of the Texas Constitution. An informal request may be submitted to the Office of Consumer Credit Commissioner, Department of Banking, Department of Savings and Mortgage Lending, or Credit Union Department. A request should:

- (1) cite the specific provision of the Texas Constitution to be interpreted;
- (2) explain the factual and legal context for the request; and
- (3) explain the requestor's opinion of how the request should be resolved.

(d) Petition for rulemaking. An interested person may formally request an interpretation of Section 50(a)(5) - (7), (e) - (p), or

(t), Article XVI of the Texas Constitution by submitting a petition to initiate rulemaking.

(1) Any petition for the Finance Commission to issue an interpretation must be submitted to the Office of Consumer Credit Commissioner and must include the information required by §9.82 of this title (relating to Petitions to Initiate Rulemaking Proceedings).

(2) Any petition for the Credit Union Commission to issue an interpretation must be submitted to the Credit Union Department and must include the information required by §97.500 of this title (relating to Petitions to Initiate Rulemaking Proceedings).

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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Matthew Nance

Deputy General Counsel, Office of Consumer Credit Commissioner
Joint Financial Regulatory Agencies

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For further information, please call: (512) 936-7660



7 TAC §§151.2 - 151.7

The rule changes are adopted under Texas Finance Code, §11.308 and §15.413, which authorize the commissions to issue interpretations of Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001.

The constitutional and statutory provisions affected by the adoption are contained in Texas Constitution, Article XVI, §50, and Texas Finance Code, Chapters 11 and 15.

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CHAPTER 153. HOME EQUITY LENDING

7 TAC §§153.8, 153.11, 153.14, 153.15, 153.22, 153.26, 153.41

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") adopt amendments to §153.8 (relating to Security of the Equity Loan: Section 50(a)(6)(H)), §153.11 (relating to Repayment Schedule: Section

50(a)(6)(L)(i)), §153.14 (relating to One Year Prohibition: Section 50(a)(6)(M)(iii)), §153.15 (relating to Location of Closing: Section 50(a)(6)(N)), §153.22 (relating to Copies of Documents: Section 50(a)(6)(Q)(v)), and §153.41 (relating to Refinance of a Debt Secured by a Homestead: Section 50(e)); and adopt new §153.26 (relating to Acknowledgment of Fair Market Value: Section 50(a)(6)(Q)(ix)) in 7 TAC, Chapter 153, concerning Home Equity Lending.

The commissions adopt the amendments to §§153.8, 153.11, 153.14, 153.15, and 153.22 without changes to the proposed text as published in the September 4, 2020, issue of the *Texas Register* (45 TexReg 6204). The text of these sections will not be republished.

The commissions adopt the amendments to §153.41, and adopt new §153.26, with changes to the proposed text as published in the September 4, 2020, issue of the *Texas Register* (45 TexReg 6204). The text of these sections will be republished.

The commissions received six official comments on the proposal. Two comments were from Black, Mann & Graham, LLP. One comment was from Cornerstone Credit Union League, Independent Bankers Association of Texas, Texas Bankers Association, and Texas Mortgage Bankers Association. One comment was from the Independent Bankers Association of Texas. One comment was from the Texas Mortgage Bankers Association. One comment was from an individual.

The comment from Cornerstone Credit Union League, Independent Bankers Association of Texas, Texas Bankers Association, and Texas Mortgage Bankers Association expressed general support for the proposal, stating that the proposed changes "will provide some extremely helpful clarity to lenders, particularly as to issues that have arisen during this time of pandemic." Each of the six comments recommended changes to certain sections of the proposal. The commissions' responses to these comments are included following the discussion of each applicable section.

7 TAC Chapter 153 contains the commissions' interpretations of the home equity lending provisions of Texas Constitution, Article XVI, Section 50 ("Section 50"). In general, the purpose of the proposed rule changes to 7 TAC Chapter 153 is to implement changes resulting from the commissions' review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 151 was published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2897). The commissions received no comments in response to that notice.

The interpretations in 7 TAC Chapter 153 are administered by the Joint Financial Regulatory Agencies ("agencies"), consisting of the Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and Texas Credit Union Department. The agencies distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held an online webinar regarding the proposed changes. The agencies received three informal precomments on the rule text draft. The agencies appreciate the thoughtful input provided by stakeholders.

An amendment to §153.8(1)(C) removes the word "or" to correct a list that unnecessarily includes the word "or" twice.

In an official comment, one commenter recommended deleting the statement in current §153.8(2) that a "guaranty or surety of an equity loan is not permitted." The commenter argued that this provision leads to an absurd result, and that parties other than

the owner or owner's spouse should be able to enter a surety or guaranty to be held personally liable for a home equity loan.

The commissions originally adopted §153.8(2) on the rationale that a guaranty or surety constitutes additional property that would secure the home equity loan, in violation of Section 50(a)(6)(H). *Cf. Smith v. Cash Store Mgmt.*, 195 F.3d 325, 331 (7th Cir. 1999) (holding that a postdated check is "security" for a loan because it creates additional value to the lender). This is a long-standing interpretation going back to the agencies' original 1998 commentary on Section 50, and has not been superseded by subsequent constitutional amendments or court rulings. See Joint Financial Regulatory Agencies, Regulatory Commentary on Equity Lending Procedures, p. 6 (Oct. 7, 1998). The commissions believe that this rationale is still correct. For this reason, the commissions disagree with the comment and decline to amend current §153.8(2).

Amendments to §153.11 explain that the repayment schedule requirements in Section 50(a)(6)(L)(i) of the Texas Constitution apply at closing. New paragraph (1) explains that this constitutional provision does not prohibit a lender from agreeing with the borrower to certain modifications, and explains that a modification may include a deferment of the original obligation. An amendment at §153.11(2) explains that the modification does not affect the two-month time period described by Section 50(a)(6)(L)(i).

These amendments to §153.11 are based on the Texas Supreme Court's decision in *Sims v. Carrington Mortg. Servs., LLC*, 440 S.W.3d 10 (Tex. 2014). In *Sims*, the Texas Supreme Court analyzed a modification of a home equity loan where the borrower and lender agreed to capitalize past-due interest, fees, property taxes, and insurance premiums into the principal, and where the modification did not involve the satisfaction or replacement of the original note, an advancement of new funds, or an increase in the obligations created by the original note. The court held that because the modification was not a new extension of credit, it did not trigger reapplication of the constitutional requirements of Section 50. *Sims*, 440 S.W.3d at 18.

In its first official comment, Black, Mann & Graham, LLP recommended adding the new text on modifications to §153.14 instead of §153.11. Section 153.14 deals primarily with the one-year requirement in Section 50(a)(6)(M)(iii), while §153.11 deals primarily with the repayment schedule requirement in Section 50(a)(6)(L)(i). The commissions believe that the new text on modifications relates primarily to the repayment schedule requirement, and, therefore, appropriately belongs in §153.11. For this reason, the commissions disagree with the comment and have maintained the new text in §153.11.

Another commenter recommended adding the following two sentences to §153.11 regarding which modifications are permissible: "Any deferment may include no payments or monthly payments in an amount that is less than the amount of accrued interest during the deferment period." And, "No more than six (6) months of payments may be deferred in any twelve (12) month period." The commissions decline to include this text in the adoption, because the text appears to go beyond interpreting Section 50 of the Texas Constitution, and could be misunderstood to allow actions that are prohibited by other law. For example, for high-cost home loans, Texas Finance Code, §343.203 generally prohibits negative amortization (i.e., a payment schedule that causes the principal balance to increase). In addition, the first sentence recommended by the commenter is unnecessary, because this concept is sufficiently addressed by the existing text on deferments.

In an informal precomment, one precommenter suggested amending §153.11(1) to state that the two-month time period described by Section 50(a)(6)(L)(i) begins "on the day the loan is funded." Section 50(a)(6)(L)(i) provides that the payments must begin "no later than two months from the date the extension of credit is made." Currently, §153.11(1) explains that the two-month period begins "on the date of closing." The commissions believe that the current text appropriately interprets the word "made" in the context of Section 50(a)(6)(L)(i), and have not included this suggested change in the proposal. *Cf.* Black's Law Dictionary, "make" (11th ed. 2019) (defining "make" to include "caus[ing] (something) to exist" and "legally perform[ing], as by executing, signing, or delivering (a document)").

Amendments to §153.14 describe states of emergency. Section 50(a)(6)(M)(iii) of the Texas Constitution generally prohibits a home equity loan from being closed within one year after another home equity loan on the same property, but includes an exception for a state of emergency declared by the president of the United States or the governor of Texas. Amendments to §153.14 would describe this exception and explain that a state of emergency includes a national emergency declared by the president of the United States under the National Emergencies Act, 50 U.S.C. §§1601-1651, and a state of disaster declared by the governor of Texas under Texas Government Code, Chapter 418. The commissions believe that these federal and state statutes describe states of emergency within the meaning of Section 50(a)(6)(M)(iii).

Amendments to §153.15 describe permissible closing locations. Section 50(a)(6)(N) of the Texas Constitution provides that a home equity loan must be closed only at the office of a lender, an attorney at law, or a title company. Because of the pandemic resulting from the coronavirus and the disease COVID-19, lenders have expressed interest in closing loans in places where they can maintain social distancing, such as an office parking lot. An amendment to §153.15(1) explains that the closing may occur in any area located at the permanent physical address of the lender, attorney, or title company. Amendments to paragraphs (2) and (3) add references to the permanent physical address. The commissions believe that these amendments are consistent with the closing location requirement of Section 50(a)(6)(N), and clarify that lenders have this option to maintain social distancing while closing loans at their offices.

In its first official comment, Black, Mann & Graham, LLP recommended adding the phrase "or branch office" after "office" in §153.15(2) and (3). The commissions believe that this change is unnecessary because the general term "office" encompasses branch offices and existing §153.15(1) already makes clear that a branch office is included. For this reason, the change is not included in this adoption.

An amendment to §153.22 describes requirements for electronic copies of loan documents. Section 50(a)(6)(Q)(v) of the Texas Constitution requires the lender to provide the owner with a copy of the loan application and all documents signed by the owner at closing. New §153.22(3) explains that the lender may provide documents electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents, and would include references to the Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322, and the federal E-Sign Act, 15 U.S.C. §§7001-7006.

In its second official comment, Black, Mann & Graham, LLP recommended that proposed §153.22(3) be renumbered as a new

and separate section and then revised to apply to all notices, disclosures and documents required to be delivered to the owner. In addition to the deliveries described by §153.22, the new section would apply to those described by §153.13 (relating to Pre-closing Disclosures: Section 50(a)(6)(M)(ii)), §153.51 (relating to Consumer Disclosure: Section 50(g)), and §153.45 (relating to Refinance of an Equity Loan: Section 50(f)). Alternatively, the commenter recommended that each of the cited sections be separately amended to permit the same type of electronic delivery as would be permitted by proposed §153.22(3). The comment from the Independent Bankers Association of Texas and the comment from the Texas Mortgage Bankers Association also expressed support for this recommendation. In general, the agencies do not object to the concept of providing required disclosures electronically in accordance with state and federal law. However, the suggested changes go significantly beyond the scope of the current proposal and cannot be accomplished within this rule-making. In the future, the agencies and the commissions will consider whether a new consolidated section or amendments to other sections in Chapter 153 might be appropriate to address this issue.

New §153.26 describes the acknowledgment of fair market value. Under Section 50(a)(6)(Q)(ix) of the Texas Constitution, the owner of the homestead and the lender must sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made. New §153.26(2) explains that the lender may sign the written acknowledgment before or at closing. New §153.26(3) explains that an authorized agent may sign the written acknowledgment on behalf of the lender.

Three of the official comments discussed §153.26 and the written acknowledgment of fair market value. Two of these comments, including the first comment from Black, Mann & Gramm, LLP, referred to the doctrine of last antecedent. Under the doctrine of last antecedent, "a qualifying phrase in a statute or the Texas Constitution must be confined to the words and phrases immediately preceding it to which it may, without impairing the meaning of the sentence, be applied." *Spradlin v. Jim Walter Homes, Inc.*, 34 S.W.3d 578, 581 (Tex. 2000) (applying the doctrine of last antecedent to Texas Constitution, Article XVI, Section 50(a)(5)). Two commenters argue that the doctrine of last antecedent should be applied to Section 50(a)(6)(Q)(ix), and that the phrase "on the date the extension of credit is made" should be read to modify only the immediately preceding phrase "the fair market value of the homestead property." The third official comment, from Cornerstone Credit Union League, Independent Bankers Association of Texas, Texas Bankers Association, and Texas Mortgage Bankers Association, expressed general support for the analysis of §153.26 in the first two comments.

The commissions agree that it is appropriate to apply the doctrine of last antecedent to Section 50(a)(6)(Q)(ix), and that the phrase "on the date the extension of credit is made" modifies only the immediately preceding phrase "the fair market value of the homestead property." In response to these comments, adopted paragraph (1) has been added to §153.26 to explain this concept.

One of the commenters, after discussing the doctrine of last antecedent, recommended including a statement in §153.26 that the lender may sign the written acknowledgment "before, at or after closing." The commenter cited Section 50(a)(6)(Q)(x)(d), which allows a lender to correct a failure to comply with Section 50(a)(6)(Q)(ix) by "obtaining the appropriate signatures" within

60 days after being notified of the failure to comply. The commenter raised questions about whether lenders can rely on the information contained in an appraisal. The commenter also explained that there may be factual questions, not addressed in the interpretations, regarding who is an "authorized agent" of the lender for purposes of §153.26.

The commissions agree that the acknowledgment may be signed before or at closing. The commissions also agree that Section 50(a)(6)(x)(d) allows a lender to correct a failure to comply with Section 50(a)(6)(Q)(ix) by obtaining the appropriate signatures. However, the language suggested by the commenter gives the impression that the lender complies with Section 50(a)(6)(Q)(ix) by signing the acknowledgment at any time after closing. Under Section 50(a)(6)(Q)(ix), a home equity loan must be "made on the condition that . . . the owner of the homestead and the lender sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made." Generally, a lender should have the information it needs to complete and sign the acknowledgment before or at closing. See Regulation B Valuations Rule, 12 C.F.R. §1002.14(a)(1) (requiring a creditor, for certain first-lien mortgages, to provide a copy of any appraisal at least three business days before consummation). For this reason, the commissions believe that the proposed text is inappropriate and decline to make the change suggested by the commenter. Regarding the commenter's questions about a lender's ability to rely on an appraisal, this issue is addressed by Section 50(h), which generally allows a lender to "conclusively rely on the written acknowledgment as to the fair market value . . . if . . . the value acknowledged to is the value estimate in an appraisal or evaluation prepared in accordance with a state or federal requirement applicable to [home equity loans]." Regarding the commenter's statement on factual questions about who is an "authorized agent," §153.26 does not require the lender to use an authorized agent, and if a lender is concerned about factual questions that arise from using an authorized agent, then the lender can sign the acknowledgment itself.

In its first comment, Black, Mann & Gramm, LLP recommended removing the word "must" from the introductory paragraph of §153.26. The comment makes this recommendation in connection with the discussion of the doctrine of last antecedent, as discussed earlier. The comment does not explain what the word "must" should be replaced with. The use of the word "must" in §153.26 is consistent with the introductory paragraphs of several other sections currently located throughout 7 TAC Chapter 153, including §153.8, §153.11, and §153.22. The word "must" appropriately reflects that certain conditions must be satisfied in order for the lender to have a valid lien under Section 50(a)(6). For this reason, the commissions decline to remove the word "must" from this provision.

An amendment to §153.41 removes the phrase "or (a)(7)" in the introductory paragraph. Section 50(e) of the Texas Constitution generally provides that if a refinance of debt against the homestead includes additional funds, the refinance must be described by Section 50(a)(6) (i.e., must be a home equity loan). Section 50(e) does not refer to Section 50(a)(7). The phrase "or (a)(7)" in the introductory paragraph of §153.41 appears to be a typographical error. For this reason, the amendment removes this phrase.

A change has been made to the introductory paragraph of §153.41 to remove the numbers "(1)" and "(2)" within this paragraph, based on input from staff of the *Texas Register*.

The constitutional provisions affected by the adoption are contained in Texas Constitution, Article XVI, §50.

No statute is affected by this adoption.

§153.26. *Acknowledgment of Fair Market Value: Section 50(a)(6)(Q)(ix).*

The owner of the homestead and the lender must sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made.

(1) For purposes of Section 50(a)(6)(Q)(ix), the phrase "on the date the extension of credit is made" modifies only the immediately preceding phrase "the fair market value of the homestead property," in accordance with the doctrine of last antecedent.

(2) A lender may sign the written acknowledgment before or at closing.

(3) An authorized agent may sign the written acknowledgment on behalf of the lender.

§153.41. *Refinance of a Debt Secured by a Homestead: Section 50(e).*

A refinance of debt secured by a homestead and described by any subsection under Subsections (a)(1)-(a)(5) of Section 50 of the Texas Constitution that includes the advance of additional funds may not be secured by a valid lien against the homestead unless the refinance of the debt is an extension of credit described by Subsection (a)(6) of Section 50 of the Texas Constitution, or the advance of all the additional funds is for reasonable costs necessary to refinance such debt or for a purpose described by Subsection (a)(2), (a)(3), or (a)(5) of Section 50 of the Texas Constitution.

(1) Reasonableness and necessity of costs relate to the type and amount of the costs.

(2) In a secondary mortgage loan, reasonable costs are those costs which are lawful in light of the governing or applicable law that authorizes the assessment of particular costs. In the context of other mortgage loans, reasonable costs are those costs which are lawful in light of other governing or applicable law.

(3) Reasonable and necessary costs to refinance may include reserves or impounds (escrow trust accounts) for taxes and insurance, if the reserves comply with applicable law.

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 November 6, 2020.

TRD-202004692

Matthew Nance

Deputy General Counsel, Office of Consumer Credit Commissioner

Joint Financial Regulatory Agencies

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For further information, please call: (512) 936-7660



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION
SUBCHAPTER D. UNIFORM GUIDANCE FOR
RECIPIENTS OF FEDERAL AND STATE FUNDS
10 TAC §§1.401 - 1.405, 1.409, 1.410

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.401 Definitions, §1.402 Cost Principles and Administrative Requirements, §1.403 Single Audit Requirements, §1.404 Purchase and Procurement Standards, §1.405 Bonding Requirements, §1.409 Records Retention, and §1.410 Determination of Alien Status for Program Beneficiaries without changes to the proposed text as published in the September 18, 2020, issue of the *Texas Register* (45 TexReg 6436). The purpose of the repeal is to clarify requirements for participants of the Department's program. The repeal will not be republished.

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.

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

1. The repeal does not create or eliminate a government program but relates to changes to existing guidance for program subrecipients.
2. The repeal does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The repeal does not require additional future legislative appropriations.
4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The repeal will not expand, limit, or repeal an existing regulation.
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 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 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

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 repeal as to its possible effects on local economies and has determined that for the first five years the 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 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 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 SUMMARY. The public comment period was held from September 18, 2020, to October 19, 2020, to receive input on the proposed action. No comments on the repeal were received.

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 amended 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 November 6, 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 §§1.401 - 1.405, 1.409, 1.410

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.401 Definitions; §1.402 Cost Principles and Administrative Requirements; §1.403 Single Audit Requirements; §1.404 Purchase and Procurement Standards; §1.405 Bonding Requirements; §1.409 Records Retention; and §1.410 Determination of Alien Status for Program Beneficiaries, without changes to the proposed text as published in the September 18, 2020, issue of the *Texas Register* (45 TexReg 6437). The rules will not be republished.

The purpose of the new sections is to make clarifications regarding cross-cutting state and federal requirements applicable to

those organizations participating in Department programs. The section changes include: minor changes to several definitions in §1.401 Definitions; clarifies what programs are applicable for this section in §1.402 Cost Principles and Administrative Requirements; clarifies when the Single Audit requirements apply in §1.403 Single Audit Requirements; provides a more orderly list of procurement process documentation in §1.404 Purchase and Procurement Standards; clarifies when this section's requirements apply in §1.405 Bonding Requirements; clarifies that any entity who performs services on behalf of a subrecipient, must also follow record retention requirements in §1.409 Records Retention; and clarifies the election process for subrecipients in §1.410 Determination of Alien Status for Program Beneficiaries.

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.

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

1. The new sections do not create or eliminate a government program but relates to changes to existing regulations applicable to Department subrecipients.
2. The 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 new sections do not require additional future legislative appropriations.
4. The 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 new sections are not creating a new regulation, except that they are replacing sections being repealed simultaneously to provide for revisions.
6. The new sections will not expand, limit, or repeal an existing regulation.
7. The new sections will not increase or decrease the number of individuals subject to the rule's applicability.
8. The 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 new sections and determined that the proposed actions 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 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 new sections as to their possible effects on local economies and has determined that for the first five years the 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 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 new sections are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held from September 18, 2020, to October 19, 2020, to receive input on the proposed action. One comment from the Texas Association of Community Action Agencies (TACAA) was received. While TACAA did not recommend specific language revisions, they did recommend that the Department should simplify and streamline the process to avoid confusing instructions or misplacement of Single Audits transmitted to TDHCA, should designate only one single point of contact for the submission of Single Audits to TDHCA, and should provide Subrecipients written acknowledgement when a Single Audit is received at TDHCA within a reasonable amount of time (three business days) or auto-reply which will serve as proof to the Subrecipient of the Single Audit submission and to retain when and if questioned. Because the items requested are not addressed in the rule, but through internal policy of the Department, no responsive revisions are being made to the rule. The Compliance Division will consider the input as they perform their duties and implement policy relating to this section.

STATUTORY AUTHORITY. The new sections are made 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.

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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TRD-202004669

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-1762



CHAPTER 12. MULTIFAMILY HOUSING REVENUE BOND RULES

10 TAC §§12.1 - 12.10

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules, without changes to the proposed text as published in the September 18, 2020, issue of the *Texas Register* (45 TexReg 6520). The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action. The repeals will not be republished.

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.

1. Mr. Wilkinson 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, the issuance of Private Activity Bonds (PAB).

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 a simultaneous re-adoption making changes to an existing activity, the issuance of PABs.

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 takings 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 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).

Bobby Wilkinson, Executive Director, 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 updated and more germane rule for administering the issuance of PAB. 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.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between September 18, 2020, and October 16, 2020. No comment was received.

The Board adopted the final order adopting the repeal on November 5, 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 November 6, 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 §§12.1 - 12.10

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules, without changes to the proposed text as published in the September 18, 2020, issue of the *Texas Register* (45 TexReg 6521). The rules will not be republished. The purpose of the new section is to provide compliance with Tex. Gov't Code §2306.359 and to update the rule to: clarify that development owners can select from supportive services identified in subsequent Qualified Allocation Plans adopted by the Department upon written consent from the Department and allow applicants to submit the full tax credit application (when the Department is the issuer) prior to receipt of a bond reservation at the discretion of staff, clarify that any market rate units proposed would be limited to 140% of area median income pursuant to

statute, and include parameters for closing fees for transactions considered to be a re-issuance.

Tex. Gov't Code §2001.0045(b) does not apply to the action on this rule pursuant to item (9), which exempts rule changes necessary to implement legislation. The rule provides compliance with Tex. Gov't Code §2306.359, which requires the Department to provide for specific scoring criteria and underwriting considerations for multifamily private activity bond activities.

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 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 issuance of Private Activity Bonds ("PAB").
2. The rule 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 rule does not require additional future legislative appropriations.
4. The rule changes will not result in an increase in fees paid to the Department, but may, under certain circumstances, result in a decrease in fees paid to the Department regarding Tax-Exempt Bond Developments.
5. The 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 rule does not increase or decrease the number of individuals subject to the rule's applicability.
8. The 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. The Department, in drafting this rule, has 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, §2306.359. Although these rules mostly pertain to the filing of a bond pre-application, some stakeholders have reported that their average cost of filing a full Application is between \$50,000 and \$60,000; which may vary depending on the specific type of Application, location of the Development Site, and other non-state of Texas funding sources utilized. The rules do not, on average result in an increased cost of filing an application as compared to the existing program rules.

1. The Department has evaluated this rule and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
2. This rule relates to the procedures in place for entities applying for multifamily PAB. Only those small or micro-businesses

that participate in this program are subject to this rule. There are approximately 100 to 150 businesses, which could possibly be considered small or micro-businesses, subject to the rule for which the economic impact of the rule would be a flat fee of \$8,500 which includes the filing fees associated with submitting a bond pre-application.

The Department bases this estimate on the potential number of Applicants and their related parties who may submit applications to TDHCA for PAB (and accompanying housing tax credits). There could be additional costs associated with pre-applications depending on whether the small or micro-businesses outsource how the application materials are compiled. The filing fees associated with a full application for PAB which is layered with LIHTC may range from \$480 to \$3,600 which is based on \$30 per unit, and all Applicants are required to propose constructing, at a minimum, 16 Units. The rule places a limit on the maximum number of Units that can be proposed, at 120 Units.

These fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing.

There are approximately 1,300 rural communities potentially subject to the new rule for which the economic impact of the rule is projected to be \$0. 10 TAC Chapter 12 places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. In an average year the volume of applications for PAB that are located in rural areas is not more than 20% of all PAB applications received. In those cases, a rural community securing a PAB Development will experience an economic benefit, not least among which is the increased property tax revenue from a large multifamily Development.

3. The Department has determined that because there are rural PAB awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive PAB awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The 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 rule may provide a possible positive economic effect on local employment in association with this rule since PAB Developments, layered with housing tax credits, often involve a typical minimum investment of \$10 million in capital, and more commonly an investment from \$20 million to \$30 million. Such a capital investment has direct, indirect, and induced effects on the local and regional economies and local employment. However, because the exact location of where

program funds or developments are directed is not determined in rule, and is driven by real estate demand, there is no way to predict during rulemaking where these positive effects may occur. Furthermore, while the Department believes that any and all impacts are positive, that impact is not able to be quantified for any given community until PABs and LIHTCs are actually awarded to a proposed Development, given the unique characteristics of each proposed multifamily Development.

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 significant construction activity is associated with any PAB Development layered with LIHTC and each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive PAB awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the rule is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule for administering the issuance of PABs and corresponding allocation of housing tax credits. There is no change to the economic cost to any individuals required to comply with the new section because the same processes described by the rule have already been in place through the rule found at this section being repealed. The average cost of filing a pre-application and application remain unchanged based on these rule changes. The rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

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 because the same processes described by the rule have already been in place through the rule found at this section being repealed.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS

Public comments were accepted between September 18, 2020, and October 16, 2020, with comments received from: (148) BETCO Housing Lab.

§12.9(b) - Federal Set-Aside Requirements

COMMENT SUMMARY:

Commenter (148) summarized that the proposed changes to this section restrict market rate units to 140% of the area median income and questioned whether the units would officially be considered income restricted units if the rents are capped.

STAFF RESPONSE:

The changes made to this section reflect the requirements contained in Tex. Gov't Code, Chapter 2306 as it relates to bonds issued by the Department. The Department is required to ensure units are occupied by eligible households, and such households are defined as low-income and moderate income. Moderate income is further defined as being limited to households at 140%

of the area median income. For transactions that propose market rate units, and propose to use bond proceeds to construct such units, these units would need to be restricted to 140% of area median income and included in the Bond Regulatory and Land Use Restriction Agreement as restricted units.

The Board adopted the final order adopting the new sections on November 5, 2020.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government 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.

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

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-1762



CHAPTER 13. MULTIFAMILY DIRECT LOAN RULE

10 TAC §§13.1 - 13.13

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 13, Multifamily Direct Loan Rule, without changes to the proposed text as published in the September 18, 2020, issue of the *Texas Register* (45 TexReg 6528). The purpose of the repeal is to provide for clarification of the existing rule through new rulemaking action. The repeals will not be republished.

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 readoption making changes to an existing activity, administration of the Multifamily Direct Loan Program.

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 or 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 an existing activity, administration of the Multifamily Direct Loan 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 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 repeal is in effect, the public benefit anticipated as a result of the repealed section would be increased clarity and improved access to the Multifamily Direct Loan funds. 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.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS: The Department accepted public comment between September 18, 2020, and October 9, 2020, to receive stakeholder comment regarding the repealed sections. All public comment was analyzed, considered and responded to by staff. No public comment was received on the repeal of 10 TAC Chapter 13.

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.

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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 §§13.1 - 13.13

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 13, Multifamily Direct Loan Rule, with changes to the proposed text as published in the September 18, 2020, issue of the *Texas Register* (45 TexReg 6529). Sections 13.5, 13.8, and 13.11 - 13.13 will be republished. The purpose of the new section is to provide compliance with Tex. Gov't Code §2306.111 and to update the rule to: clarify program requirements in multiple sections, codify in rule practices of the division, and change citations to align with changes to other multifamily rules. In general, most changes are corrective in nature, intended to gain consistency with state or federal rules, delete duplicative language or provisions, correct or update rule references, and clarify language or processes to more adequately communicate the language or process.

Tex. Gov't Code §2001.0045(b) does not apply to the action on this 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. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect:

1. The rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, administration of the Multifamily Direct Loan Program.

2. The new rule 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 rule changes do not require additional future legislative appropriations.

4. The rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The 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 expand, limit, or repeal an existing regulation.

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

8. The 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. The Department, in drafting this rule, has 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 §2306.111.

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 procedures for multifamily direct loan applications and award through various Department fund sources. Other than in the case of a small or micro-business that is an applicant for such a loan product, no small or micro-businesses are subject to the rule. It is estimated that approximately 200 small or micro-businesses are such applicants; for those entities the new rule provides for a more clear, transparent process for applying for funds and does not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the rule because this rule is applicable only to direct loan applicants for development of properties, which are not generally municipalities. The fee for applying for a Multifamily Direct Loan product is \$1,000, unless the Applicant is a nonprofit that provides supportive services or the Applicant is applying for Housing Tax Credits in conjunction with Multifamily Direct Loan funds, in which case the application fee may be waived. These fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing.

There are 1,296 rural communities potentially subject to the rule for which the economic impact of the rule is projected to be \$0. 10 TAC Chapter 13 places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. In an average year the volume of applications for MFDL resources that are located in rural areas is approximately fifteen. In those cases, a rural community securing a loan will experience an economic benefit, including, potentially, increased property tax revenue from a multifamily Development.

3. The Department has determined that because there are rural MFDL awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive MFDL awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The 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 may provide a possible positive economic effect on local employment in association with this rule since MFDL Developments, layered with housing tax credits, often involve a

typical minimum investment of \$10 million in capital, and more commonly an investment from \$20 million to \$30 million. Such a capital investment has direct, indirect, and induced effects on the local and regional economies and local employment. However, because the exact location of where program funds or developments are directed is not determined in rule, and is driven by real estate demand, there is no way to predict during rulemaking where these positive effects may occur. Furthermore, while the Department believes that any and all impacts are positive, that impact is not able to be quantified for any given community until MFDL awards and LIHTCs are actually awarded to a proposed Development, given the unique characteristics of each proposed multifamily Development.

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 significant construction activity is associated with any MFDL Development layered with LIHTC and each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the new rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive MFDL awards.

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 sections will be improved clarity of program requirements in multiple sections, codification in rule practices of the division, and change citations to align with changes to other multifamily rules. There will not be any economic cost to any individuals required to comply with the new sections because this rule does not have any new requirements that would cause additional costs to applicants.

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 sections does not have any foreseeable implications related to costs or revenues of the state or local governments because it does not have any new requirements that would cause additional costs to applicants.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS

Public comments were accepted between September 18, 2020, and October 9, 2020, with comments received from: BETCO Housing Lab

Summary of Comments

§13.5(g)(2)(A) Eligibility Criteria and Determinations

SUMMARY OF COMMENT: Commenter requests clarification of the term "or resources."

STAFF RESPONSE: The eligibility determination is not limited to Direct Loan funds that may have been awarded in the past 15 years, but extends to any assistance from the Department. *Staff recommends no changes based on this comment.*

§13.8(e) Criteria for Permanent Refinance Loans

SUMMARY OF COMMENT: Commenter states that it is unclear when the balance of the described loan will be disbursed.

STAFF RESPONSE: Disbursement of funds is governed by §13.11(b)(11), along with the Direct Loan contract and loan

documents. *Staff recommends no changes based on this comment.*

STATUTORY AUTHORITY. The new adoption is made 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.

§13.5. *Application and Award Process.*

(a) Applications. MFDL Applicants must follow the applicable requirements in 10 TAC Chapter 11, Subchapter C (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules).

(b) Application Acceptance Date. Applications will be considered received on the business day of receipt, unless a different time period is described in the Department's rules or NOFA. If an Application is received after 5:00 p.m., Austin local time, it will be determined to have been received on the following business day. Applications received on a non-business day will be considered received on the next day the Department is open. Applications will be considered complete at the time all Application materials, required third party reports and application fee(s) are received by the Department. Within certain Set-Asides or priorities, the date of receipt may be fixed, regardless of the earlier actual date a complete Application is received, if so specified in the Department's rules or NOFA. If multiple Applications have the same Application Acceptance Date, in the same region or subregion (as applicable), and within the same Set-Aside, then score and tiebreaker factors, as described in §13.6 of this chapter (relating to Selection Criteria) for MFDL or 10 TAC §11.7 and §11.9 of this title (relating to Tie Breaker Factors and Competitive HTC Selection Criteria, respectively) for Applications layered with 9% HTC, will be used to determine the Application's rank.

(c) Market Analysis. Applications proposing Rehabilitation that request MFDL as the only source of Department funding may be exempted from the Market Analysis requirement in 10 TAC §11.205(2) (relating to Required Third Party Reports) if the Development's rent rolls for the most recent six months reflect occupancy of at least 80% of all habitable Units.

(d) Required Site Control Agreement Provisions. All Applicants for MFDL funds must include the following provisions in the purchase contract or site control agreement if the subject property is not already owned by the Applicant:

(1) "Notwithstanding any other provision of this Contract, Purchaser shall have no obligation to purchase the Property, and no transfer of title to the Purchaser may occur, unless and until the Department has provided Purchaser and/or Seller with a written notification that: (A) It has completed a federally required environmental review and its request for release of federal funds has been approved and, subject to any other Contingencies in this Contract, (i) the purchase may proceed, or (ii) the purchase may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the property; or (B) It has determined that the purchase is exempt from federal environmental review and a request for release of funds is not required."; and

(2) "The Buyer does not have the power of eminent domain relating to the purchase and acquisition of the Property. The Buyer may use federal funds from the U.S. Department of Housing and Urban Development (HUD) to complete this purchase. HUD will not use eminent domain authority to condemn the Property. All parties entered this transaction voluntarily and the Buyer has notified the Seller of what it believes the value of the Property to be in accordance with 49 CFR

Part 24 Appendix A. If negotiations between both parties fail, Buyer will not take further action to acquire the Property."

(e) Oversubscribed Funds for 9% HTC-Layered Applications. Should MFDL funds be oversubscribed in a Set-Aside or for a fund source that has geographic limitations within a Set-Aside, Applications concurrently requesting 9% HTC will be notified and may amend their Application to accommodate another fund source and make changes that still meet threshold requirements in 10 TAC Chapter 11 and 13 of this title, and do not impact scoring under 10 TAC Chapter 11 of this title. The Department will provide notice to all impacted Applicants in the case of over-subscription, which will include a deadline for response. Multiple Applications from a single or affiliated Applicants does not constitute oversubscription, and the Applicant(s) will not be able to amend their Applications as described in this subsection. If MFDL funds become available between the Market Analysis Delivery Date, and the last Board meeting in July, they will not be reserved for 9% HTC-layered Applications, unless the reservation is described in the NOFA.

(f) Availability of funds for 4% HTC-layered Applications. If an Application requesting layered 4% HTC and Direct Loan funds is terminated under 10 TAC §11.201(2)(E), it will receive a new Application Acceptance Date for purposes of Direct Loan on submission of the new Certificate of Reservation. Direct Loan funds will not be reserved for terminated Applications, and may not be available for the Application with a new Reservation.

(g) Source of Direct Loan Funds. To the extent that an Application is submitted under a Set-Aside where multiple sources of Direct Loan funds are available, the Department will select sources of funds for recommended Applications, as provided in paragraphs (1) - (4) of this subsection.

(1) The Department will generally select the recommended source of funds to award to an Application in the order described in subparagraphs (A) - (C) of this paragraph, which may be limited by the type of activity an Application is proposing or the proposed Development Site of an Application:

(A) Federal funds with commitment and expenditure deadlines will be selected first;

(B) Federal funds that do not have commitment and expenditure deadlines will be selected next; and

(C) Nonfederal funds that do not have commitment and expenditure deadlines will be selected last; however,

(2) The Department may also consider repayment risk or ease of compliance with other fund sources when assigning the source of funds to recommend for award to an Application;

(3) The Department may move to the next fund source prior to exhausting another selection; and

(4) The Department will make the final decision regarding the fund source to be recommended for an award (within a Set-Aside that has multiple fund sources), and this recommendation may be not be appealed.

(h) Eligibility Criteria and Determinations. The Department will evaluate Applications received under a NOFA for eligibility and threshold pursuant to the requirements of this chapter and Chapter 11 of this title (relating to the Qualified Allocation Plan). The Department may terminate the Application if there are changes at any point prior to MFDL loan closing that would have had an adverse effect on the score and ranking order of the Application that would have resulted in the Application being ranked below another Application received prior to the subject Application.

(1) Applicants requesting MFDL as the only source of Department funds must meet the Experience Requirement as provided in either subparagraph (A) or (B) of this paragraph:

(A) The Experience Requirement as provided in 10 TAC §11.204(6) of this title (relating to Required Documentation for Application Submission); or

(B) Alternatively by providing the acceptable documentation listed in §11.204(6)(i) - (ix) of this title evidencing the successful development, and at least five years of the successful operation, of a project or projects with at least twice as many affordability restricted Units as requested in the Application.

(2) The Executive Director or authorized designee must make eligibility determinations for Applications for Developments that meet the criteria in subparagraph (A) or (B) of this paragraph regardless of available fund sources:

(A) Received an award of funds or resources from the Development from the Department within 15 years preceding the Application Acceptance Date; or

(B) Started or completed construction, and are not proposing acquisition or rehabilitation.

(3) An Application that requires an eligibility determination must identify that fact prior to, or in their Application so that an eligibility determination may be made subject to the Applicant's appeal rights under 10 TAC §11.902 or 10 TAC §1.7 of this title, as applicable. A finding of eligibility under this section does not guarantee an award. Applications requiring eligibility determinations generally will not be funded with HOME or NSP funds.

(A) Requests under this subsection will not be considered more than 60 calendar days prior to the first Application Acceptance Date published in the NOFA, for the Set-Aside in which the Applicant plans to apply.

(B) Criteria for consideration include clauses (i) - (iii) of this subparagraph:

(i) Evidence of circumstances beyond the Applicant's control that could not have been prevented with appropriate due diligence; or

(ii) Force Majeure events (not including weather events); and

(iii) Evidence that no further exceptional conditions exist that will delay or cause further cost increases.

(C) Criteria for consideration shall not include weather events, typical construction, or financing delays.

(D) Applications for Developments that previously received an award from the Department within 15 years preceding the Application Acceptance Date will be evaluated at no more than the amount of Developer Fee proposed the last time that the Department published an Underwriting Report. MFDL funds may not be used to fund increased Developer Fee, regardless of the allowability of the increase under other Department rules.

(i) Request for Preliminary Determination. Applicants considering a request for Direct Loan layered with a 9% HTC Application may submit a Request for Preliminary Determination with the HTC Pre-Application. The results of evaluation of the Request may be used as evidence of review of the Development and the Principals for purposes of scoring under 10 TAC §11.9(e)(1)(E). Submission of a Request for Preliminary Determination does not obligate the Applicant to request Multifamily Direct Loan funds with their full Application. The

Preliminary Determination is based solely on the information provided in the request, and does not indicate that the full Application will be accepted. It is not a guarantee that Direct Loan funds will be available or awarded to the full Application.

(j) Effective rules and contractual terms. The contractual terms of an award will be governed by and reflect the rules in effect at the time of Application; however, any changes in federal requirements will be reflected in the contractual terms. Further provided, that if after award, but prior to execution of such Contract, there are new rules in effect, the Direct Loan awardee may elect to be governed by the new rules, provided the Application would continue to have been eligible for award under the rules and NOFA in effect at the time of Application.

§13.8. Loan Structure and Underwriting Requirements.

(a) Loan Structures. Loan structures will generally be governed by the Direct Loan fund source as described below but may be further differentiated within a Set-Aside, as described in a NOFA.

(1) Loans of NHTF may be structured as deferred payable, deferred forgivable, or amortizing loan at an interest rate as low as 0%. The amortization period for an NHTF amortizing loan will not exceed 40 years. Terms for these loans will be published in the NOFA. It is the responsibility of the Applicant to account for any Basis, taxable event implications, and other federal superior lender requirements when requesting the deferred forgivable or deferred payable loan structure available in this Set-Aside.

(2) Loans of HOME, NSP PI, and TCAP RF will be structured as fully repayable (must pay) at an interest rate specified in the NOFA and approved by the Board, with an amortization period not to exceed 40 years and loan term that matches the term of any superior loans (within six months) at the time of Application, within the requirements of §13.8(c)(3) of this chapter. To the extent the Direct Loan has first lien position during the permanent term, the amortization period and loan term must meet the requirements of §13.8(c)(3) of this Chapter. Terms for these loans will be published in the NOFA. The interest rate, amortization period, and term for the loan will be fixed by the Board at the time of award, and can only be amended prior to loan closing by the process in 10 TAC §13.12 (relating to Pre-Closing Amendments to Direct Loan Terms).

(3) Requirements of any other fund source will be determined in the NOFA.

(b) Closing Memo to Underwriting Report. Any changes to the total development cost, expenses, income, and/or other sources of funds from time of the publication of the initial Underwriting Report at the time of award to the time of loan closing, must be reevaluated by Real Estate Analysis staff, who will typically publish a Closing Memo to the Underwriting Report. The Report may recommend changes to the principal amount and/or the repayment structure for the Multifamily Direct Loan pursuant to §11.302 of this title (relating to Underwriting Rules and Guidelines), except that the change must have been an available option in the rule or NOFA (as applicable), and may not be made to awards that were competitively scored to the extent that change would have caused the Development to lose points. This will allow the Department to uphold the competitive process, mitigate any increased risk, and to ensure that the Development is not oversubsidized. Where the Department determines such risk is not adequately mitigated, the award may be terminated or reconsidered by the Board. Increases in the principal amount or scheduled payment amounts of any superior loans that cause the total Debt Coverage Ratio (DCR) to decrease by more than .05 require approval by the Board. If the changes cause the total DCR to no longer comply with 10 TAC §11.302 of this title (relat-

ing to Underwriting Rules and Guidelines), the award may be subject to termination.

(c) **Criteria for Construction-to-Permanent Loans.** Direct Loans awarded through the Department must adhere to the following criteria as identified in paragraphs (1) - (11) of this subsection if being requested as construction-to-permanent loans, for which the interest rate will be specified in the NOFA and approved by the Board:

(1) The construction term for MFDL loans shall be coterminous with any superior construction loan(s), but no greater than 36 months. In the event the MFDL loan is the only loan with a construction term or the superior construction loan, the construction term shall be 24 months with one available six-month extension that may be approved for good cause by the Executive Director or his designee;

(2) No interest will accrue during the construction term;

(3) The loan term shall be no less than 15 years and no greater than 40 years and six months, and the amortization period shall be between 30 to 40 years. The Department's loan must mature at the same time or within six months of the shortest term of any senior debt, so long as neither exceeds 40 years and six months. The loan term commences following the end of the construction term;

(4) For Direct Loans structured as deferred payable loans, the loan shall be structured with either one balloon payment due at the end of the loan or with several payments due at a point in time during the loan term. For Direct Loans structured as deferred forgivable, the loan shall be structured with one balloon payment due at the end of the loan term;

(5) For amortized Direct Loans that are not subordinate to a HUD-insured loan, the loan shall be structured with regular monthly payments beginning on the first of the month following the end of the construction term and continuing for the loan term;

(6) For amortized Direct Loans that are subordinate to a HUD-insured loan, the loan shall be structured with an annual payment beginning on the first of the month following one year after the end of the construction term and continuing until the end of the loan term;

(7) If an amortized Direct Loan is subordinate to a HUD-insured loan that requires the Direct Loan to be subject to surplus cash flow as defined by HUD, staff will require the debt service coverage ratio on both the HUD insured loan and the Department's loan - as restricted to surplus cash flow - to continue to meet the minimum 1.15 DCR in accordance with 10 TAC §11.302(d)(4)(D) (relating to Acceptable Debt Coverage Ratio Range), and may require payment of any remaining amount from other sources;

(8) Loans shall be secured with a deed of trust with a permanent lien position that is superior to any other sources for financing including hard repayment debt that is in an amount less than or equal to the Direct Loan amount and superior to any other sources that have soft repayment structures, non-amortizing balloon notes, have deferred forgivable provisions, or in which the lender has an identity of interest with any member of the Development Team. Parity liens may only be considered with USDA Rural Development;

(9) If the Direct Loan amounts are more than 50% of the Total Housing Development Cost, except for Developments also financed through the USDA §515 program, the Application must include documents identified in either subparagraphs (A) or (B) of this paragraph:

(A) A letter from a Third Party Certified Public Accountant verifying the capacity of the Applicant, Developer, or Development Owner to provide at least 10% of the Total Housing Development Cost as a short term loan for the Development; or

(B) Evidence of a line of credit or equivalent tool in the sole determination of the Department equal to at least 10% of the Total Housing Development Cost from a financial institution that is available for use during the proposed Development activities;

(10) If the Direct Loan is the only source of permanent Department funding for the Development, the Development Owner must provide all items required in subparagraphs (A) and (B) of this paragraph:

(A) Equity in an amount not less than 10% of Total Housing Development Costs; however,

(i) An Applicant for Direct Loan funds may request Board approval to have an equity requirement of less than 10% that would not have to meet the waiver requirements in 10 TAC §11.207 of this title. The request must specify the proposed equity that will be provided and provide support for why that reduced level of equity will be sufficient to provide reasonable assurance that such owner will be able to complete construction and stabilization timely; and

(ii) "Sweat equity" or other forms of equity that cannot be readily accessed will not be allowed to count toward the equity requirement; and

(B) Evidence submitted through the Application Submission Process that shows the Direct Loan amount is not greater than 80% of the Total Housing Development Costs; and

(11) Up to 50% of the loan may be advanced at loan closing, should there be sufficient eligible costs to reimburse that amount.

(d) **Criteria for Construction Only Loans.** Direct Loans through the Department must adhere to the following criteria as identified in paragraphs (1) - (3) of this subsection if being requested as construction only loans:

(1) The term of the construction loan must be coterminous with any superior construction loan(s), but no greater than 36 months. In the event that the Direct Loan is the only construction loan or is the superior construction loan, the term may not exceed 24 months with available six-month extension that may be approved for good cause by the Executive Director or his designee;

(2) The interest rate may be as low as 0%; and

(3) Up to 50% of the loan may be advanced at loan closing, should there be sufficient costs to reimburse that amount.

(e) **Criteria for Permanent Refinance Loans.** If 90% of the Department's loan will repay existing debt, the first payment will be due the month after the month of loan closing, in which 90% of the loan may be advanced at loan closing, unless the Board approves another date.

(f) **Evaluations.** All Direct Loan Applicants in which third-party financing entities are part of the sources of funding must include a pro forma and lender approval letter evidencing review of the Development and the Principals, as described in 10 TAC §11.9(e)(1) of this title (relating to Competitive HTC Selection Criteria). Where no third-party financing exists, the Department reserves the right to procure a third-party evaluation which will be required to be prepaid by the Applicant.

(g) **Pass-Through Loans.** Department funds may not be used as pass-through financing. The Department's Borrower must be the Development Owner.

§13.11. *Post-Award Requirements.*

(a) Direct Loan awardees must satisfactorily complete the following Post-Award Requirements after the Board approval date.

(b) If a Direct Loan award is declined by the Direct Loan awardee and returned after Board approval, or if the Direct Loan awardee or Affiliates fail to timely enter into the Contract, close the loan, begin and complete construction, or leave a portion of the Direct Loan award unexpended, penalties may apply under 10 TAC §11.9(f) (relating to Competitive HTC Selection Criteria), and/or the Department may prohibit the Applicant and all Affiliates from applying for MFDL funds for a period of two years.

(c) Extensions to the benchmarks in paragraphs (1) - (4) and (7) - (8) of this subsection may only be approved by the Executive Director or authorized designee in accordance with 10 TAC §13.12 or 10 TAC §13.13 of this chapter, as applicable.

(1) Award Letter. If provided, Direct Loan awardees must execute and return to the Department an Award Letter, provided by the Department, within 15 calendar days after receipt. The Award Letter will be conditional in nature, and provide a basic outline of the terms and conditions approved by the Board.

(2) Environmental Clearance. In order to obtain environmental clearance (if applicable), Direct Loan awardees must submit a fully completed environmental review including any applicable reports to the Department within 90 calendar days of the Board approval date. If the awardee was contemporaneously awarded 9% HTC and selected Readiness to Proceed points under 10 TAC §11.9(c)(8), this period is within 14 calendar days of the Board approval date. If the awardee receives an allocation of 9% HTC from the waitlist after the July Board meeting, the fully completed environmental review must be submitted within 90 calendar days of receipt of the Carryover Allocation Agreement. Applicants or Direct Loan awardees that commit any choice limiting activities as defined by HUD in 24 CFR Part 58 prior to obtaining environmental clearance may be subject to termination of the Direct Loan award.

(3) Contract Execution. After a Development receives environmental clearance (if applicable), the Department will draft a Contract to be emailed to the Direct Loan awardee. Direct Loan awardees must execute and return a Contract to the Department within 30 calendar days after receipt of the Contract.

(4) Loan Closing and Construction Commencement. Loan closing must occur and construction must begin on or before the date described in the Contract. If construction has not commenced within 12 months of the Contract Effective Date, the award may be terminated.

(5) Quarterly Construction Status Reports. The Development Owner is required to submit quarterly Construction Status Reports to the Asset Management Division as described and by the deadlines specified in 10 TAC §10.402(h) of this title (relating to Construction Status Report).

(6) Mid-Construction Development Inspection Letter. In addition to any other obligations required as the result of any other Department funding sources, the Development Owner must submit a Mid-Construction Development Inspection Request once the Development has met at least 25% construction completion as indicated on the G703 Continuation Sheet or HUD equivalent form. Department inspection staff will issue a Mid-Construction Development Inspection Letter that confirms work is being done in accordance with the applicable codes, the construction contract, and construction documents. Regardless of how Direct Loan funds are allocated among acquisition, Hard, and Soft costs, up to 50% of the Direct Loan award may be released prior to issuance of the Mid-Construction Development Inspection Letter, with the remaining 50% available for disbursement in accordance with the percentage of Construction Completion.

(7) Construction Completion. Construction must be completed, as reflected by the Development's certificate(s) of occupancy (if new construction and/or reconstruction) and Certificate of Substantial Completion (AIA Form G704) or Form HUD-92485 for instances in which a federally insured HUD loan is being utilized, within the construction term of any superior construction loan(s) or 24 months of the actual loan closing date if no superior construction loan(s) exists.

(8) Closed Final Development Inspection Letter. The Closed Final Development Inspection Letter must be issued by the Department within 36 months of loan closing. This letter will verify committed amenities have been provided and confirm compliance with all applicable accessibility requirements; this letter may include deficiencies that require resolution. The Final Development Inspection may be conducted concurrently with a Uniform Physical Condition Standards (UPCS) inspection. However, any letters associated with a UPCS inspection will not satisfy the Closed Final Development Inspection Letter required by this subsection.

(9) Initial Occupancy. Initial occupancy of all MFDL assisted Units by eligible households shall occur within six months of the final Direct Loan draw. Requests to extend the initial occupancy period must be accompanied by documentation of marketing efforts and a marketing plan. The marketing plan may be submitted to HUD for final approval, if required by the MFDL fund source.

(10) Per Unit Repayment. Repayment may be required on a per Unit basis for Units that have not been rented to eligible households within 18 months of the final Direct Loan draw.

(11) Termination and Repayment for Failure to Complete. Termination of the Direct Loan award and repayment of all disbursed funds will be required for any Development that is not completed within four years of the effective date of a Direct Loan Contract.

(12) Loan Closing. In preparation for closing any Direct Loan, the Development Owner must submit the items described in subparagraphs (A) - (F) of this paragraph. Providing incomplete documents, or not responding timely to subsequent Department requests for materials needed to facilitate closing, may significantly inhibit the Department's ability to meet closing timelines. Any request to change the financing structure of the Development, or the ownership structure, will in most cases extend the amount of time it will take for the Department to meet closing timelines, and may move prioritization of the closing below that of other Developments.

(A) Documentation of the prior closing or concurrent closing with all sources of funds necessary for the long-term financial feasibility of the Development.

(B) Due diligence items determined by the Department to be prudent and necessary to meet the Department's rules and to secure the interests of the Department, as requested by Staff.

(C) When Department funds have a first lien position during the construction term, or if the Development is a public work under state law assurance of completion of the Development in the form of payment and performance bonds in the full amount of the construction contract or equivalent guarantee as allowable under state law in the sole determination of the Department is required. Development Owners utilizing the USDA §515 program for a Development that is not a public work are exempt from this requirement, but must meet the alternative requirements set forth by USDA.

(D) Documentation required for preparation of closing loan documents includes, but is not limited to:

(i) Substantially final information necessary for REA staff to reevaluate the transaction prior to loan closing, including

but not limited to a substantially final development cost schedule, sources and uses, operating pro forma, annual operating expenses, rent schedule, updated written financial commitments or term sheets, and any additional financing exhibits that have changed since the time of Application;

(ii) Substantially final Draft Owner/General Contractor agreement and draft Owner/Architect agreement prior to closing with final executed copies required by the day of closing;

(iii) Survey of the Property that includes a certification to the Department, Development Owner, Title Company, and other lenders;

(iv) Plans and specifications for review by the Department's inspection staff. Inspection staff will issue a plan review letter that is intended to assist in identifying early concerns associated with the Department's final construction requirements; and

(v) If layered with Housing Tax Credits, a substantially final draft limited partnership agreement between the General Partner and the tax credit investor entity.

(E) If required by the fund source, prior to Contract Execution unless an earlier period is described in Chapters 10, 11, or 12 of this title, the Development Owner must provide verification of:

(i) Environmental clearance from the Department or HUD, as applicable;

(ii) Site and Neighborhood clearance from the Department;

(iii) Documentation necessary to show compliance with the Uniform Relocation Assistance and Property Act and any other relocation requirements that may apply; and

(iv) Any other documentation that is necessary or prudent to meet program requirements or state or federal law in the sole determination of the Department.

(F) The Direct Loan Contract as executed, which will be drafted by the Department's counsel or its designee for the Department. No changes proposed by the Developer or Developer's counsel will be accepted unless approved by the Department's Legal Division or its designee.

(13) Loan Documents. The Development Owner is required to execute all loan closing documents required by and in the form and substance acceptable to the Department's Legal Division.

(A) Loan closing documents include but are not limited to a promissory note, deed of trust, construction loan agreement (if the proceeds of the loan are to be used for construction), LURA, Architect and/or licensed engineer certification of understanding to complete environmental mitigation if such mitigation is identified in HUD's environmental clearance or the Real Estate Analysis Division (REA) Underwriting Report and assignment and security instruments whereby the Developer, the Development Owner, and/or any Affiliates (if applicable) grants the Department their respective right, title, and interest in and to other collateral, including without limitation the Owner/Architect agreement and the Owner/General Contractor agreement, to secure the payment and performance of the Development Owner's obligations under the loan documents.

(B) Loan terms and conditions may vary based on the type of Development, Real Estate Analysis Underwriting Report, and the Set-Aside under which the award was made.

(14) Disbursement of Funds. The Borrower must comply with the requirements in subparagraphs (A) - (K) of this paragraph in

order to receive a disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Borrower's compliance with these requirements is required with a request for disbursement:

(A) All requests for disbursement must be submitted through the Department's Housing Contract System, using the MFDL draw workbook or such other format as the Department may require;

(B) Documentation of the total construction costs incurred and costs incurred since the last disbursement of funds must be submitted. Such documentation must be signed by the General Contractor and certified by the Development architect and is generally in the form of an AIA Form G702/ G703 or HUD equivalent form;

(C) Disbursement requests must include a down-date endorsement to the Direct Loan (mortgagee) title policy or Nothing Further Certificate that includes a title search through the date of the Architect's signature on AIA form G702 or HUD equivalent form. For release of retainage, the down-date endorsement to the Direct Loan title policy or Nothing Further Certificate must be dated at least 30 calendar days after the date of the completion as certified on the Certificate of Substantial Completion (AIA Form G704) with \$0 as the work remaining to be completed. If AIA Form G704 or HUD equivalent form indicates an amount of work remaining to be completed, the Architect must provide confirmation that all work has been completed. Disbursement requests for acquisition and closing costs are exempt from this requirement;

(D) At least 50% of Direct Loan funds (except as otherwise allowed for Permanent Refinance Loans described in 10 TAC §13.8(e)) will be withheld from the initial disbursement of loan funds to allow for periodic disbursements;

(E) The initial draw request for the Development must be entered into the Department's Housing Contract System no later than 15 calendar days prior to the one year anniversary of the effective date of the Direct Loan Contract;

(F) Up to 75% of Direct Loan funds may be drawn before providing evidence of Match. Thereafter, the Borrower must provide evidence of Match being credited to the Development prior to release of the final 25% of funds;

(G) Developer Fee disbursement shall be limited by subparagraph (H) of this paragraph and is further conditioned upon clauses (i) - (iii), as applicable:

(i) For Developments in which the loan is secured by a first lien deed of trust against the Property, 75% shall be disbursed in accordance with percent of construction completed. 75% of the total allowable fee will be multiplied by the percent completion, as documented by the construction contract and as may be verified by an inspection by the Department. The remaining 25% shall be disbursed at the time of release of retainage; or

(ii) For Developments in which the loan is not secured by a first lien deed of trust or the Development is also utilizing Housing Tax Credits, Developer Fees will not be reimbursed by the Department, except as follows. If all other lenders and syndicator in a Housing Tax Credit Development (if applicable) provide written confirmation that they do not have an existing or planned agreement to govern the disbursement of Developer Fees and expect that Department funds shall be used to fund Developer Fees, they shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and

(iii) The Department may reasonably withhold any disbursement in accordance with the Loan Documents and if it is determined that the Development is not progressing as reasonably neces-

sary to meet the benchmarks for the timely completion of construction of the Development as set forth in the loan documents, or that cost overruns have put the Development Owner's ability to repay its Direct Loan or complete the construction at risk in accordance with the terms of the loan documents and within budget. If disbursement has been withheld under this subsection, the Development Owner must provide evidence to the satisfaction of the Department that the Development will be timely completed and occupied in order to continue receiving funds. If disbursement is withheld for any reason, disbursement of any remaining Developer Fee will be made only after construction of the Development has been completed, and all requirements for expenditure and occupancy have been met; and

(H) Expenditures must be allowable and reasonable in accordance with federal and state rules and regulations. The Department shall review each expenditure requested for reasonableness. The Department may request the Development Owner make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of Department funds to Development Owner as may be necessary or advisable for compliance with all program requirements;

(I) Table Funding (the wiring of Direct Loan funds to the title company at loan closing) may be permitted at the time of closing, for disbursement of funds related to eligible acquisition costs and eligible softs costs incurred, and in an amount not to exceed 50% of the total funds. Table Funding must be requested in writing and will not be considered unless the Direct Loan Contract has been executed, and all necessary documentation has been submitted to and accepted by the Department at least 10 calendar days prior to the anticipated closing date;

(J) Following 50% construction completion, any funds will be released in accordance with the percentage of construction completion as documented on AIA Form G702/703 or HUD equivalent form. 10% of requested Hard Costs will be retained and will not be released until the final draw request. If the Development is receiving funds from more than one MFDL source, the retainage requirement will apply to each fund source individually. All of the items described in clauses (i) - (vii) of this subparagraph are required in order to approve the final draw request:

(i) Fully executed Certificate of Substantial Completion (AIA Form G704) or Form HUD-92485 (for instances in which a federally insured HUD loan is being utilized) with \$0 as the cost estimate of work that is incomplete. If AIA Form G704 or Form HUD-92485 indicates an amount of work remaining to be completed, the Architect must provide confirmation that all work has been completed;

(ii) A down date endorsement to the Direct Loan title policy or Nothing Further Certificate dated at least 30 calendar days after the date of completion as certified on the Certificate of Substantial Completion (AIA Form G704) or Form HUD-92485;

(iii) For Developments not layered with Housing Tax Credits, a Closed Final Development Inspection Letter from the Department;

(iv) For Developments subject to the Davis-Bacon Act, evidence from the Department's Senior Labor Standards Specialist that the final wage compliance report was received and approved or confirmation that HUD or other entity maintains Davis-Bacon oversight;

(v) Certificate(s) of Occupancy (for New Construction or Reconstruction Units);

(vi) Development completion reports, which includes, but is not limited to, documentation of full compliance with the Uniform Relocation Act/104(d), Match Documentation requirements, and Section 3 of the Housing and Urban Development Act of 1968, as applicable to the Development, and any other applicable requirement; and

(vii) If applicable to the Development, certification from Architect or a licensed engineer that all HUD environmental mitigation conditions have been met;

(K) No disbursement of funds will be approved without receipt of all closing documents in the form and substance required by the Department's Legal Division; and

(L) The final draw request must be submitted within the construction term as determined in accordance with 10 TAC §13.8(c)(1) or (d)(1) as applicable, unless the construction term has been extended in accordance with 10 TAC §13.12 or 10 TAC §13.13 of this chapter, as applicable.

(15) Annual Audits and Cost Certifications under 24 CFR §93.406(b).

(A) Annual Audits under 24 CFR §93.406(b). Unless otherwise directed by the Department, the Development Owner shall arrange for the performance of an annual financial and compliance audit of funds received and performances rendered under the Direct Loan Contract, subject to the conditions and limitations set forth in the executed Direct Loan Contract. All approved audit reports will be made available for public inspection within 30 days after completion of the audit.

(B) Cost Certifications under 24 CFR §93.406(b).

(i) Non-HTC-Layered Developments. Within 180 calendar days of the later of all title transfer requirements and construction work having been performed, as reflected by the Development's Certificate(s) of Occupancy (if New Construction) or Certificate of Substantial Completion (AIA Form G704 or HUD equivalent form), or when all modifications required as a result of the Department's Final Construction Inspection are cleared as evidenced by receipt of the Closed Final Development Inspection Letter, the Development Owner will submit to the Department a cost certification done by an independent licensed certified public accountant of all Development costs (including project NHTF eligible costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract.

(ii) HTC-Layered Developments. With the Cost Certification required by the Low Income Housing Tax Credit Program, the Development Owner must submit to the Department a cost certification completed by an independent licensed certified public accountant of all Development costs (including NHTF project eligible costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract.

§13.12. Pre-Closing Amendments to Direct Loan Terms.

(a) Executive Approval Required Pre-Closing. The Executive Director or authorized designee may approve amendments to loan terms prior to closing as described in paragraphs (1) - (6) of this subsection.

(1) Extensions of up to six months to the loan closing date required in 10 TAC §13.11(c)(4) of this chapter (relating to Post-Award Requirements) may be approved prior to closing. An Applicant must submit sufficient evidence documenting good cause, including but not limited to, documented delays caused by circumstances outside the control of the applicant or constraints in arranging a multiple fund source closing. An extension will not be available if an Applicant has:

(A) Failed to timely begin or complete a process required to close; including, but not limited to:

(i) The process of finalizing all equity and debt financing;

(ii) The environmental clearance process;

(iii) The due diligence processing requirements; or

(B) Made changes to the Development that require significant additional underwriting by the Department without at least 45 days to complete the review.

(2) Changes to the construction term and/or loan maturity date to accommodate the requirements of other lenders or to maintain parity of term may be approved prior to closing.

(3) Extensions of up to 12 months to the Construction Completion date or date of receipt of a Closed Final Development Inspection Letter required in 10 TAC §13.11(c)(8) of this chapter may be requested but generally are not approved prior to initial loan closing. Extensions under this paragraph are determined based on documentation that the extension is necessary to complete construction and that there is good cause for the extension.

(4) Only to the extent determined necessary by Real Estate Analysis to maintain financial feasibility, changes to the amortization period (not to exceed 40 years) or interest rate (to not less than the minimum specified in rule or NOFA) that cause the annual repayment amount to decrease less than 20%, or any changes to the amortization or interest rate that increase the annual repayment amount up to 20%.

(5) Decreases in the Direct Loan amount, provided the decrease does not jeopardize the financial viability of the Development in the determination of Real Estate Analysis may be approved prior to closing, though the Development Owner may be subject to penalties as further described in 10 TAC §13.11 of this chapter (relating to Post-Award Requirements). Increases will not be approved unless the Applicant applies for the additional funding under an open NOFA.

(6) Changes to other loan terms or requirements that would not require a Waiver or change in Scoring Items, as necessary to facilitate the loan closing without exposing the Department to undue financial risk.

(b) Board Approval Required Pre-Closing. Board approval is necessary for any other changes prior to closing.

§13.13. *Post-Closing Amendments to Direct Loan Terms.*

(a) Good Cause Extensions. The Executive Director or authorized designee may approve extensions of up to 12 months under 10 TAC §13.11(c)(7) - (8) or (14)(L) of this chapter (relating to Post-Award Requirements) based on documentation that there is good cause for the extension.

(b) Amendments to MFDL Awards. Except in cases of Force Majeure, changes to terms of awards subject to mandatory HUD reporting requirements will only be processed after the Construction Completion is reported to the federal oversight entity as completed, and the last of the MFDL funds have been drawn.

(c) Executive Amendments. The Executive Director or authorized designee may approve amendments to loan terms post-closing as described in paragraphs (1) - (3) of this subsection. Board approval is necessary for any other changes post-closing.

(1) Changes in Terms. Changes to the amortization or maturity date to accommodate the requirements of other lenders or maintain parity of term may be approved post-closing, provided the changes result in the Direct Loan continuing to meet the requirements of 10 TAC

§13.8(c)(1) and (3) of this chapter (relating to Loan Structure and Underwriting Requirements), and NOFA requirements.

(2) Post-Closing Subordinations or Re-subordinations of MFDL Liens. Re-subordination of the Direct Loan in conjunction with refinancing may be approved post-closing, provided the conditions in subparagraphs (A) - (E) of this paragraph are met:

(A) The Borrower is current with loan payments to the Department, and no notice has been given of any Event of Default on any MFDL loan. Histories of late or non-payment on any other MFDL loan may result in denial of the request;

(B) The refinance does not propose payment to any of the Development Owner or Developer parties (including the Limited Partners);

(C) A proposal for partial repayment of the MFDL lien is made with the request;

(D) The new superior lien is in an amount that is equal to or less than the original senior lien and does not negatively affect the financial feasibility of the Development.

(i) For purposes of this section, a negative effect on the financial feasibility of the Development shall mean a reduction in the total Debt Coverage Ratio (DCR) of more than 0.05, or if the DCR no longer meets the requirements of 10 TAC §11.302 of this title; and

(ii) Changes to accommodate refinancing with a new superior lien that is in an amount that exceeds the original senior lien and which will be directly applied to property improvements, as evidenced by the loan or security agreements (exclusive of fees associated with the refinance and any required reserves), will be considered on a case by case basis; and

(E) The subordination or re-subordination request does not include a request to subordinate or resubordinate any MFDL LURA, with the exception of partial subordination or re-subordination of receivership rights (subject to the proposed receiver entity or Affiliate not having been Debarred by the Department or on the Federal Suspended or Debarred Listing).

(3) Workout Arrangements. Changes required to the Department's loan terms or amounts that are part of an approved Asset Management Division work out arrangement may be approved after Construction Completion.

(d) Contract Assignments and Assumptions of MFDL Liens. The Executive Director or authorized designee may approve the Contract Assignment and Assumption of MFDL Liens following approval of an Ownership Transfer request if the conditions in paragraphs (1) - (3) of this subsection are met:

(1) The assignment or assumption is not prohibited by the Contract, Loan Documents, or regulations;

(2) The assignment or assumption request is based on either subparagraph (A) or (B) of this paragraph:

(A) There are insufficient funds available in the transaction to fully repay the Direct Loan at the time of acquisition, for which Deferred Developer Fee, Development Owner or Affiliate Contributions, or other similar liabilities will not be considered in determining whether the Direct Loan could be repaid at the time of acquisition; or

(B) The new superior lien will be directly applied to property improvements as evidenced by the loan or security agreements, exclusive of fees association with the new financing and any required reserves; and

(3) The corresponding Ownership Transfer has been approved in accordance with all requirements in 10 TAC §10.406 of this title (relating to Ownership Transfers), and no prospective Owner including person, or affiliate, as those terms are defined in 2 CFR Part 180 and 2 CFR Part 2424, Subpart I, has been subject to state Debarment or are on the Federal Suspended or Debarred Listing. This includes Board Members and Limited Partners.

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

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-1762



CHAPTER 23. SINGLE FAMILY HOME PROGRAM

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 23, Single Family HOME Program, without changes to the proposed text as published in the September 18, 2020, issue of the *Texas Register* (45 TexReg 6543). The rules 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 readoption making changes to an existing activity: administration of the HOME Program.

2. The repeal does not require a change in work that will require the creation of new employee positions, nor is the repeal significant enough to 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; however, the repeal does eliminate the application fee in §23.25(a)(4) that had been \$30, which will provide for a reduction in costs for those participants participating in the activity governed by this rule.

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 an existing activity, the administration of the HOME 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 affect this state's economy, however, the repeal does eliminate application fees that may have been a barrier to participation, and which may 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 updated and more germane rule that conforms with the State's 2020-2024 Consolidated Plan 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.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between September 18, 2020, and October 19, 2020. Comments regarding the proposed repeal were accepted in writing and via e-mail; no comments were received.

The Board adopted the final order adopting the repeal on November 5, 2020.

SUBCHAPTER A. GENERAL GUIDANCE

10 TAC §23.1, §23.2

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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SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS

10 TAC §§23.20 - 23.29

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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SUBCHAPTER C. HOMEOWNER REHABILITATION ASSISTANCE PROGRAM

10 TAC §§23.30 - 23.32

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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SUBCHAPTER D. HOMEBUYER ASSISTANCE PROGRAM

10 TAC §§23.40 - 23.42

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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SUBCHAPTER E. CONTRACT FOR DEED PROGRAM

10 TAC §§23.50 - 23.52

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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SUBCHAPTER F. TENANT-BASED RENTAL ASSISTANCE PROGRAM

10 TAC §§23.60 - 23.62

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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SUBCHAPTER G. SINGLE FAMILY DEVELOPMENT PROGRAM

10 TAC §§23.70 - 23.72

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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SUBCHAPTER H. HOMEBUYER ASSISTANCE WITH NEW CONSTRUCTION (HANC) OR REHABILITATION

10 TAC §§23.80 - 23.82

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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CHAPTER 23. SINGLE FAMILY HOME PROGRAM

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 23, Single Family HOME Program, with only one technical change to the proposed text as published in the September 18, 2020, issue of the *Texas Register* (45 TexReg 6545). The one change is a citation correction in §23.28(9). Section 23.28 will be republished. Sections 23.26 and 23.51 will also be republished to clarify their rule structure. The remaining rules will not be republished. The purpose of the new sections is to conform to the 2020-2024 State of Texas Consolidated Plan and to update the rule to update definitions to better align HOME Program administration to federal requirements.

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 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 it does eliminate the Homebuyer Assistance program activity to align with the 2020-2024 State of Texas Consolidated Plan. This rule also relates to changes in the administration of other Single Family HOME Program activities, including Homeowner Reconstruction Assistance, Contract for Deed, Tenant-Based Rental Assistance, Single Family Development, and Homebuyer Assistance with New Construction.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The new rule changes will not result in an increase in fees paid to the Department, however, the rule change does reduce the

Application Fee from \$30 to \$0, which will provide for a reduction in costs for those participants complying with this rule.

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 expand or repeal an existing regulation, but can be considered to "limit" the existing regulations on this activity because the proposed rule removes regulations related to the Homebuyer Assistance activity and rehabilitation of existing housing. However, this potentially limiting clarification to the rule is necessary to ensure compliance with the State of Texas 2020-2024 Consolidated Plan.

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

8. The new rule will not negatively affect the state's economy, and may be considered to have a positive effect on the state's economy because changes at §23.25(a)(4) eliminate the requirement for an application fee, potentially increasing the number of applicants participating in the Single Family HOME Program.

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, in drafting this rule, has 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 §2306.111.

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. There are approximately 60 rural communities subject to the rule for which the economic impact of the rule is projected to be \$4,000,000 during the first year the rule is in effect.

3. The Department has determined that because the rule both eliminates an application fee and increases the funding limitation for construction activities, and because the applicants are primarily in rural parts of Texas, the proposed rule would assist in infusing funds into the local construction market, and may result in a possible positive economic effect on small or micro-businesses or rural communities, although the specific impact is not able to be quantified.

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 rule may provide a possible positive economic effect on local employment because increased funding limitations for construction activities may create employment opportunities in the construction sector and supportive businesses; however, because participation in the Single Family HOME Program is not compulsory for communities, there is no way to determine during rulemaking where the positive effects may occur. The impact is not able to be quantified 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 region affected by this rule..." Considering that participation in the Single Family HOME Program is at the discretion of the local government or other eligible subrecipients, 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).** Bobby Wilkinson, Executive Director, 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 an updated and more germane rule that conforms to the State of Texas 2020-2024 Consolidated Plan and federal regulations. There will not be any economic cost to any individuals required to comply with the new section because the HOME Program provides reimbursement to those entities subject to the rule for the cost of compliance with the rule.

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 because the Single Family HOME Program is a federally funded program, and no increase in the requirement to match federal funds is proposed in the rule.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between September 18, 2020, and October 19, 2020. Comments regarding the proposed rule were accepted in writing and via e-mail; no comments were received.

The Board adopted the final order adopting the new rule on November 5, 2020.

SUBCHAPTER A. GENERAL GUIDANCE

10 TAC §23.1, §23.2

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.

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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SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL

ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS

10 TAC §§23.20 - 23.29

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.

§23.26. *Contract Benchmarks and Limitations.*

(a) **Contract Award Funding Limits.** Limits on the total amount of a Contract award will be established in the NOFA.

(b) **Contract Award Terms.** Homeowner Reconstruction Assistance awards will have a Contract term of not more than 21 months, exclusive of any applicable affordability period or loan term. Single Family Development awards will have a Contract term of not more than 24 months, exclusive of any applicable affordability period or loan term. Tenant-Based Rental Assistance awards will have a Contract term of not more than 36 months.

(c) **Contract Award Benchmarks.** Administrators must have attained environmental clearance for the contractually required number of Households served within six months of the effective date of the Contract. Contract Administrators must submit to the Department complete Activity setup information for the Commitment of Funds of all contractually required Households in accordance with the requirements herein within nine months from the effective date of the Contract. All remaining funds will be deobligated and reallocated in accordance with Chapter 1 of this Title relating to Reallocation of Financial Assistance.

(d) **Voluntary deobligation.** The Administrator may fully deobligate funds in the form of a written request signed by the signatory, or successor thereto, of the Contract. The Administrator may partially deobligate funds under a Contract in the form of a written request from the signatory if the letter also deobligates the associated number of targeted Households, funds for administrative costs, and Match and the partial deobligation would not have impacted the award of the Contract. Voluntary deobligation of a Contract does not limit an Administrator's ability to participate in an open application cycle.

(e) The Department may request information regarding the performance or status under a Contract prior to a Contract benchmark or at various times during the term of a Contract. Administrator must respond within the time limit stated in the request. Prolonged or repeated failure to respond may result in suspension of funds and ultimately in termination of the Contract by the Department.

(f) **Pre-Contract Costs.**

(1) The Administrator may be reimbursed for eligible administrative and Activity soft costs incurred before the effective date of the Contract in accordance with 24 CFR §92.212 and at the sole discretion of the Department.

(2) A Community Housing Development Organization may be reimbursed for Predevelopment Costs as defined in this Chapter for an Activity funded under Single Family Development.

(3) In no event will the Department reimburse expenses incurred more than six months prior to Governing Board approval of the Administrator's award.

(g) Amendments to Contract awards will be processed in accordance with Chapter 20 of this Title, relating to Single Family Programs Umbrella Rule.

§23.28. *General Administrative Requirements.*

Unless otherwise provided in this Chapter, the Administrator or Developer must comply with the requirements described in paragraphs (1) - (21) of this section, for the administration and use of HOME funds:

(1) Complete training, as applicable.

(2) Provide all applicable Department Housing Contract System access request information and documentation requirements.

(3) Establish and maintain sufficient records at its regular place of business and make available for examination by the Department, HUD, the U.S. General Accounting Office, the U.S. Comptroller, the State Auditor's Office of Texas, the Comptroller of Public Accounts, or any of their duly authorized representatives, throughout the applicable record retention period.

(4) For non-Single Family Development Contracts, develop and establish written procurement procedures that comply with federal, state, and local procurement requirements including:

(A) Develop and comply with written procurement selection criteria and committees, including appointment of a procurement officer to manage any bid process;

(B) Develop and comply with a written code of conduct governing employees, officers, or agents engaged in administering HOME funds;

(C) Ensure consultant or any procured service provider does not participate in or direct the process of procurement for services. A consultant cannot assist in their own procurement before or after an award is made;

(D) Ensure that procedures established for procurement of building construction contractors do not include requirements for the provision of general liability insurance coverage in an amount to exceed the value of the contract and do not give preference for contractors in specific geographic locations;

(E) Ensure that building construction contractors are procured in accordance with State and Federal regulations for single family HOME Activities;

(F) Ensure that professional service providers (consultants) are procured using an open competitive procedure and are not procured based solely on the lowest priced bid; and

(G) Ensure that any Request for Proposals or Invitation for Bid include:

(i) an equal opportunity disclosure and a notice that bidders are subject to search for listing on the Excluded Parties List;

(ii) bidders' protest rights and an outline of the procedures bidders must take to address procurement related disputes;

(iii) a conflict of interest disclosure;

(iv) a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description must include complete, adequate, and realistic specifications;

(v) for sealed bid procedures, disclose the date, time and location for public opening of bids and indicate a fixed-price contract;

(vi) must not have a term of services greater than five years; and

(vii) for competitive proposals, disclose the specific election/evaluation criteria.

(5) In instances where a potential conflict of interest exists, follow procedures to submit required documentation to the Department sufficient to submit an exception request to HUD for any conflicts prohibited by 24 CFR §92.356. The request submitted to the Department must include a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict by newspaper publication, a description of how the public disclosure was made, and an attorney's opinion that the conflict does not violate state or local law. No HOME funds will be committed to or reserved to assist a Household impacted by the conflict of interest regulations until HUD has granted an exception to the conflict of interest provisions.

(6) Perform environmental clearance procedures, as required, before acquiring any Property or before performing any construction activities, including demolition, or before the occurrence of the loan closing, if applicable.

(7) Develop and comply with written Applicant intake and selection criteria for program eligibility that promote and comply with Fair Housing requirements and the State's One Year Action Plan.

(8) Complete Applicant intake and Applicant selection. Notify each Applicant Household in writing of either acceptance or denial of HOME assistance within 60 days following receipt of the intake application.

(9) Determine the income eligibility of a Household using the "Annual Income" as defined at 24 CFR §5.609, by using the list of income included in HUD Handbook 4350.3 (or most recent version), and excluding from income those items listed in HUD's Updated List of Federally Mandated Exclusions from Income.

(10) Complete an updated income eligibility determination of a Household if the date of certification is more than six months prior to the Date of Assistance.

(11) For single family Activities involving construction, perform initial inspection in accordance with Chapter 20 of this Title (relating to Single Family Programs Umbrella Rule). Property inspections must include photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms. The inspection must be signed and dated by the inspector and the Administrator.

(12) Submit a substantially complete request for the Commitment or Reservation of Funds, loan closing preparation, and for disbursements. Administrators must upload all required information and verification documentation in the Housing Contract System. Requests determined to be substantially incomplete will not be reviewed and may be disapproved by the Department. Expenses for which reimbursement is requested must be documented as incurred. If the Department identifies administrative deficiencies during review, the Department will allow a cure period of 14 days beginning at the start of the first day following the date the Administrator or Developer is notified of the deficiency. If any administrative deficiencies remain after the cure period, the Department, in its sole discretion, may disapprove the request. Disapproved requests will not be considered sufficient to meet the performance benchmark and shall not constitute a Reservation of Funds.

(13) Submit signed program documents timely as may be required for the completion of a Commitment or Reservation of Funds, and for closing preparation of the loan or grant documents. Department reserves the right to cancel or terminate Activities when program documents are not executed timely, in the Department's sole and reasonable discretion.

(14) Not proceed or allow a contractor to proceed with construction, including demolition, on any Activity or development without first completing the required environmental clearance procedures,

preconstruction conference and receiving notice to proceed, if applicable, and execution of grant agreement or loan closing with the Department, whichever is applicable.

(15) Submit any Program Income received by the Administrator or Developer to the Department within 14 days of receipt; any fund remittance to the Department, including refunds, must include a written explanation of the return of funds, the Contract number, name of Administrator or Developer, Activity address and Activity number, and must be sent to the Department's accounting division.

(16) Submit required documentation for project completion reports no later than 60 days after the completion of the Activity.

(17) For Contract awards, submit certificate of Contract Completion within 14 days of the Department's request.

(18) Submit to the Department reports or information regarding the operations related to HOME funds provided by the Department.

(19) Submit evidence with the final draw for construction related activities that the builder has provided a one-year warranty specifying at a minimum that materials and equipment used by the contractor will be new and of good quality unless otherwise required, the work will be free from defects other than those inherent in the work as specified, and the work will conform to the requirements of the contract documents.

(20) Provide the Household all warranty information for work performed by the builder and any materials purchased for which a manufacturer or installer's warranty is included in the price.

(21) If required by state or federal law, place the appropriate bonding requirement in any contract or subcontract entered into by the Administrator or Developer in connection with a HOME award may result in termination of the RSP Agreement.

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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SUBCHAPTER C. HOMEOWNER RECONSTRUCTION ASSISTANCE PROGRAM

10 TAC §§23.30 - 23.32

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.

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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SUBCHAPTER D. CONTRACT FOR DEED PROGRAM

10 TAC §§23.40 - 23.42

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.

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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SUBCHAPTER E. TENANT-BASED RENTAL ASSISTANCE PROGRAM

10 TAC §§23.50 - 23.52

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.

§23.51. *Tenant-Based Rental Assistance (TBRA) General Requirements.*

(a) Households assisted under the general set-aside must participate in a self-sufficiency program, as described in the Administrator's policies and procedures.

(b) The amount of assistance will be determined using the HUD Housing Choice Voucher method.

(c) A Household certifying to zero income must also complete a questionnaire that includes a series of questions regarding how basic hygiene, dietary, transportation, and other living needs are met.

(d) The minimum Household contribution toward gross monthly rent must be ten percent of the Household's adjusted monthly income. The maximum Household contribution toward gross monthly rent at initial occupancy is limited to 40 percent of the Household's gross monthly income.

(e) Activity funds are limited to:

(1) Rental subsidy: Each rental subsidy term is limited to no more than 24 months. Total lifetime assistance to a Household may not exceed 36 months cumulatively, except that a maximum of 24 additional months of assistance, for a total of 60 months cumulatively may be approved if:

(A) the Household has applied for a Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program, and is placed on a waiting list during their TBRA participation tenure; and

(B) the Household has not been removed from the waiting list for the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program due to failure to respond to required notices or other ineligibility factors; and

(C) the Household has not been denied participation in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program while they were being assisted with HOME TBRA; and

(D) the Household did not refuse to participate in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program when a voucher was made available.

(2) Security deposit: no more than the amount equal to two month's rent for the unit.

(3) Utility deposit in conjunction with a TBRA rental subsidy.

(f) The payment standard is determined at the Date of Assistance. The payment standard utilized by the Administrator must be:

(1) For metropolitan counties and towns, the current U.S. Department of Housing and Urban Development (HUD) Small Area Fair Market Rent for the Housing Choice Voucher Program;

(2) For nonmetropolitan counties and towns, the current HUD Fair Market Rent for the Housing Choice Voucher Program;

(3) For a HOME assisted unit, the current applicable HOME rent; or

(4) The Administrator may submit a written request to the Department for approval of a different payment standard. The request must be evidenced by a market study or documentation that the PHA serving the market area has adopted a different payment standard. An Administrator may request a Reasonable Accommodation as defined in Section 1.204 of this Title for a specific Household if the Household, because of a disability, requires the features of a specific unit, and units with such features are not available in the Service Area at the payment standard.

(g) Administrators must select the method under which funds for administrative costs and Activity soft costs may be reimbursed prior to execution of an RSP agreement or at Application for an award of funds. Administrators of an existing RSP Agreement may request an amendment to an existing Agreement in accordance with Section 23.1 of this Chapter. Applicants and Administrators may choose from one of the following options, and in any case funds for Administrative costs may be increased by an additional one percent of Direct Activity Costs if Match is provided in an amount equal to five percent or more of Direct Activity Costs:

(1) Funds for Administrative costs are limited to four percent of Direct Activity Costs, excluding Match funds, and Activity soft costs are limited to \$1,200 per Household assisted. Activity soft costs may reimburse expenses for costs related to determining Household income eligibility, including recertification, and conducting Housing Quality Standards (HQS) inspections. All costs must be reasonable and customary for the Administrator's Service Area; or

(2) Funds for Administrative costs are limited to eight percent of Direct Activity Costs, excluding Match funds, and Administrator may not be reimbursed for Activity soft costs.

(h) Administrators must have a written agreement with Owner that the Owner will notify the Administrator within one month if a tenant moves out of an assisted unit prior to the lease end date.

(i) Administrator must not approve a unit if the owner is by consanguinity, affinity, or adoption the parent, child, grandparent, grandchild, sister, or brother of any member of the assisted Household, unless the Administrator determines that approving the unit would provide Reasonable Accommodation for a Household member who is a Person with Disabilities. This restriction against Administrator approval of a unit only applies at the time the Household initially receives assistance under a Contract or Agreement, but does not apply to Administrator approval of a recertification with continued tenant-based assistance in the same unit.

(j) Administrators must maintain Written Policies and Procedures established for the HOME Program in accordance with Section 10.802 of this Title, except that where the terms Owner, Property, or Development are used Administrator or Program will be substituted, as applicable. Additionally, the procedures in subsection (l) of this section (relating to the Violence Against Women Act (if in conflict with the provisions in Section 10.802 of this Title)) will govern.

(k) Administrators serving a Household under a Reservation Agreement may not issue a Certificate of Eligibility to the Household prior to reserving funds for the Activity.

(l) Administrators are required to comply with regulations and procedures outlined in the Violence Against Women Act (VAWA), and provide tenant protections as established in the Act.

(1) An Administrator of Tenant-Based Rental Assistance must provide all Applicants (at the time of admittance or denial) and Households (before termination from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance Coupon Contract) the Department's "Notice of Occupancy Rights under the Violence Against Women Act", (based on HUD form 5380) and also provide to Households "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking" (HUD form 5382) prior to execution of a Rental Coupon Contract and before termination of assistance from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance coupon contract.

(2) Administrator must notify the Department within three days when tenant submits a Certification of Domestic Violence, Dating

Violence, Sexual Assault, or Stalking and/or alternate documentation to Administrator and must submit a plan to Department for continuation or termination of assistance to affected Household members.

(3) Notwithstanding any restrictions on admission, occupancy, or terminations of occupancy or assistance, or any Federal, State or local law to the contrary, Administrator may "bifurcate" a rental coupon contract, or otherwise remove a Household member from a rental coupon contract, without regard to whether a Household member is a signatory, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a recipient of TBRA and who engages in criminal acts of physical violence against family members or others. This action may be taken without terminating assistance to, or otherwise penalizing the person subject to the violence.

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 November 6, 2020.

TRD-202004734
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: November 26, 2020
Proposal publication date: September 18, 2020
For further information, please call: (512) 475-1762



SUBCHAPTER F. SINGLE FAMILY DEVELOPMENT PROGRAM

10 TAC §§23.60 - 23.62

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.

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
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-1762



SUBCHAPTER G. HOMEBUYER ASSISTANCE WITH NEW CONSTRUCTION (HANC)

10 TAC §§23.70 - 23.72

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.

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
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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION SUBCHAPTER T. WORKFORCE EDUCATION COURSE MANUAL ADVISORY COMMITTEE

19 TAC §1.223

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 1, Subchapter T, §1.223, Duration, without changes to the proposed text as published in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5747) and will not be republished.

The amendment allows the committee to continue in existence until January 31, 2025. The Board will continue the committee in order to provide the Board with advice and recommendation(s) regarding content, structure, currency and presentation of the Workforce Education Course Manual (WECM) and its courses; recommendations regarding field engagement in processes, maintenance, and use of the WECM; and assistance in identifying new programs of study, developments within existing programs represented by courses in the manual, vertical and horizontal alignment of courses within programs, and obsolescence of programs of study and courses.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Education Code, Section 61.026, which provides the Coordinating Board with the authority to adopt rules regarding an advisory committee's terms of service and Texas Education Code, Section 130.155, which authorizes the Board to adopt rules to administer Workforce Continuing Education.

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 November 2, 2020.

TRD-202004590
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 22, 2020
Proposal publication date: August 21, 2020
For further information, please call: (512) 427-6206



CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS SUBCHAPTER C. TEXAS SUCCESS INITIATIVE

19 TAC §§4.56, 4.57, 4.62

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 4, Subchapter C, §§4.56, 4.57, and 4.62, concerning Texas Success Initiative, without changes to the proposed text as published in the September 4, 2020 issue of the *Texas Register* (45 TexReg 6208) and will not be republished.

These amendments provide college readiness benchmarks for the revised assessment approved by the Board under this title and provide the final phase for implementation of corequisite models supporting underprepared students.

The amendment to §4.56 replaces the TSI Assessment, which expires in January 2021, with the TSI Assessment, Version 2.0 (TSIA2), as the Board-approved assessment instrument under this title. The amendment to §4.57 adds the college readiness benchmarks, based on faculty-driven, psychometric standard setting processes, for the TSIA2 and clarifies that results from both assessment instruments remain valid for the purposes of this title for five (5) years from date of testing. The college readiness benchmarks added to §4.56 are based on the standard setting and psychometric processes conducted by the College Board, the TSIA/TSIA2 test vendor. One of the major changes to the TSIA2 is the reduction from three subject areas of reading, writing, and mathematics to two, with the reading and writing sections being integrated to an English Language Arts Reading (ELAR) section. This change is in alignment with other assessments, including the SAT and STAAR EOCs. The ELAR college readiness benchmark is based on a student's performance in both the College Readiness Classification test (CRC) comprising computer-adaptive multiple-choice items and the WritePlacer essay. The essay cannot be used as a sole indicator of readiness. Because the new ELAR section has fewer overall multiple-choice items, the determination was made to place greater weighting on the WritePlacer essay component in order to support a reliable and valid ELAR standard. The College Board is scheduled to conduct its study after one year of implementation to confirm the reliability and validity of the college-readiness benchmarks and will make recommended modifications, if needed, as indicated by the findings.

With regard to §4.62(8)(A)(iv), statewide developmental education (DE) outcomes data continue to demonstrate that underprepared students enrolled in corequisite models con-

sistently and significantly outperform students in traditional stand-alone DE with regard to meeting college readiness and first college-level course completions. Corequisite models allow the student to co-enroll in the entry-level college course and an intervention designed to provide just-in-time, aligned support to help ensure students' successful completion of the college-level course. It is important to note that TSI statute is applicable only to those students who enroll in developmental education, not to the general developmental education population. Statute also provided exemptions from this requirement, including students enrolled in adult education and basic academic skills education (i.e., those assessed on the TSIA/TSIA2 at levels 1-4), and gave authority to enact rules for implementation (TEC, Subsection F-1, 51.336(d)). Based in data-informed decision-making, this proposal takes into account Texas outcomes data when comparing student performance pre-fall 2018 implementation and post-implementation, which confirm that students enrolled in corequisite models consistently and significantly outperform students who are enrolled in non-corequisite models (i.e., traditional, stand-alone developmental education courses). In the first year of implementation alone, over 11,500 more students successfully completed their entry-level college courses, including over 1,800 more Black students and 5,800 more Hispanic students, when compared to the previous pre-implementation year (Source: CBM002 and CBM00S). Providing equitable access and accelerating student success are key goals that are especially important in this COVID impacted environment.

The amendment to §4.62 provides the final phase of corequisite implementation for 2021 and thereafter, ensuring eligible underprepared students are afforded the best opportunity in building momentum towards important milestones leading to certificate/degree completions and transfers.

The following comments were received regarding the adoption of the amendments.

Comment: South Texas College raised concerns about the January 11, 2021 implementation date for the Texas Success Initiative Assessment, Version 2.0 (TSIA2) being during a peak enrollment period for this institution. A request was made to postpone the TSIA2 implementation date for three weeks to February 1, 2021 to enact a workable timeline or be provided a waiver due to a number of factors including testing restrictions, additional staff time, and fiscal implications that require Governing Board approval. Concerns about extended downtimes and negative impact on dual credit students were also raised.

THECB Response: The Coordinating Board appreciate this comment. Due to COVID-19 restrictions and resulting delays in the test development process for the TSIA2, the implementation date had been delayed two prior times. The final January implementation date was provided by the test vendor based on several factors, including postsecondary enrollment periods that vary by institution, as well as contractual considerations. We understand many local processes and practices have been, and continue to be, modified because of the pandemic and its impact. To this point, THECB has provided TSI COVID waivers applicable through AY2020-21 allowing institutions to use a number of indicators not involving TSIA/TSIA2 testing, such as GPA and course-taking patterns that can be used to place both undergraduate and dual credit students with unknown TSI status. Given these alternative placement options, we do not anticipate the test launch date to be a barrier for students. Unfortunately, test platform limitations do not provide for variations with regard to the implementation date. THECB staff is

available to consult with institutions to explore various options for consideration to help ensure least impact on students and institutions.

Comment: Waco Independent School District raised concern about the proposed change in the WritePlacer essay score from a 4 to a 5 (on a 1-8 scale) and requested that it be kept at 4, the benchmark for the current TSIA.

THECB Response: The THECB appreciates this comment. The proposed college readiness benchmarks added to §4.56 are based on the standard setting and psychometric processes conducted by the College Board, the TSIA/TSIA2 test vendor. One of the major changes to the TSIA2 is the reduction from three subject areas of reading, writing, and mathematics to two, with the reading and writing sections being integrated to an English Language Arts Reading (ELAR) section. This change is in alignment with other assessments, including the SAT and STAAR EOCs. The ELAR college readiness benchmark is based on a student's performance in both the College Readiness Classification test (CRC) comprising computer-adaptive multiple-choice items and the WritePlacer essay. The essay cannot be used as a sole indicator of readiness. Because the new ELAR section has fewer overall multiple-choice items, the determination was made to place greater weighting on the WritePlacer essay component in order to support a reliable and valid ELAR standard. The College Board is scheduled to conduct its study after one year of implementation to confirm the reliability and validity of the college-readiness benchmarks and will make recommended modifications, if needed, as indicated by the findings. Furthermore, THECB has provided TSI COVID waivers applicable for both undergraduate and high school students through AY2020-21 allowing institutions to use a number of indicators that do not include, or can complement, TSIA testing that can be used to place students interested in qualifying for dual credit. It should also be noted that TSI applies only to those courses designated by the offering institution as ELAR- or math-intensive; non-designated core curriculum courses are not subject to TSI.

Comment: One comment received from the Texas Federation of Teachers/AFL-CIO, one comment from South Plains College, and one joint comment from Victoria College raised concerns about the proposal to increase from 75% to 100% "all developmental education students to be enrolled in a corequisite course" and that a "one-size-fits-all" approach will negatively impact students.

THECB Response: While the THECB appreciates this comment, the concern raised that all developmental education students be enrolled in a corequisite course is not accurately citing TSI statute. Effective fall 2018, TSI statute (Texas Education Code, Subsection F-1, 51.336(c)) requires that at least 75% of students not in adult education and basic academic skills education (i.e., those assessed on the TSIA at levels 5 and 6 on a scale of 1-6) and enrolled in developmental education be placed in corequisite models. Authority to implement rules to address this statutory requirement is provided in 51.344(b)(d).

Such models allow the student to co-enroll in the entry-level college course and an intervention designed to provide just-in-time, aligned support to help ensure students' successful completion of the college-level course. It is important to note that TSI statute is applicable only to those students who enroll in developmental education, not to the general developmental education population. Statute also provided exemptions from this requirement, including students enrolled in adult education and basic academic

skills education (i.e., those assessed on the TSIA/TSIA2 at levels 1-4), and gave authority to enact rules for implementation (TEC, Subsection F-1, 51.336(d)). Based in data-informed decision-making, this proposal takes into account Texas outcomes data when comparing student performance pre-fall 2018 implementation and post-implementation, which confirm that students enrolled in corequisite models consistently and significantly outperform students who are enrolled in non-corequisite models (i.e., traditional, stand-alone developmental education courses). In the first year of implementation alone, over 11,500 more students successfully completed their entry-level college courses, including over 1,800 more Black students and 5,800 more Hispanic students, when compared to the previous pre-implementation year (Source: CBM002 and CBM00S). Providing equitable access and accelerating student success are key goals that are especially important in this COVID impacted environment.

The THECB clarified in 2018 that it does interpret the Education Code to require students who are not required to take college-level mathematics as part of their degree plan, to be TSI complete. THECB's understanding and application of the Code is that while non-exempt students are still required to be assessed in order to provide them with information regarding their knowledge and skills levels, they do not need to be TSI complete in order to enroll in or graduate from such programs.

The concern that placing students in corequisite models results in a "one-size-fits-all" approach may be reflective of a misunderstanding with how corequisite models are implemented in Texas. Each institution has autonomy to select from a wide range of instructional and delivery options to individualize each student's intervention and may include in this decision additional factors selected by the institution, such as student's high school GPA, course-taking patterns, and non-cognitive factors (e.g., career goals, job, childcare, transportation, etc.). Intervention options include a range from 4 to 96 hours; single or shared instruction; hybrid, online, or in-person delivery; modular/Emporium and/or computer labs; supplemental instruction; structured/open lab tutoring or course, among many others. Since 2011, THECB has provided comprehensive, statewide professional development and grant-funding opportunities to support institutions in research based and data-driven best practices related to the development, implementation, evaluation, enhancement, and scaling of their corequisite options.

Comment: In response to the proposed amendments to Texas Administrative Code (TAC), Title 19, Part 1, Chapter 4, Subchapter C, Sections 4.56, 4.57, and 4.62, the Texas Association of Community Colleges (TACC) commented that "advancing the proposed TSIA2 policy changes should only be done based on transparently shared information and evidence that the changes will improve equitable access and outcomes for students."

THECB Response: The proposed amendments provide the college readiness benchmarks based on Item Review and Standard Setting processes driven by faculty content-expert input, as outlined in the publicly-posted RFA for the Texas Success Initiative Assessment, version 2.0 (TSIA2) test vendor, and closely aligned with the Texas Success Initiative Assessment (TSIA) test development process described in the TSIA technical manual. Dr. Luz Bay, lead psychometrician at the College Board, will provide additional information on these processes at the THECB Committee on Academic and Workforce Success (CAWS) meeting on October 21, 2020. As with the implementation of the TSIA and in alignment with test implementation standard practices, the College Board will be conducting a study to verify validity and

reliability of benchmarks based on authentic test data after one year of implementation and will proposed changes, if any, based on findings. Benchmarks related to TSIA are not changed and test results remain valid up to five years from date of testing, as do those for TSIA2.

The proposed amendments do include a policy change related to corequisite implementation. Data regarding the impact of corequisite implementation and how it has improved equitable access and outcomes for students has been shared in a number of meetings, presentations, and webinars hosted by the Texas Higher Education Coordinating Board (THECB) since 2019. Student placements into college-level courses with or without support that were informed through the TSIA and other multiple measures factors, including TSI waivers in place through AY 2020-21, coupled with the scaling of corequisite model course enrollments (HB2223), have yielded positive results for both African American and Hispanic students statewide. When comparing corequisite course outcomes in fall 2019 (phase II, HB2223 implementation) to fall 2017 (pre-HB2223 implementation), there were 19,560 more first college-level course completions statewide. This number is nearly double the number of first college-level course completions in fall 2018, the first year of HB2223 implementation, although the percentage of required corequisite enrollments increased by only 25%. Of those 19,560 completions, 14,115, or 72 percent, were completions by African American or Hispanic students who completed their first college-level reading and/or writing or mathematics course in one semester. Furthermore, the newly proposed TSIA2 second-chance benchmark for mathematics will provide students with an additional opportunity to demonstrate college readiness based on diagnostic test performance. When considering developmental education reform efforts underway in Texas since 2012, no impact has been greater in a shorter time period than that resulting from these targeted interventions.

Below is the THECB response to summary statements included in joint comments received from The Charles Dana Center, E3 Alliance, and TACC regarding the proposed amendments to TAC, Title 19, Part 1, Chapter 4, Subchapter C, Sections 4.56, 4.57, and 4.62. The complete comments are provided as an addendum to this document.

Comment: The Charles Dana Center, E3 Alliance, and the TACC submitted joint comments. Among other comments, the group asserted that the THECB should not adopt new rules until the THECB and the College Board provide evidence that the TSIA2 will result in more equitable outcomes for students than a multiple measures approach.

THECB Response: The THECB appreciates this comment; however, the THECB disagrees. The proposed rules provide the college readiness benchmarks for the revised TSIA2 and continue the support of co-requisite. The proposed rules have no impact on use of multiple measures (i.e., holistic placement), as provided in TAC, Rule 4.55(c), and use of such measures by institutions when making placement decisions is not impacted by the proposed amendments. Furthermore, Texas Success Initiative (TSI) waivers enabling use of multiple measures assessment (MMA) for determining placements for students whose TSI status is unknown remain effective through AY 2020-21. The THECB is open to extending these waivers through AY 2021-22.

Comment: The Charles Dana Center, E3 Alliance, and TACC submitted joint comments. Among other comments, the group asserted that the THECB should not adopt new rules until the

THECB and the College Board demonstrate that the TSIA2 will result in more accurate and reliable course placement for students than a multiple measures approach.

THECB Response: The THECB appreciates this comment. As part of the TSIA2 RFA development process, THECB contracted with a third-party expert consultant group to help ensure the processes outlined in the RFA met or exceeded the industry standard for computer-adaptive test development and implementation. Spearheaded by the competitively-selected TSIA/TSIA2 test vendor, the College Board, and as outlined in its application in response to the RFA and the publicly-posted RFA (781-9-21432), the development of the TSIA2 includes alignment to the most updated and revised standards (CCRS, TEKS, Adult Education, NRS EFLDs). The Item Review process, described in the application and the RFA and conducted in February 2020, requires TSIA2 items to be in alignment with current standards and college readiness expectations of secondary and post-secondary faculty, a process also used for the establishment and revision of the College and Career Readiness Standards (Texas Education Code, Section 28.008). This development process makes the TSIA2 more likely than the current TSIA to provide the most appropriate information to institutions as they make their placement decisions. In addition, the Standard Setting process and psychometric and statistical modeling outlined in their application ensure that the TSIA2 results are reliable and valid. Furthermore, the proposed amendments also outline a new "second chance" opportunity for students to demonstrate college readiness in math via diagnostic testing, thus aligning with the second-chance opportunity available in ELAR and allowing more students with demonstrated knowledge and skills to place directly in entry-level college coursework. Finally, the College Board will conduct, after one year of implementation, a study using authentic test results to verify validity of its benchmarks and will recommend modifications as findings dictate. These processes were similar to those implemented during the development of the current TSIA, where its validity study findings resulted in only one adjustment to the writing standards. As required in TAC, Rule 4.55(c), assessment results, including diagnostic information provided for students not meeting the college readiness benchmark, should be used *in addition* to information provided through other indicators used in holistic placement decision-making. In support of this recommendation, THECB co-hosted with the Community College Research Center and MDRC in June 2020 a webinar (available on THECB's YouTube site) that focused on multiple measures assessment. THECB continues to provide technical assistance to institutions as they engage in their continuous improvement processes for assessment and placement of their students.

The TSIA/TSIA2-related information outlined above, as well as use of multiple measures and TSI waivers, have been provided at various levels of detail during a number of presentations, meetings, and webinars, including but not limited to the following:

Austin CC Coreq Conf January 25, 2019

TCCTA Conference March 1, 2019

TABPHE 2019 Conference March 13, 2019

N TX Consort of CCs March 29, 2019

College & Career Readiness Summit April 15, 2019

Catch The Next (TTT) April 18, 2019

TX Oncourse TSI Webinar May 7, 2019

CCR-School Models Conference June 18, 2019

HCC Corequisite Conference June 21, 2019

THECB P-16 Conference June 24, 2019

NOSS McCabe Conference June 28, 2019

TACRAO Summer Conference (4-yr) July 16, 2019

TACRAO Summer Conference (2-yr) July 18, 2019

TEXAAN Fall Update August 13, 2019

T3AMS Fall Update October 12, 2019

CASP Conference Townhall October 21, 2019

ACC Advising Conference October 24, 2019

Catch The Next (TTT) October 25, 2019

TSIA2 K-12 Webinar October 28, 2019

Region 8 TSIA2 Update October 29, 2020

TSIA2 IHE Webinar October 30, 2019

TACRAO Fall Meeting November 4, 2019

Region 17 TSIA2 Update December 3, 2019

Region 3 TSIA2 Training (CB) January 27, 2020

Region 2 TSIA2 Training (CB) January 28, 2020

Region 1 TSIA2 Training (CB) January 29, 2020

Region 4 TSIA2 Training (CB) 1-4 February 11, 2020

Region 4 TSIA2 Training (CB) 2-4 February 12, 2020

Region 4 TSIA2 Training (CB) 3-4 February 12, 2020

Region 4 TSIA2 Training (CB) 4-4 February 12, 2020

Region 15 TSIA2 Training (CB) February 26, 2020

Region 18 TSIA2 Training (CB) February 27, 2020

TEXAAN Annual Conference February 27, 2020

TCCTA Annual Conference February 28, 2020

Region 19 TSIA2 Training (CB) February 28, 2020

Region 9 TSIA2 Training (CB) March 2, 2020

Region 10 TSIA2 Training (CB) March 4, 2020

Region 11 TSIA2 Training (CB) 1-2 March 5, 2020

Region 11 TSIA2 Training (CB) 2-2 March 6, 2020

TABPHE Conference March 6, 2020

Catch The Next (TTT) March 27, 2020

Texas Library Association March 27, 2020

TEXAAN Fall Update August 6, 2020

AEL Institute September 15, 2020

TSIA2 Training: Part 1 (CB) September 21, 2020

TSIA2 Training: Part 2 (CB) September 22, 2020

TSIA2 Training: Part 3 (CB) September 23, 2020

TSIA2 Training: Part 1 (CB) September 28, 2020

TSIA2 Training: Part 2 (CB) September 29, 2020

TSIA2 Training: Part 3 (CB) September 30, 2020

HCC Corequisite Conference October 2, 2020

T3AMS Fall Update October 9, 2020

TSIA2 Training: Part 1 (CB) October 12, 2020

TSIA2 Training: Part 2 (CB) October 13, 2020

TX Oncourse TSIA2 Webinar October 13, 2020

TSIA2 Training: Part 3 (CB) October 14, 2020

Upcoming Events:

CASP Conference October 20, 2020

TSIA2 Training: Part 1 (CB) October 26, 2020

TSIA2 Training: Part 2 (CB) October 27, 2020

TSIA2 Training: Part 3 (CB) October 28, 2020

TSIA2 Training: Part 1 (CB) November 2, 2020

TSIA2 Training: Part 2 (CB) November 3, 2020

TSIA2 Training: Part 3 (CB) November 4, 2020

TSIA2 Training: Part 1 (CB) November 16, 2020

TSIA2 Training: Part 2 (CB) November 17, 2020

TSIA2 Training: Part 3 (CB) November 18, 2020

Statewide TSIA2 Launch Webinar November 18, 2020

Meetings:

E3 Alliance (@ THECB) December 19, 2019

Dana Center (@Dana Center) February 18, 2020

Comment: The Charles Dana Center, E3 Alliance, and TACC jointly commented that the THECB should not adopt new rules until the THECB and the College Board provide thorough and transparent documentation about the standard-setting process, the scale and cut score development, and any variation between the requirements of the RFP and the final version of the TSIA2.

THECB Response: The THECB appreciates this comment; however, the agency respectfully disagrees. The THECB has been fully transparent with TSIA2 development process (see previous response), including inviting participation in the Item Review and Standard Setting processes of subject matter experts at the secondary, postsecondary (community college, university), and adult education levels and those faculty members affiliated with The Charles Dana Center, E3 Alliance, and TACC. The THECB also outlined the test development process in detail in the publicly posted RFA, the test manual shared by THECB with The Charles Dana Center, E3 Alliance, and TACC, test blueprint, and test specifications documents already released to the public or currently undergoing final review. The THECB will make all materials available prior to test launch. Dr. Luz Bay, lead psychometrician from the College Board, will provide a briefing at the THECB CAWS meeting on October 21, 2020, to further explain the Standard Setting and Item Review processes, including modifications resulting from COVID-related restrictions.

Comment: The Charles Dana Center, E3 Alliance, and TACC jointly commented that the THECB should not adopt new rules until the THECB and the College Board publish multiple cut scores for use in mathematics pathways placement. In addition, THECB and the College Board should share documentation on

how the mathematics component measures were developed and provide guidance on how the scores support placing students into multiple mathematics pathways. Finally, the THECB should establish a plan for communicating with institutions about implementing the existing rule requiring that a student's transcript reflect TSI readiness for multiple math pathways.

THECB Response: The THECB appreciates this comment; however, the agency respectfully disagrees. TSI statute (Texas Education Code, Section 51, Subsection F-1, 51.333) requires that the assessment instrument designated by the Board is used to determine readiness for students to enter freshman-level academic coursework. Rule 4.59 outlines a number of ways institutions can determine a student's readiness and includes the option for institutions to determine that mathematics students, upon complete of their plan for academic success (Rule 4.58), may be designated as ready for any entry-level college math course or ready only the non-Algebra-based math courses. These rules were established through the negotiated rule-making process and included participation and feedback from the Dana Center. Because use of mathematics pathways is not a required component of developmental education delivery, THECB rules must consider all options that Texas institutions offer for their students, including those institutions that do not participate in mathematics pathways programs.

During many discussions with staff from THECB, the Dana Center, E3 Alliance, and TACC, we agree that advising continues to be an area requiring improvement in the assessment and placement process, and underrepresented students often have the least access to the type of robust and high-quality advising needed to ensure students not only select the appropriate mathematics course needed for their degree plan but also ensure that students fully understand the consequences, including in time and money, of selecting the "wrong" mathematics course or changing majors. Some state that students rarely change from a degree plan requiring a non-algebra-based course to an algebra-based course. However, many students, for a variety of reasons, change from other majors to business (the most popular major) or teaching, both of which generally result in a move to algebra-based mathematics.

The THECB has provided a number of webinars and presentations, including at TACRAO and specifically for those responsible for reporting, to provide guidance for those institutions that participate in mathematics pathways programs and choose to designate college readiness based on students' preparation.

Comment: The Charles Dana Center, E3 Alliance, and TACC jointly commented that the THECB should not adopt new rules until the institutions of higher education and the THECB conclude existing placement studies.

THECB Response: Placement decision-making, including use of assessment results and multiple measures, is part of each institution's ongoing, continuous improvement process. The THECB has, and will continue, to provide guidance, data, technical assistance, and other resources to aid in this process. Findings from formal studies will be shared with all stakeholders to further inform this process.

Comment: No new rules should be adopted until the THECB and the College Board provide equitable and remote access to beta testing opportunities for the TSIA2.

THECB Response: Beta testing for the new TSIA2 is provided by the THECB and the test vendor to allow faculty members to experience the assessment process. Because of test security,

including use of live items, staffing, and capacity limitations with the test vendor to address potential requests from over 1200 school districts, this process unfortunately had to be limited to current faculty at Texas institutions of higher education. Test administrators also continue to report limited capacity with online remote proctoring, compelling a decision to prioritize limited on-line spaces for students rather than for beta testing. We feel assured that faculty affiliated with the Dana Center, E3 Alliance, and TACC have access to Beta testing and can share information about their experiences with those interested.

Comment: The Charles Dana Center, E3 Alliance, and TACC jointly commented that any rule that requires colleges to use cut scores to place students into entry-level courses should include multiple measures to assign students to entry-level courses with or without corequisite support. The THECB and College Board should be required to provide guidance on how the TSIA2 can be used to assess varied levels of student readiness for entry-level courses and improve the targeting of corequisite.

THECB Response: The THECB has allowed colleges and IHES to implement TSI waivers through AY 2020-21, to permit the use of multiple measures assessment for student placement into entry-level courses with or without corequisite support. The THECB recommends these waivers to be extended through AY 2021-22 to allow for use of multiple measures also during a time when the pandemic and its impact may be minimal. During the TSI waiver period(s), the THECB is working with MDRC and CCRC to further study multiple measures assessment (MMA) and provide technical assistance directly to institutions, with findings used to inform future policy recommendations beyond the waiver period. Use of MMA is not contingent upon, or in conflict with, the launch of TSIA2 and should be considered on its own merits, independent of the TSIA2.

Comment: Finally, the Charles Dana Center, E3 Alliance, and TACC jointly commented that in reviewing the final version of HB 2223 approved by the 85th Texas Legislature, the THECB lacks authority to require an increase in the corequisite mandate beyond 75% of non-exempt students.

THECB Response: Effective fall 2018, TSI statute (Texas Education Code, Subsection F-1, 51.336(c)) requires that "at least 75% of students not in adult education and basic academic skills education" (i.e., those assessed on the TSIA at levels 5 and 6 on a scale of 1-6) *and* enrolled in developmental education be placed in corequisite models. Authority to implement rules to address this statutory requirement is provided in 51.344(b)(d).

The amendments are adopted under Texas Education Code, Section 51.344, which provides the Coordinating Board with the authority to adopt rules to implement the provisions of Texas Education Code, Chapter 51, Subchapter F-1, concerning the Texas Success Initiative.

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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For further information, please call: (512) 427-6247



SUBCHAPTER S. APPROVAL FOR PARTICIPATION IN THE STATE AUTHORIZATION RECIPROCITY AGREEMENT (SARA) FOR PUBLIC INSTITUTIONS OF HIGHER EDUCATION

19 TAC §4.314

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 4, Subchapter S, §4.314, Approval for Participation in the State Authorization Reciprocity Agreement (SARA) for Public Institutions of Higher Education, without changes to the proposed text as published in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5748) and will not be republished.

The amendments to §4.314 change the appeal process for institutions that have been denied membership in SARA by the Coordinating Board. The current process allows institutions to appeal a Coordinating Board denial to the Southern Regional Education Board and the National Council for SARA (NC-SARA). New NC-SARA policy requires SARA member states to develop and implement an in-state appeal process, giving states the final authority to deny institutions for SARA membership. The new appeal process must be in place by January 1, 2021. The amendments clarify that if the Board denies SARA membership to an institution, the institution may appeal to Texas' SARA signatory. This appeal will provide additional in-state due process before the institution takes an appeal to the Southern Regional Education Board consistent with NC-SARA's revised policy.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Education Code, Section 61.05121, which provides the Coordinating Board with the authority to administer state participation in State Authorization Reciprocity Agreements.

The amendments affect the implementation of Texas Education Code, Section 61.05121.

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 7. DEGREE GRANTING
COLLEGES AND UNIVERSITIES OTHER THAN
TEXAS PUBLIC INSTITUTIONS
SUBCHAPTER B. APPROVAL FOR PARTIC-
IPATION IN THE STATE AUTHORIZATION
RECIPROCITY AGREEMENT (SARA) FOR
PRIVATE OR INDEPENDENT INSTITUTIONS
OF HIGHER EDUCATION AND PRIVATE POST-
SECONDARY EDUCATIONAL INSTITUTIONS
19 TAC §7.54

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 7, Subchapter B, §7.54, Approval for Participation in the State Authorization Reciprocity Agreement (SARA) for Private or Independent Institutions of Higher Education and Private Postsecondary Educational Institutions, without changes to the proposed text as published in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5749) and will not be republished.

The amendments to §7.54 change the appeal process for institutions that have been denied membership in SARA by the Coordinating Board. The current process allows institutions to appeal a Coordinating Board denial to the Southern Regional Education Board and the National Council for SARA (NC-SARA). New NC-SARA policy requires SARA member states to develop and implement an in-state appeal process, giving states the final authority to deny institutions for SARA membership. The new appeal process must be in place by January 1, 2021. The amendments clarify that if the Board denies SARA membership to an institution, the institution may appeal to Texas' SARA signatory. This appeal will provide additional in-state due process before the institution takes an appeal to the Southern Regional Education Board consistent with NC-SARA's revised policy.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Education Code, Section 61.05121, which provides the Coordinating Board with the authority to administer state participation in State Authorization Reciprocity Agreements.

The amendments affect the implementation of Texas Education Code, Section 61.05121.

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 22. STUDENT FINANCIAL AID
PROGRAMS
SUBCHAPTER A. GENERAL PROVISIONS
19 TAC §22.11

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 22, Subchapter A, §22.11(b), General Provisions, without changes to the proposed text as published in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5750) and will not be republished.

Section 22.11(b) is amended to provide clarity on the flexibility institutions have regarding funding in the Texas College Work-Study and Work-Study Student Mentorship Programs. Section 22.11(b)(1) reflects the authority provided in General Appropriations Act, HB1, Article III, §18, 86th Texas Legislature. Section 22.11(b)(2) is amended to provide institutions with guidance on transferring funds between the two programs funded by the Texas College Work-Study appropriation. The agency adopted a transfer limit in line with what financial aid practitioners are familiar with for Federal Work-Study and Federal Supplemental Educational Opportunity Grant Programs. Some instances of the word "award" throughout the amended rule have been replaced with either "grant" or "offer," depending on the meaning and use of the phrase, to reflect current financial aid terminology.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Education Code, Sections 56.071-56.079, which provides the Coordinating Board with the authority to adopt rules for the implementation and administration of the Texas College Work-Study Program.

The amendments affect Texas Education Code, Sections 56.071-56.079.

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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SUBCHAPTER B. PROVISIONS FOR THE
TUITION EQUALIZATION GRANT PROGRAM
19 TAC §22.28

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 22, Subchapter B, §22.28, Tuition Equalization Grant Program, with changes to the proposed text as published in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5751) and will

be republished. The proposal submission did not include an amendment to rename subsection §22.28(d) to §22.28(c) after removing §22.28(c).

The removal of language from §22.28(c) provides greater flexibility for institutions in their efforts to address the needs of their student population and to eliminate an unnecessary level of complexity in the administration and understanding of the grant program.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Education Code, Sections 61.221-61.230, which provides the Coordinating Board with the authority to adopt rules for the implementation and administration of the Tuition Equalization Grant Program.

The amendments affect Texas Education Code, Sections 61.221-61.230.

§22.28. *Award Amounts and Adjustments.*

(a) Award Amount. Each academic year, no TEG award shall exceed the least of:

- (1) the student's financial need;
- (2) the student's tuition differential; or
- (3) the maximum award allowed based on the student's EFC, which is:

(A) 150 percent of the program maximum for undergraduate students demonstrating exceptional TEG need; or

(B) the program maximum for all other eligible students.

(b) Term or Semester Disbursement Limit. The amount of any disbursement in a single term or semester may not exceed the student's financial need or tuition differential for that term or semester or the program maximum for the academic year, whichever is the least.

(c) Award calculations and disbursements are to be completed in accordance with Chapter 22, Subchapter A of this title (relating to General Provisions).

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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SUBCHAPTER L. TOWARD EXCELLENCE, ACCESS, AND SUCCESS (TEXAS) GRANT PROGRAM

22 TAC §§22.225 - 22.231, 22.233, 22.234, 22.241

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 22, Subchapter L, §§22.225 - 22.231, 22.233, 22.234, and 22.241, Toward EXcellence, Access and Success Grant Program, without changes to the proposed text as published in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5752) and will not be republished.

Some instances of the word "award" throughout the amended rule have been replaced with either "grant" or "offer," depending on the meaning and use of the phrase, to reflect current financial aid terminology.

Section 22.225 concerning "Authority and Purpose" is amended to increase consistency in language within Chapter 22 and to clarify both the need-based nature of the program and the limitation to public institutions.

Section 22.226 concerning "Definitions" is amended to strike the terms that are not used in the subchapter, are defined in Subchapter A, §22.1, or are defined at the time they are used in the subchapter. Section 22.226(1) is amended to remove multiple terms with the same meaning in the subchapter. Section 22.226(2) and (3) are amended to remove the term "certificate," as the program is not available to individuals pursuing certificates, and to clarify the reference to programs of more than four years. Section 22.226(5), (7), and (12) are amended to clarify statutory references. Section 22.226(7) is added to clarify the term "public institution." The terms "institution" or "institution of higher education" have been replaced with "public institution" throughout the subchapter. Section 22.226(10) is added to provide clarity of the term "private institution" within the subchapter. Section 22.226(11) is added to clarify the word "program," as it is used in this subchapter. References throughout the document have been aligned with the defined terms.

Section 22.227(a) concerning "Eligible Institutions" is amended to clarify eligible institutions and to increase consistency in language within Chapter 22. Section 22.227(b) is amended to clarify the approval process. Section 22.227(c) replaces language that is duplicated in Subchapter A with a reference to the Subchapter.

Section 22.228 concerning "Eligible Students" is amended to remove language that has expired or that has been moved to §22.230 regarding "Discontinuation of Eligibility or Non-Eligibility" or §22.233 concerning "Priorities in Grants to Students." Section 22.228(a)(6)(D) corrects references regarding students who are eligible to receive TEXAS Grant based on prior receipt of a Texas Educational Opportunity Grant. Section 22.228(b) is amended to remove redundant language and to add clarifying language to support summer grants. Section 22.228(c) removes language that has been moved to §22.233 concerning "Priorities in Grants to Students."

Section 22.229 concerning "Satisfactory Academic Progress" is amended to remove expired or unnecessary language, to add clarifying language to support summer grants and to align with defined terms.

Section 22.230 concerning "Discontinuation of Eligibility or Non-Eligibility" is amended to add language regarding discontinuation of eligibility or non-eligibility that was removed from other sections. Language has been revised to support summer grants, to align with defined terms, and to remove unnecessary or duplicative language. Section 22.230(h) is amended to align the section with the statutory reference to "semester."

Section 22.231 concerning "Hardship Provisions" is amended to improve clarity by moving language to §22.229 concerning "Satisfactory Academic Progress" and §22.230 concerning "Discontinuation of Eligibility or Non-Eligibility" and as well as clarifying and aligning expectations with other subchapters. Section 22.231(c) is amended to extend the hardship to all eligibility pathways described in §22.228(a)(6).

Section 22.233 concerning "Priority in Awards to Students" is amended adding language from other sections of the subchapter to bring all program priorities under one section.

Section 22.234 concerning "Award Amounts" is amended by removing duplicative language, including language that exists in Subchapter A concerning "General Provisions." The section is also amended to add language that aligns the rule with statutory requirements and supports summer grants. The removal of §22.234(e) and (f) introduces greater flexibility for institutions in their efforts to address the needs of their student population and to eliminate an unnecessary level of complexity in the administration and understanding of the grant program.

Section 22.241(b) is amended to correct a statutory reference.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Education Code, Sections 56.301-56.311, which provides the Coordinating Board with the authority to adopt rules for the administration of the Toward EXcellence, Access and Success Grant Program.

The amendments affect Texas Education Code, Sections 56.301-56.311.

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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Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6365



19 TAC §§22.232, 22.235, 22.238 - 22.240, 22.242

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of Title 19, Chapter 22, Subchapter L, §§22.232, 22.235, 22.238 - 22.240, and 22.242, Toward EXcellence, Access and Success Grant Program, without changes to the proposed text as published in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5761) and will not be republished.

Specifically, §22.232 is repealed as its contents have been integrated with other priorities in §22.233. Sections 22.235, 22.239 and 22.240 are repealed as they are duplicative of rules in Chapter 22, Subchapter A, General Provisions. Section 22.238 is repealed as the provision is not utilized, making the rule unnecessary. Section 22.242 is repealed as it is redundant.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Education Code, Sections 56.301-56.311, which provide the Coordinating Board with the authority to adopt rules for the administration of the Toward EXcellence, Access, and Success Grant Program.

The repeal affects Texas Education Code, Sections 56.301-56.311.

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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SUBCHAPTER M. TEXAS EDUCATIONAL OPPORTUNITY GRANT PROGRAM

19 TAC §22.261

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 22, Subchapter M, §22.261, Texas Educational Opportunity Grant Program, without changes to the proposed text as published in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5761) and will not be republished.

The removal of language from §§22.261(b)(3), (c), and (f) is proposed to introduce greater flexibility for institutions in their efforts to address the needs of their student population and to eliminate an unnecessary level of complexity in the administration and understanding of the grant program.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Education Code, Sections 56.401-56.4075, which provides the Coordinating Board with the authority to adopt rules for the implementation and administration of the Texas Educational Opportunity Grant Program.

The amendments affect Texas Education Code, Sections 56.401-56.4075.

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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SUBCHAPTER Q. TEXAS B-ON-TIME LOAN PROGRAM

19 TAC §§22.329, 22.330, 22.339, 22.341

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 22, Subchapter Q, §§22.329, 22.330, 22.339, and 22.341, Texas B-On-Time Loan Program. Sections 22.329, 22.339, and 22.341 are adopted without changes to the proposed text as published in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5763), and will not be republished. Section 22.330, relating to Definitions, is adopted with changes to the rule text as published in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5763) and will be republished.

Section 22.329(a) is amended to update the legislative reference to reflect the specific citation of the Texas Education Code section regarding the authority for these provisions. Section 22.330, concerning Definitions, is amended to strike the terms that are either not used in the subchapter or are already defined in Subchapter A, §22.1. Section 22.339(d) is amended to remove the word "written" to allow for verbal requests, which aligns the program with the agency's other loan programs. Section 22.341(c) is deleted to eliminate institutional holds on student records and registration for individuals who are delinquent on a Texas B-On-Time loan. These institutional holds create a barrier to student completion of a certificate or degree. Eliminating this barrier supports the agency's 60x30TX educated population and completion goals.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Education Code, Section 56.0092, which provides the Coordinating Board with the authority to adopt rules for the administration of the Texas B-On-Time Loan Program.

The amendment affects Texas Education Code, Section 56.0092.

§22.330. Definitions.

In addition to the words and terms defined in §22.1 of this chapter (relating to Definitions), the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) Degree in Architecture--The completion credential awarded to a student who has completed satisfactorily the curriculum that the Board has approved as a baccalaureate degree program identified as belonging to Category 04.0201 of the Texas CIP Codes.
- (2) Degree in Engineering--The completion credential awarded to a student who has completed satisfactorily the curriculum that the Board has approved as a baccalaureate degree program identified as belonging to Category 14 of the Texas CIP Codes.
- (3) Default--The failure of a borrower to make loan installment payments for a total of 180 days.

(4) Texas CIP Codes--Classification codes for degree programs, agreed upon by institutions and approved by the Board, based on curricular content belonging to categories within the federal Classification of Instructional Programs (CIP) published by the National Center for Educational Statistics. Texas CIP Codes are available at <http://www.theccb.state.tx.us/apps/ProgramInventory/>.

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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SUBCHAPTER Q. TEXAS B-ON-TIME LOAN PROGRAM

19 TAC §§22.331 - 22.336, 22.342 - 22.344

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of Title 19, Part 1, Chapter 22, Subchapter Q, §§22.331 - 22.336 and 22.342-22.344, Texas B-On-Time Loan Program, without changes to the proposed text as published in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5764) and will not be republished.

Per Texas Education Code §56.0092(c), the Coordinating Board may not offer B-On-Time loans after the summer 2020 semester. Therefore, §§22.331-22.336, 22.342-22.344 are repealed as these rules are no longer authorized.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Education Code, Section 56.0092, which provides the Coordinating Board with the authority to adopt rules for the administration of the Texas B-On-Time Loan Program.

The repeal affects Texas Education Code, Section 56.0092.

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 23. EDUCATION LOAN
REPAYMENT PROGRAMS
SUBCHAPTER C. THE PHYSICIAN
EDUCATION LOAN REPAYMENT PROGRAM

19 TAC §§23.65 - 23.67

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 23, Subchapter C, §§23.65-23.67, Physician Education Loan Repayment Program, without changes to the proposed text as published in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5764) and will not be republished.

Amendments to several definitions are adopted in §23.65. The definition of full-time service is rounded to 32 hours, matching the standard in place for federal programs assisting health care providers practicing in shortage areas. The amendment to the definition of Primary Care excludes hospitalists because the hospitals where they work are not considered primary care settings. The words "in an outpatient setting" is added for all primary care physicians except geriatricians and psychiatrists, whose services often must occur in facilities such as nursing homes and state hospitals.

An amendment to §23.66(3), regarding eligibility, clarifies that physicians in postgraduate training, including fellowship, are not eligible for participation in the program. Physicians in postgraduate training are not working in the same capacity as practicing physicians who have their own liability coverage, bill for their services, and practice without supervision in the specialty or subspecialty for which they have completed training. An amendment to §23.66(5) regarding the timing of the board certification requirement makes the statement clearer. The rule is amended to delete the statement in §23.66(5)(B) that the Department of State Health Services (DSHS) determines if there is a critical need for a specialty other than primary care in a primary care HPSA. There is no mechanism in place for the DSHS to evaluate the need in a primary care HPSA for specific subspecialties. However, a determination has been made that any physician who provides access to subspecialty care in a primary care HPSA for persons enrolled in Medicaid or CHIP, a basic program requirement, is serving the program's purpose.

Amendments to §23.67 regarding application ranking criteria strengthen the priority given to applications from primary care physicians practicing in HPSAs. Currently, initial applications from subspecialists practicing in HPSAs are considered only after priority has been given to primary care physicians practicing in HPSAs. However, once enrolled in the program, renewal applications from subspecialists receive the same priority as renewal applications from primary care physicians. The changes to this section require that subspecialists receive consideration each year only after priority is given to all applications from primary care physicians practicing in HPSAs. Additionally, an amendment to §23.67 adds the requirement that primary care physicians seeking to qualify for the program by meeting specified Medicaid service levels must have provided outpatient care in meeting those service levels. This tier of applicants is considered the last priority for funding.

No comments were received regarding adoption of the amendments.

The amendment is adopted under Texas Education Code, Sections 61.531-61.540, which provides the Coordinating Board with

the authority to adopt rules for the administration of the Physician Education Loan Repayment Program.

The amendment affects Texas Education Code, Sections 61.531-61.540.

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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SUBCHAPTER H. PEACE OFFICER LOAN
REPAYMENT ASSISTANCE PROGRAM

19 TAC §23.211, §23.214

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 23, Subchapter H, §§23.211 and 23.214, Peace Officer Loan Repayment Assistance Program (POLRAP), without changes to the proposed text as published in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5766) and will not be republished.

In keeping with legislative intent, these amendments align the rules with the updated program design, which will allow peace officers to receive loan repayment based on the initial year of service as a peace officer provided after September 1, 2019, rather than requiring applicants to wait another year to qualify for an initial award.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Education Code, Sections 61.9951-.9959, which requires the Coordinating Board to establish and administer the Peace Officer Loan Repayment Assistance Program by rule.

The amendment affects Texas Education Code, Sections 61.9951-.9959.

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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TITLE 28. INSURANCE

**PART 1. TEXAS DEPARTMENT OF
INSURANCE**

**CHAPTER 7. CORPORATE AND FINANCIAL
REGULATION**

**SUBCHAPTER A. EXAMINATION AND
FINANCIAL ANALYSIS**

28 TAC §7.88, §7.89

The Commissioner of Insurance adopts amendments to 28 TAC §7.88, concerning independent annual audits of insurer and Health Maintenance Organization (HMO) financial statements and insurer and HMO internal control over financial reporting. The Commissioner also adopts new 28 TAC §7.89, concerning annual corporate governance disclosures. Amendments to §7.88 update the section to include requirements for audit committees and the internal audit function for large insurers and HMOs to align with best practices and changes to the Model Audit Rule (MAR) of the National Association of Insurance Commissioners (NAIC). New §7.89 implements House Bill 3306, 86th Legislature, Regular Session (2019), which is codified in Insurance Code Chapter 831 and requires rules describing the corporate governance disclosures an insurer or HMO is required to make each year. The amendments to 28 TAC §7.88 and new 28 TAC §7.89 are adopted without changes to the proposed text published in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5826). The rules will not be republished.

REASONED JUSTIFICATION. The amendments to §7.88 require certain large insurers and HMOs to establish an internal audit function that is independent and reports on corporate governance and internal controls to the audit committee of the insurer's or HMO's board of directors.

Under Insurance Code Chapter 823, Subchapter B, insurers and HMOs are required to provide an annual registration statement on executive staff's implementation and maintenance of corporate governance and internal control procedures and the board's oversight of corporate governance and internal controls. To have oversight, a board of directors should have a direct line of communication from an independent internal source at regular intervals. Best practices show this is achieved by establishing an internal audit function that reports to the audit committee of the board of directors.

The amendments to §7.88 improve the Texas Department of Insurance's (TDI) TDI's oversight of the financial condition of insurers and HMOs and incorporate best practices by requiring large insurers and HMOs to establish an internal audit function to ensure appropriate corporate governance and internal controls. The internal audit function provides independent and objective assurance to an insurer's or HMO's audit committee and management regarding their governance, risk management, and internal controls.

The amendments to §7.88 are necessary for TDI to maintain its NAIC accreditation. TDI notes that these amendments are consistent with existing stock exchange requirements, international standards, and industry best practices observed by large insurers or HMOs.

New §7.89 is necessary to implement HB 3306, which requires the Commissioner to adopt rules relating to an insurer's or HMO's corporate governance annual disclosure (CGAD) requirements. A recent analysis in the insurance industry compared existing corporate governance statutory requirements, regulatory initiatives, and review practices of regulators and the insurance industry. The analysis identified a need to collect additional information related to corporate governance practices. To address this need, the legislature passed HB 3306. The NAIC also acted to address this need, by developing the CGAD Model Act and the CGAD Model Regulation. The provisions of HB 3306 and §7.89 are based on the NAIC CGAD Model Act and NAIC CGAD Model Regulation; these provisions are necessary for TDI to maintain its NAIC accreditation. Under Insurance Code §36.004(c), TDI is authorized to adopt a rule to require compliance with a rule, regulation, directive, or standard adopted by the NAIC if the rule is necessary to preserve TDI's NAIC accreditation and, before the adoption of the rule, the Commissioner provides the standing committees of the senate and house of representatives with primary jurisdiction over TDI with written notice of the Commissioner's intent to adopt the rule. TDI provided notice to the standing committees as required by §36.004(c) when these sections were proposed.

HB 3306 requires an insurer or HMO or a group of insurers or HMOs to provide confidential corporate disclosures relating to their corporate governance practices to the Commissioner of their lead state if the insurer or HMO is a member of an insurance group or their domestic regulator each year by June 1. An insurer or HMO that is a member of an insurance group must submit the CGAD to the Commissioner of the lead state for the insurance group, under the laws of the lead state, as determined by the procedures adopted by the NAIC.

Neither HB 3306 nor §7.89 prescribe new governance standards, but rather require an insurer or HMO to report on existing practices. Given the different structures of U.S. insurers and HMOs, they are afforded discretion over the format of the filing and the level of the company responsible for the filing. The levels may be the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level, depending on how the insurer or insurance group has structured its system of corporate governance. However, an insurer or HMO should consider which level of the company determines the insurer's or HMO's or group of insurers' or HMOs' risk appetite.

At a minimum, the disclosure is required to address (1) the insurer's or HMO's corporate governance framework and structure; (2) the policies and practices of its board of directors and significant committees; (3) the policies and practices directing senior management; and (4) the processes by which the board of directors, its committees, and senior management ensure an appropriate level of oversight to the critical risk areas impacting the insurer's or HMO's business activities.

To simplify the reporting process, the CGAD requirements allow reference to existing documents and filings and provide guidance for filing changes from the prior year. Any insurer or HMO that fails, without cause, to timely file the CGAD under Insurance Code Chapter 831 may be subject to a penalty. Most insurers and HMOs already summarize and describe their corporate governance practices to various stakeholders on a regular basis, so the compliance costs with this requirement will not be significant.

TDI expects to receive initial CGAD filings on or before June 1, 2021. The electronic filing address is provided on TDI's website at www.tdi.texas.gov.

Section 7.88. Independent Audits of Insurer and HMO Financial Statements and Insurer and HMO Internal Control over Financial Reporting. The amendments to §7.88, related to the new internal audit function requirements and related to nonsubstantive text changes that conform to current TDI rule drafting, are adopted.

Section 7.88(b) is amended to include a new paragraph (4), which states that the internal audit committee requirements under §7.88(l) are applicable beginning January 1, 2021.

Section 7.88(c)(3) is amended to add the words "the internal audit function of an insurer or HMO or group of insurers or HMOs" and "external" to the definition of audit committee.

Section 7.88(d)(4), (e)(2), (g), and (k)(3) are amended to revise citations to a redesignated subsection and a redesignated paragraph. The references to subsection (m) in subsections (e)(2) and (g) are changed to reference subsection (n), the reference to subsection (m)(1) in subsection (e)(2) is changed to reference subsection (n)(1), and the reference to paragraph (9) in subsection (k)(3) is changed to reference paragraph (10).

Section 7.88(k)(3)(B) is amended to revise a citation to a chapter name and to revise a citation to a rule section that changed. The title of Chapter 8 is updated to "Hazardous Condition" and the reference to §11.810 is changed to §11.811.

Section 7.88(k)(4) is amended to reflect renumbering of the paragraphs that follow new paragraph (7). The waiver discussed in §7.88(k)(4) applies to paragraphs (1), (2), (5), (6), and (8) - (13).

Section 7.88(k)(7) clarifies the responsibilities of an insurer's or HMO's or group of insurers' or HMOs' audit committee. This amendment is included because the audit committee is responsible for overseeing the insurer's, HMO's, or group of insurers' or HMOs' internal audit function. To meaningfully carry out this function, certain authority and adequate resources must be made available to the persons doing the work. This paragraph also clarifies that this requirement for the audit committee applies only if the premium thresholds in §7.88(l) apply to the insurer, HMO, or group of insurers or HMOs.

Because new paragraph (7) is adopted, the paragraphs that follow it are renumbered as appropriate. In addition, because of the renumbering of the paragraphs in subsection (k), subsection (k)(8) is updated to reference paragraph (11) and subsection (k)(13) is updated to reference paragraph (12).

Section 7.88(l) is adopted as a new subsection to §7.88, and the subsections that follow it are redesignated as appropriate. Section 7.88(l) describes the requirements for the internal audit function, which applies to an insurer or HMO or group of insurers or HMOs when §7.88(k)(7)'s requirements for audit committees are applicable.

Section 7.88(l)(1) describes exemptions that limit the requirement for an insurer or HMO or group of insurers or HMOs to comply with the internal audit function requirements of the subsection. Under §7.88(l)(1), an insurer or HMO or group is exempt if it has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$500 million, and the insurer or HMO is a member of a group that has annual direct written and unaffiliated assumed premium including international

direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1 billion.

Section 7.88(l)(2) describes the required characteristics for the internal audit function. The internal audit function must provide independent, objective, and reasonable assurance to the audit committee and insurer management about the insurer's governance, risk management, and internal controls. The assurance is provided by doing general and specific audits, reviews, and tests, and by employing other techniques deemed necessary to protect assets, evaluate control effectiveness and efficiency, and determine compliance with policies and regulations.

Section 7.88(l)(3) requires that an internal audit function be organizationally independent to ensure that internal auditors remain objective. "Being independent" means that a person or entity conducting an internal audit makes the final decision on audit matters and that there is an individual appointed to head the internal audit function who has direct and unrestricted access to the board of directors. Internal audit can report to more than just the board without compromising organizational independence.

Section 7.88(l)(4) describes what the head of the internal audit must report to the audit committee and how often. It states that reporting must happen regularly, and it specifies that this must be no less than once per year. The report must include detail about the audit plan, factors that may adversely affect the internal audit function's independence or effectiveness, material findings from completed audits, and the appropriateness of corrective actions implemented by management as a result of audit findings.

Section 7.88(l)(5) provides that if an insurer or HMO is a member of an insurance holding company system or included in a group of insurers or HMOs, the internal audit function requirements may be satisfied at the ultimate controlling parent level, intermediate holding company level, or individual legal entity level.

Section 7.88(n)(2) updates the reference to a TAC section to change it from §11.810 to §11.811.

Section 7.88(o)(2) and (o)(3) are amended to revise citations to reflect redesignated subsections. The reference to subsection (m) in subsection (o)(2) is changed to subsection (n), and the reference to (m)(1) in subsection (o)(3) is changed to (n)(1).

Section 7.88(o)(4) is new. This section states that if an insurer or HMO or a group of insurers or HMOs no longer meets the exemption from the internal audit requirement in §7.88(l)(1), the insurer or HMO or group of insurers or HMOs has one year after the year the threshold is exceeded to comply with the requirements of §7.88(l).

Nonsubstantive amendments are also made to the existing rule text to conform it to current TDI rule-drafting style. These amendments include:

- capitalizing the word "Commissioner" where it appears in lowercase in subsections (b)(1); (d)(1) - (4); (f); (h); (h)(1), (2), (4), (4)(l), and (6), (10); (j)(1); (k)(3), (4), (10), and (11); redesignated (m)(2)(A); and redesignated (n)(1) and (2);
- correcting unnecessary capitalization in catchlines for subsections (d) - (k) and redesignated (m) - (p);
- replacing the words "shall be" with "is" in subsection (b)(2);
- replacing the word "shall" with "must" in subsections (f)(5); (e)(1); (h)(1) and (12); (j)(1); (k)(2), (5), (6), and (12); and redesignated (n)(1) and (7);

- replacing the word "shall" with "will" in subsections (h) and (h)(11);

- replacing the word "shall" with "may" in subsection (h)(3);

- removing the word "the" before citations to specific subchapters or sections of the Insurance Code in subsections (a)(3); (b)(1); (c)(1), (2), (4), (5), and (14); (d)(1) and (3) - (5); (e)(1)(C); (g); (h); (h)(11)(B) and (C); (i); (j)(1); (k)(2), (3)(A) and (B), and (12); redesignated (m)(1)(A) and (B) and (2); redesignated (n)(1), (2), (4), and (9); and redesignated (o)(2); and

- changing to word "chapter" to "title" and inserting the word "to" in a reference to another section of Title 28 of the Texas Administrative Code.

Section 7.89. Corporate Governance Annual Disclosure. Adopted new §7.89 describes the requirements for submitting the CGAD.

Section 7.89(a) states the purpose of the section, which is to implement Insurance Code Chapter 831 by providing the procedures for filing and the content of the corporate governance annual disclosures.

Section 7.89(b) provides definitions for the section. It states the definitions in Insurance Code §831.0002 apply to §7.89 and provides additional definitions. Insurance Code §831.0002(3) includes HMOs in the definition of "insurer," so when the term "insurer" is used in §7.89, it includes an HMO, and it is unnecessary to expressly repeat that definition in §7.89.

Section 7.89(b)(1) defines "Board" as the insurer's board of directors. Section 7.89(b)(2) defines "CGAD" as the corporate governance annual disclosure. Section 7.89(b)(3) defines "Senior Management" as any corporate officer reporting information to the board of directors at regular intervals or providing this information to shareholders or regulators. It notes that the term includes, but is not limited to, the chief executive officer (CEO), chief financial officer (CFO), chief operations officer, chief procurement officer, chief legal officer, chief information officer, chief technology officer, chief revenue officer, chief visionary officer, or any other senior level executive. Section 7.89(b)(4) defines "TDI" as the Texas Department of Insurance.

Section 7.89(c) describes the CGAD's filing procedures. Section 7.89(c)(1) states that an insurer required to file the CGAD must do so no later than June 1 of each calendar year.

Section 7.89(c)(2) identifies who may sign the CGAD, and it provides that the signature attests that the corporate governance practices were implemented and that the CGAD was provided to the appropriate board of directors and committee.

Section 7.89(c)(3) describes how to submit the CGAD. The CGAD must be sent in an electronic format acceptable to TDI. The electronic filing address and acceptable formats are provided on TDI's website at www.tdi.texas.gov.

Section 7.89(c)(4) describes the format of the CGAD. Section 7.89(c)(4) states that the insurer or the insurance group has discretion over the format of the information described in §7.89 and can choose the most relevant information as long as it allows TDI to understand the corporate governance structure, policies, and practices used by the insurer or insurance group.

Section 7.89(c)(5) describes that the level the insurer should report depends on how it has structured its corporate governance. Section 7.89(c)(5)(A) states that the insurer or insurance group has the choice to report at the controlling parent level, interme-

diating holding company level, or individual legal entity level. Section 7.89(c)(5)(B) encourages that the CGADs be made at the level at which the insurer's or insurance group's risk appetite is determined, or at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively, and at which the supervision of those factors are coordinated and exercised, or the level at which legal liability for failure of general corporate governance duties is placed. Section 7.89(c)(5)(C) requires the insurer or insurance group to indicate which of the three criteria under §7.89(c)(5)(B) was used to determine the level of reporting and explain any subsequent changes in level of reporting.

Section 7.89(c)(6) provides details if the CGAD is completed at the insurance group level. Section 7.89(c)(6) states that if the CGAD is completed at the insurance group level, then it must be filed with the lead state of the group as determined by the procedures outlined in the most recent financial analysis handbook adopted by the NAIC. It further describes that if completed on the insurance group level, a copy of the CGAD must also be provided upon request to the chief regulatory official of any state in which the insurance group has a domestic insurer.

Section 7.89(c)(7) describes what should be filed in the annual filing if there were changes to the CGAD or if there were no changes. Section 7.89(c)(7) states that after the initial filing, the insurer must file an amended CGAD if there were changes. The amended CGAD must identify where the changes were made. If there were no changes, the insurer must submit a letter signed by the person described under §7.89(c)(2) stating that there were no changes since the last CGAD submission. The letter must also identify that CGAD's date.

Section 7.89(d) describes the content of the CGAD. It states that the CGAD should be as descriptive as possible and include attachments and examples that are used in the governance process. The CGAD should provide information that shows the strengths of the framework and controls. The insurer or insurance group may reference other filings that were previously submitted to TDI instead of resubmitting similar information.

Section 7.89(e) describes what the insurer's or insurance group's corporate governance framework and structure should consider, at a minimum. Section 7.89(e)(1) states that the framework and structure should consider the board and board committees that are responsible for overseeing the insurer or insurance group and the levels at which the oversight of the insurer or insurance group occurs. The level may be at the ultimate controlling parent level, intermediate holding company level, or individual legal entity level, depending on how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group must also describe and discuss the rationale for the current board size and structure. Section 7.89(e)(2) states that the framework and structure should also consider the duties of the board and each of its significant committees and how they are governed under the bylaws, charters, and informal mandates, as well as how the board's leadership is structured. It should also include a discussion of the roles of chief executive officer and chairman of the board.

Section 7.89(f) describes the factors that the insurer or insurance group should consider when compiling the CGAD. The insurer or insurance group must describe the policies and practices of the most senior governing entity and its significant committees, including, but not limited to, a discussion of the factors described in §7.89(f)(1) - (5).

Section 7.89(f)(1) requires a description of how the qualifications, expertise, and experience of each board member meet the needs of the insurer or insurance group.

Section 7.89(f)(2) requires a description of how independence is maintained on the board and within its significant committees.

Section 7.89(f)(3) requires a report of the number of meetings held by the board and its significant committees over the past year, as well as information on director attendance.

Section 7.89(f)(4) requires a description of how the insurer or insurance group identifies, nominates, and elects members to the board and its committees. The discussion should include, but should not be limited to, the factors in §7.89(f)(4)(A) - (D). Section 7.89(f)(4)(A) requires that the description include whether a nomination committee is in place to identify and select individuals for consideration. Section 7.89(f)(4)(B) requires that the discussion include whether term limits are placed on directors. Section 7.89(f)(4)(C) requires that the discussion include how the election and reelection processes function. Section 7.89(f)(4)(D) requires that the discussion include whether the board has a diversity policy in place and, if so, how it functions.

Section 7.89(f)(5) requires that the description include the processes in place for the board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance. This description should include any board or committee training programs that have been put in place.

Section 7.89(g) requires an insurer or insurer group to address additional factors related to the policies and practices used to direct senior management. The factors must include those described in §7.89(g)(1) - (4).

Section 7.89(g)(1) requires a description of any processes or practices to determine whether officers and key persons in control functions have the appropriate background, experience, and integrity to fulfill their prospective roles, such as suitability standards. The description of the processes or practices must include those listed in §7.89(g)(1)(A) and (B). Section 7.89(g)(1)(A) and (B) address the specific positions for which suitability standards have been developed and a description of the standards employed, and any changes in an officer's or key person's suitability as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate such changes.

Section 7.89(g)(2) requires that the discussion include the insurer's or insurance group's code of business conduct and ethics. Section 7.89(g)(2)(A) and (B) provide examples of what the discussion could consider. Section 7.89(g)(2)(A) suggests the discussion of which considers compliance with laws, rules, and regulations, and §7.89(g)(2)(B) suggests that the discussion include proactive reporting of any illegal or unethical behavior.

Section 7.89(g)(3) requires that the discussion include the insurer's or insurance group's processes for performance evaluation, compensation, and corrective action to ensure effective senior management throughout the organization. This discussion must include a description of the general objectives of significant compensation programs and what the programs are designed to reward. The discussion must also include enough detail to allow the director to understand how the organization ensures that compensation programs do not encourage and reward excessive risk taking.

Section 7.89(g)(3)(A) - (F) provide examples of elements to discuss under §7.89(g)(3). Section 7.89(g)(3)(A) references the board's role in overseeing management compensation programs and practices. Section 7.89(g)(3)(B) references the various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid. Section 7.89(g)(3)(C) references how compensation programs are related to both company and individual performance over time. Section 7.89(g)(3)(D) references whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels. Section 7.89(g)(3)(E) references "clawback provisions" built into the programs to recover awards or payments if the performance measures that the awards or payments are based on are restated or otherwise adjusted. Section 7.89(g)(3)(F) references any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees.

Section 7.89(g)(4) requires that the discussion include the insurer's or insurance group's plans for CEO and senior management succession.

Section 7.89(h) requires the insurer or insurance group to describe the processes by which the board, its committees, and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's business activities. Section 7.89(h)(1) - (3) list the details that must be addressed in the insurer or insurance group's description of oversight.

Section 7.89(h)(1) requires a description of how oversight and management responsibilities are delegated between the board, its committees, and senior management.

Section 7.89(h)(2) requires a description of how the board is kept informed of the insurer's strategic plans, the associated risks, and steps that senior management is taking to monitor and manage those risks.

Section 7.89(h)(3) requires a description of how reporting responsibilities are organized for each critical risk area that allows the board to understand the frequency at which information on each critical risk area is reported to and reviewed by senior management and the board. Subparagraphs (A) - (H) provide that the description may include risk management processes, actuarial function, investment decision-making processes, reinsurance decision-making processes, business strategy/finance decision-making processes, compliance function, financial reporting/internal auditing, and market conduct decision-making processes.

Section 7.89(i) discusses the severability of §7.89. It states that if a determination that any portion of §7.89 or its application to any person or circumstance is held invalid, that portion's invalidity does not affect other portions of §7.89 or its applications that can be given effect without the invalid portion or application.

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed amendments or the new section.

STATUTORY AUTHORITY. The Commissioner adopts the amendments to §7.88 under Insurance Code §36.001 and §36.004(c) and new §7.89 under Insurance Code §§36.001, 36.004(c), 831.0008(c) and 831.0014(a).

Insurance Code §36.001 provides that the Commissioner may adopt rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Insurance Code §36.004(c) provides that the Commissioner may adopt a rule to require compliance with a rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners if the rule is technical or nonsubstantive in nature or necessary to preserve TDI's NAIC accreditation and, before the adoption of the rule, the Commissioner provides the standing committees of the senate and house of representatives with primary jurisdiction over TDI with written notice of the Commissioner's intent to adopt the rule.

Insurance Code §831.0008(c) provides that corporate governance annual disclosures must be prepared consistent with rules adopted by the Commissioner.

Insurance Code §831.0014(a) provides that the Commissioner must adopt rules as necessary to enforce Insurance Code Chapter 831.

CROSS-REFERENCE TO STATUTE. Amendments to §7.88 affect Insurance Code Chapter 401, Subchapter B, and Insurance Code Chapter 843, Subchapter B. New §7.89 affects Insurance Code §§831.0003 - 831.0014.

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 November 5, 2020.

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Texas Department of Insurance

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For further information, please call: (512) 676-6587



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 325. HAZARDOUS SUBSTANCES INVENTORY

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §§325.1 - 325.3, and simultaneously adopts new §§325.1 - 325.4.

The repeal of §§325.1 - 325.3 and new §§325.1 - 325.4 are adopted *without changes* to the proposal as published in the June 05, 2020, issue of the *Texas Register* (45 TexReg 3738) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The Tier II Chemical Reporting program (program) was transferred from the Texas Department of State Health Services (DSHS) to the Texas Commission on Environmental Quality as a

result of the passage of House Bill 942, 84th Texas Legislature, effective September 1, 2015. The program has been fully established within the Critical Infrastructure Division, including the development of a new online reporting system and database.

The purpose of this rulemaking adoption is to repeal and replace existing rules to remove obsolete references, provide consistency with federal rules, provide clarity to definitions, provide consistency with the federal Emergency Planning and Community Right-to-Know Act (EPCRA), add requirements stemming from the new online reporting system, develop clear guidance pertaining to submitting hazardous substances inventories, known as Tier II Reports, and reduce the number of reports that can be consolidated within a submission.

Section by Section Discussion

The commission adopts to repeal Chapter 325, §§325.1 - 325.3, in its entirety and adopts a new reformatted Chapter 325. This adopted rulemaking is necessary to provide consistency, update references, and to accommodate new requirements.

§325.1, *General Provisions*

The commission adopts new §325.1 to establish exclusions to this chapter to assist facility operators to comply with Texas Health and Safety Code (THSC), Chapters 505, 506, and 507. These exclusions will also be compatible with EPCRA.

§325.2, *Definitions*

The commission adopts new §325.2 to establish specific definitions for facility operators to comply with, specifically, definitions that will comply with THSC, Chapters 505, 506, and 507. These definitions will also be compatible with the federal EPCRA.

§325.3, *Reporting Requirements*

The commission adopts new §325.3 to establish how to submit Tier II Reports, when to submit Tier II Reports, and where to submit Tier II Reports, complying with THSC, Chapters 505, 506, and 507. These requirements are also compatible with the federal EPCRA.

§325.4, *Compliance and Fees*

The commission adopts new §325.4 to establish information on the commission's investigations of facilities and the required report submission fees, complying with THSC, Chapters 505, 506, and 507.

Final Regulatory Impact Determination

All of the commission's rules are designed to protect the environment and reduce risk. This adopted rulemaking is simply the transfer of rules already determined not to meet the definition of a "Major environmental rule" when promulgated by the DSHS to the commission. The commission's executive director has determined they do not meet any of the four applicability criteria in Texas Government Code, §2001.0225(a)(1-4) to require a regulatory analysis determination. The adopted rules do not exceed a standard set by federal or state law, unless the rules are specifically required by state law. The adopted rules do not exceed an express requirement of state law, unless the rules are specifically required by federal law. The adopted rules do not exceed a requirement of a federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. The adopted rules do not adopt a rule solely under the general powers of the agency instead of under a specific state law.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rules and performed analysis of whether the adopted rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of these adopted rules is to promulgate well-established rules from the DSHS to TCEQ as a result of the passage of HB 942, effective September 1, 2015, which transferred the program to the commission. The program has been fully established within the Critical Infrastructure Division, including the development of a new online reporting system and database. The adopted rules will substantially advance this stated purpose by providing for the Tier II Chemical Reporting Program within the existing 30 TAC, which is the Title for commission, from Title 25 which is the Title for the DSHS.

Promulgation and enforcement of these adopted rules will be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in private real property because this rule-making does not burden (constitutionally); 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 the regulations. In other words, these rules have existed at the DSHS for many years without any burden, restriction, or limitation of an owner's right to property and reduce its value by 25% or more.

Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in private real property because this rule-making does not burden (constitutionally); 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 the regulations. In other words, these rules have existed for many years without any burden, restriction, or limitation of an owner's right to property and reduce its value by 25% or more.

In addition, they do not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these rules will not constitute a taking under the Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The comment period closed on July 6, 2020. No public comments were received.

30 TAC §§325.1 - 325.3

Statutory Authority

The repealed rules are adopted under Texas Water Code (TWC), §5.102, which provides the commission the power to perform any acts necessary and convenient to the exercise of its jurisdiction and powers as provided by this code and other laws; TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule.

The adopted repealed rules implement House Bill 942, 84th Texas Legislature, effective September 1, 2015. HB 942 transferred the Tier II Chemical Reporting program, requiring the repeal of administrative rules, from the Texas Department of State Health Services and replacing them with these adopted rules at Texas Commission on Environmental Quality. The program has been fully established within the Critical Infrastructure Division, including the development of a new online reporting system and database.

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 November 6, 2020.

TRD-202004661

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: November 26, 2020

Proposal publication date: June 5, 2020

For further information, please call: (512) 239-2678



30 TAC §§325.1 - 325.4

Statutory Authority

The new rules are adopted under Texas Water Code (TWC), §5.102, which provides the commission the power to perform any acts necessary and convenient to the exercise of its jurisdiction and powers as provided by this code and other laws; TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule.

The adopted new rules implement House Bill 942, 84th Texas Legislature, effective September 1, 2015. HB 942 transferred the Tier II Chemical Reporting program, requiring the repeal of administrative rules, from the Texas Department of State Health Services and replacing them with these adopted rules at the Texas Commission on Environmental Quality. The program has been fully established within the Critical Infrastructure Division, including the development of a new online reporting system and database.

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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Robert Martinez

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

37 TAC §651.208

The Texas Forensic Science Commission ("Commission") adopts amendments to 37 Texas Administrative Code §651.208 without changes to the proposed text as published in the October 2, 2020, issue of the *Texas Register* (45 TexReg 6982). The rule will not be republished. Section 651.208 describes the requirements for renewal of a forensic analyst or technician license. The adopted amendments establish a timeline for requiring 8 discipline-specific continuing forensic education ("CFE") hours for forensic analysts adding another discipline to the scope of their forensic analyst license. Under the current rule, forensic analysts adding a discipline are required to complete 8 hours of CFE specific to the supplemental discipline before their license expires, without regard to the date they add the extra discipline to their license. The adopted amendments require 1) no CFE specific to the supplemental discipline for analysts adding a supplemental discipline within 6 months of their current license expiration; 2) 4 hours of CFE specific to the supplemental discipline for analysts adding a discipline between 6 and 18 months of license expiration; and 3) the full 8 hours for analysts adding a discipline 18 or more months before license expiration. The amendments are necessary to reflect adoptions made by the Commission at its July 24, 2020, quarterly meeting. The amendments are made in accordance with the Commission's forensic analyst licensing authority under Code of Criminal Procedure, Article 38.01 §4-a, which directs the Commission to adopt rules to establish the qualifications for a forensic analyst license and the Commission's rulemaking authority under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Code of Criminal Procedure Article 38.01.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendments are proposed under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Article 38.01, and Article 38.01 §4-a(d), which directs the Commission to adopt

rules to establish the qualifications for a forensic analyst license, including the successful complete of educational requirements established by the Commission.

Cross reference to statute. The adoption affects 37 Texas Administrative Code §651.208.

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 November 4, 2020.

TRD-202004633

Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

Effective date: November 24, 2020

Proposal publication date: October 2, 2020

For further information, please call: (512) 784-0037



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 374. DISCIPLINARY ACTIONS/DETRIMENTAL PRACTICE/COMPLAINT PROCESS/CODE OF ETHICS/LICENSURE OF PERSONS WITH CRIMINAL CONVICTIONS

40 TAC §374.1

The Texas Board of Occupational Therapy Examiners adopts amendments to the Schedule of Sanctions Figure in 40 Texas Administrative Code §374.1, concerning Disciplinary Actions. The amendments are adopted to replace "investigative costs" with "administrative penalties" in the Schedule of Sanctions, and to update other language to make the schedule consistent with other provisions in the chapter. The amendments are adopted without changes to the proposed text as published in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5863). The rule will not be republished.

Changes to the Schedule of Sanctions include replacing investigative costs with administrative penalties. The Occupational Therapy Practice Act, Texas Occupations Code §454.3521, authorizes the Board to impose an administrative penalty for a violation of the chapter or a rule adopted under the chapter. The amendments to the Schedule of Sanctions Figure in §374.1 will impose administrative penalties, not to exceed \$200 for each day a violation continues or occurs, to the "Minimum Discipline," "Intermediate Discipline," and "Maximum Discipline" levels per §454.3521. The graduated penalty amounts are assessed based on the severity and type of violation per §454.3025(a).

Additional changes to the Schedule of Sanctions include updating citations to the "OT Act/Rule" column. The changes also

include removing from the "Failed to Properly Renew a License" violation the reference to §367.1(b) and replacing such with a reference to the full §367.1, concerning continuing education, as further provisions in the section concern the violation. Such a change, concomitantly, will ensure that the schedule's reference to the section remains intact in the event that changes to the lettering of the section's provisions are made.

An additional cleanup removes the phrase "until conditions are met or indefinitely" from the "Maximum Discipline" column, with regard to the revocation or surrender of a license. The change is made to reflect that the administrative penalty assessed in an order is fixed, not indefinitely cumulative.

A further change to the section concerns removing from the "Minimum Discipline" and "Intermediate Discipline" columns the extraneous term "provisional" when it precedes "restricted practice." The removal is a cleanup to increase consistency in the schedule, as in other areas of the schedule, just the phrase "restricted practice" is employed for an equivalent sanction. A further change to the section involves a cleanup to correct "licensee" to "license."

No comments were received regarding adoption of the amendments.

The amendments to the Schedule of Sanctions Figure in 40 TAC §374.1(c) are adopted under Texas Occupations Code §454.102, which authorizes the Board to adopt rules to carry

out its duties under chapter 454. The amendments are also adopted under §454.3025, which requires the Board by rule to adopt a schedule of administrative penalties and other sanctions that the Board may impose under this chapter. Lastly, the amendments are adopted under §454.3521, which authorizes the Board to impose an administrative penalty, not to exceed \$200 for each day a violation continues or occurs, under this chapter for a violation of this chapter or a rule or order adopted under this chapter.

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 November 6, 2020.

TRD-202004660

Ralph A. Harper

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: December 1, 2020

Proposal publication date: August 21, 2020

For further information, please call: (512) 305-6900





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

Office of the Governor, Economic Development and Tourism Office

Title 10, Part 5

TITLE 10. Community Development

PART 5. Office of the Governor, Economic Development and Tourism Office

CHAPTER 177. Product Development and Small Business Incubator Fund

The Product Development and Small Business Incubator Board files this notice of intention to review 10 TAC Chapter 177, concerning the Product Development and Small Business Incubator Fund. The review is being conducted in accordance with Texas Government Code §2001.039.

An assessment will be made by the Product Development and Small Business Incubator Board as to whether the reasons for adopting the rules continue to exist. Each rule will be reviewed to determine whether to readopt, readopt with amendments, or repeal the rule.

Comments may be submitted for 30 days following the date of publication of this notice by mail to Terry Zrubek, Office of the Governor, P.O. Box 12428, Austin, Texas 78711 or by email to terry.zrubek@gov.texas.gov with the subject line "PDSBI Fund Rule Review."

TRD-202004752

Terry Zrubek

Director, Economic Development Finance

Office of the Governor, Economic Development and Tourism Office

Filed: November 9, 2020



Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 16, Part 4, of the Texas Administrative Code. This review and consideration is being conducted in accordance with Texas Government Code §2001.039.

Business and Consumer Safety Programs

Chapter 91, Dog and Cat Breeders Program

During the review, the Department will assess whether the reasons for adopting or readopting the rules in this chapter continue to exist. The Department will review each rule to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current Department procedures. This review is required every four years.

Written comments regarding the review of this chapter may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules> (select the appropriate chapter name for your comment); by facsimile to (512) 475-3032; or by mail to Vanessa Vasquez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

Any proposed changes to the rules in this chapter as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-202004753

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Filed: November 9, 2020



Adopted Rule Reviews

Texas Department of Housing and Community Affairs

Title 10, Part 1

The Texas Department of Housing and Community Affairs (the Department) adopts the review of 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.406 Fidelity Bond Requirement, §1.407 Inventory Report, and §1.408 Travel. The Department proposed the review in the September 18, 2020, issue of the *Texas Register* (45 TexReg 6597). The purpose of the action is to conduct a rule review in accordance with Tex. Gov't Code §2001.039, which requires a state agency to review its rules every four years.

At this time, the Department has determined there continues to be a need for these rules, which is to provide guidance to subrecipients of the Department relating to reporting inventory and travel. The Department has also determined that no changes to these rules as currently in effect are necessary. These rules were noted in the *Texas Register's* Review of Agency Rules section without publication of the text.

SUMMARY OF PUBLIC COMMENT. Public comment on the rule was accepted from September 18, 2020, to October 19, 2020. No comment was received.

This concludes the review of 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.406 Fidelity Bond Requirement, §1.407 Inventory Report, and §1.408 Travel.

TRD-202004659

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: November 6, 2020



TABLES &

GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure 1: 10 TAC §2.302(k)

Penalty table for Chapters 6 and 7 Findings of Noncompliance These are the maximum potential administrative penalty amounts possible for each finding of noncompliance. When an administrative penalty is to be considered, the matrix below must be considered in conjunction with the statutory factors at Tex. Gov't Code §2306.042.		
Finding of Noncompliance	Maximum first time administrative penalty assessment	Maximum Administrative penalty assessment for a Responsible Party that has previously paid a penalty for the same finding type
Lack of financial duties or material inventory segregation of duties	Up to \$500	Up to \$1,000
No Cost Allocation/Not allocating costs properly	Up to \$500 for each instance	Up to \$1,000 for each instance
Violation of Conflict of Interest policies	Up to \$500	Up to \$1,000
Lack of Insurance or Fidelity Bond coverage	Up to \$1,000 + up to \$100 a day for each day not in compliance	Up to \$1,000 + up to \$200 a day for each day not in compliance
Failure to submit Inventory Report within 45 days (end Contract Term)	Up to \$500	Up to \$1,000
Unallowable/Unreasonable expenditure	Up to \$1,000 for each instance	Up to \$1,000 for each instance
Violation of Procurement Requirements	Up to \$1,000 for each service or product not properly procured	Up to \$1,000 for each service or product not properly procured
Lack of Subcontractor contract	Up to \$250 for each instance	Up to \$500 for each instance

Lack of prior approval for purchase(s)	Up to \$500 for each instance	Up to \$1,000 for each instance
Instance of Fraud, Waste and/or Abuse	Up to \$1,000	Up to \$1,000
Commingling of funds, Misapplication of funds	Up to \$1,000	Up to \$1,000
Failure to timely submit Audit Certification Form	Up to \$250	Up to \$1,000 per violation
Failure to timely submit Single Audit	Up to \$1,000	Up to \$1,000 + up to \$100 for each day not in compliance
Lack of providing requested documentation/item(s) for monitoring	Up to \$500 per day for each item or documentation not provided	Up to \$150 per day for each item or documentation not provided
Failure to timely respond to Report/provide required correspondence	Up to \$100 for first violation	Up to \$1,000 per day per violation
Failure to report/record program income	Up to \$500 for each instance	Up to \$1,000 for each instance
Noncompliance with record retention requirements	Up to \$100 for each instance	Up to \$1,000 for each instance
Providing assistance to income or SAVE ineligible applicants	Up to \$500 for each instance	Up to \$1,000 for each instance
Service provided to clients not according to poverty population makeup	Up to \$500	Up to \$1,000
Failure to meet Tri-Partite Board Requirements	Up to \$1,000 + up to \$100 for each the entity failed to comply	Up to \$1,000 + up to \$250 for each day the entity failed to comply

Failure to comply with Department minimum applicant/client denials and appeals	Up to \$250 for each instance	Up to \$500 for each instance
Failure to Prioritize applicants	Up to \$250 for each instance	Up to \$500 for each instance
Failure to complete or to properly complete required program documents	Up to \$250 for each instance	Up to \$750 for each instance
Payment to Vendor without a Vendor Agreement	Up to \$500 for each instance	Up to \$1,000 for each instance
Failure to perform Outreach activities	Up to \$500	Up to \$1,000
Weatherized unit expenditure over maximum cost per unit w/o prior approval	Up to \$500 for each instance	Up to \$1,000 for each instance
Failure to input Ending Homelessness, HHSP, or ESG client data into the Homeless Management Information System	Up to \$500 for each instance	Up to \$1,000 for each instance
Other noncompliance with a contract requirement	Up to \$1,000	Up to \$1,000
Failure to comply with case management requirements	Up to \$500	Up to \$750
Noncompliance with applicable OMB or state financial management requirements	Up to \$500	Up to \$1,000
Noncompliance with Texas Prompt Payment Act	Up to \$500	Up to \$750
Noncompliance with Historical Commission requirements	Up to \$500	Up to \$750

Failure to comply with Limited English Proficiency (“LEP”) policies in accordance with program rule, policy or agreement	Up to \$500	Up to \$1000
Failure to meet accessibility requirements	Up to \$1,000 per violation	Up to \$1,000 per violation
Failure to submit Inventory Report within 45 days (end of contract term)	Up to \$500	Up to \$1,000
Failure to timely enter into an ISPA (Information Privacy and Security Agreement)	Up to \$1,000 per violation	Up to \$1,000 per violation
Failure to attend required training as required by program rule, policy or agreement	Up to \$100 per violation	Up to \$200 per violation
Failure to comply with Section 3 requirements in accordance with program rule, policy, or agreement (ESG only)	Up to \$500	Up to \$1,000

Figure 2: 10 TAC §2.302(k)

Penalty table for Multifamily Rental Findings of Noncompliance. These are the maximum potential administrative penalty amounts possible for each finding of noncompliance. When an administrative penalty is to be considered, the matrix below must be considered in conjunction with the statutory factors at Tex. Gov't Code §2306.042:		
Finding of Noncompliance	Maximum First Time Administrative Penalty assessment	Maximum Administrative Penalty Assessment for a Responsible Party that has previously paid a penalty for the same finding type
Violations of the Uniform Physical Condition Standards	Up to \$500 for level 3 deficiencies, up to \$250 for level 2 deficiencies, up to \$125 for level 1 deficiencies, plus an optional \$100 per day if level 2 or level 3 deficiencies remain uncorrected 6 months from the corrective action deadline	Up to \$1,000 for level 3 deficiencies, up to \$500 for level 2 deficiencies, up to \$250 for level 1 deficiencies, plus an optional \$200 per day if level 2 or level 3 deficiencies remain uncorrected 6 months from the corrective action deadline
Noncompliance related to Affirmative Marketing requirements described in §10.801 of this title	Up to \$250	Up to \$500,
TDHCA has received notice from HUD, the DOJ, or the TWC of a judgement from a court of competent jurisdiction regarding a Fair Housing Act Violation and/or reported general public use violation	Up to \$1,000	Up to \$1,000
TDHCA has referred unresolved Fair Housing design and construction	Up to \$1,000	Up to \$1,000

issues to the Texas workforce Commission Civil Rights division		
Development is not available to the general public because of leasing issues	Up to \$1,000 per day per violation	Up to \$1,000 per day per violation
Development is never expected to comply due to failure to report or allow monitoring	Up to \$1,000 per day	Up to \$1,000 per day
Owner did not allow on-site monitoring or failed to notify residents resulting in inspection cancellation (including failure to appear for review)	Up to \$1,000 per day	Up to \$1,000 per day
LURA not in effect	Up to \$1,000 per day	Up to \$1,000 per day
Project failed to meet minimum set aside	Up to \$1,000 per day	Up to \$1,000 per day
No evidence of, or failure to certify to material participation and/or ownership by a non-profit or HUB, if required by LURA	Up to \$750	Up to \$1,000
Development failed to meet additional state required rent and occupancy restrictions	Up to \$250 per day per violation	Up to \$500 per day per violation
Noncompliance with social service requirements (provision of services)	Up to \$250 per violation, with each required service considered a separate violation	Up to \$500 per violation, with each required service considered a separate violation

Noncompliance with social service requirements (expenditure amounts)	Double the monthly expenditure deficiency, up to a maximum of \$1,000 per day	Triple the monthly expenditure deficiency, up to a maximum of \$1,000 per day.
Development failed to provide housing to the elderly as promised at application	Up to \$5 per day per violation	Up to \$10 per day per violation
Failure to provide special needs housing as required by LURA	Up to \$1,000	Up to \$1,000
Changes in Eligible Basis or Applicable percentage in violation of the IRS 8823 Audit Guide or other IRS guidance	Up to \$1,000 per day per violation	Up to \$1,000 per day per violation
Failure to submit all or parts of the Annual Owner's Compliance Report	Up to \$500	Up to \$1,000
Failure to respond to Compliance Division requests for clarification regarding answers on the Annual Owner's Compliance Report	Up to \$250	Up to \$750
Failure to submit quarterly reports as required by §10.607 of this title	Up to \$100, then and additional \$250 for each subsequent quarter that the report is not received	Up to \$250, then an additional \$500 for each subsequent quarter that the report is not submitted
Noncompliance with utility allowance requirements described in §10.614 of this title and/or Treasury	Up to \$50 per unit	Up to \$100 per unit

Regulation 26 CFR §1.42-10		
Noncompliance with lease requirements described in §10.613 of this title (relating to failure to execute required lease provisions)	Up to \$500	Up to \$1,000
Noncompliance with lease requirements described in §10.613 of this title (relating to failure to provide lease brochures, guides or notices described in §10.613 currently including but not limited to the Tenant Rights and Resources Guide)	Up to \$250	Up to \$500
Asset Management has reported that Development has failed to establish and maintain a reserve account in accordance with §10.404 of this title	Up to \$1,000	Up to \$1,000
Failure to provide a notary public as promised at application	Up to \$500	Up to \$750
Violation of the Unit Vacancy Rule	Up to \$250 per violation	Up to \$500 per violation
Failure to provide pre-on-site documentation	Up to \$250 per pre-on-site documentation item	Up to \$500 per pre-on-site documentation item
Failure to provide amenity as required by LURA	Up to \$1,000 per violation	Up to \$1,000 per violation, plus \$100 for each subsequent day the violation continues

Failure to pay asset management, compliance monitoring or other required fee	Up to \$250 for the first day plus \$10 per day for each subsequent day the violation continues	Up to \$500 for the first day plus \$50 per day for each subsequent day the violation continues
Change in ownership without department approval (other than removal of a general partner in accordance with §10.406 of this title)	Up to \$1,000 for the first day plus \$100 per day for each subsequent day the violation continues	Up to \$1,000 for the first day plus \$200 per day for each subsequent day the violation continues
Noncompliance with written policy and procedure requirements described in §10.802 of this title (written policy violations)	Up to \$500 per violation	Up to \$1,000 per violation
Noncompliance with written policy and procedure requirements described in §10.802 of this title (notice of termination language requirements)	Up to \$250 per violation	Up to \$500 per violation
Noncompliance with Reasonable Accommodation Policy requirements as described in §10.802 of this title	Up to \$500 per violation	Up to \$1,000 per violation
Program Unit not leased to Low-Income household (either because the household's income exceeds the allowable limit or because the	Up to \$1,000 per violation	Up to \$1,000 per violation

owner did not gather adequate documentation to establish household eligibility)		
Program unit occupied by nonqualified full-time students	Up to \$1,000 per violation	Up to \$1,000 per violation
Low-Income units used on a transient basis	Up to \$500 per violation	Up to \$1,000 per violation
Violation of the Available Unit Rule	Up to \$500 per violation	Up to \$1,000 per violation
Gross rent exceeds the highest rent allowed under the LURA or other deed restriction	Up to \$50 per unit per day	Up to \$150 per unit per day
Failure to provide Tenant Income Certification and documentation	Up to \$100 per violation	Up to \$250 per violation
Unit not available for rent	Up to \$50 per unit per day	Up to \$100per unit per day
Failure to collect data required by §10.612(b)(1) and/or (2) of this title (Annual Eligibility Certifications)	Up to \$50 per violation	Up to \$100 per violation
Development evicted or terminated the tenancy of a low-income tenant for other than good cause	Up to \$1,000 per violation	Up to \$1,000 per violation
Household income increased above 80 percent at recertification and Owner	Up to \$500 per violation	Up to \$1,000 per violation

failed to properly determine rent		
Violation of the Integrated Housing Rule in 10 TAC 1.15	Up to \$500	Up to \$500
Failure to resolve final construction deficiencies within corrective action period	Up to \$1,000 per violation	Up to \$1,000 per violation
Noncompliance with the required accessibility requirements such as §504 of the Rehabilitation Act of 1973, the 2010 ADA standards or other accessibility related requirements of a Department Rule, including but not limited to those described in Chapter 1, Subchapter B (except those only under the Fair Housing Act for which there is a separate category)	Up to \$1,000 per violation	Up to \$1,000 per violation
Noncompliance with the notice to the Department requirements described in §10.609 of this title	Up to \$500	Up to \$500
Failure to provide a reasonable accommodation under 10 TAC, Chapter 1, Subchapter B	Up to \$1,000 per violation	Up to \$1,000 per violation
Violation of the Fair Housing Act and §1.205 of this Title	Up to \$1,000	Up to \$1,000
Failure to reserve units for Section 811	Up to \$750	Up to \$1,000

participants (Section 811 PRA only)		
Failure to notify the Department of the availability of Section 811 units (Section 811 PRA only)	Up to \$750	Up to \$1,000
Owner failed to check criminal history and drug use of household (as required by Department Rule)	Up to \$250	Up to \$500
Failure to use Enterprise Income Verification System (section 811 PRA only)	Up to \$250	Up to \$500
Failure to properly document and calculate adjusted income (section 811 PRA only)	Up to \$500 per violation	Up to \$1,000 per violation
Failure to use required HUD forms (Section 811 PRA only)	Up to \$250	Up to \$500
Accepted funding that limits 811 PRA participation	Up to \$1,000	Up to \$1,000
Failure to properly calculate resident portion of rent (Section 811 PRA only)	Up to \$50 per unit per day	Up to \$150 per unit per day
Failure to use HUD model Lease (Section 811 PRA only)	Up to \$500	Up to \$1,000
Failure to disperse 811 PRA Units according to program requirements (relates to disbursement throughout the Development. Section 811 PRA only)	Up to \$500	Up to \$1,000

Failure to conduct interim certifications (Section 811 PRA only)	Up to \$100 per violation	Up to \$250 per violation
Failure to conduct annual income recertification (Section 811 PRA only)	Up to \$100 per violation	Up to \$250 per violation
Asset Management Division has reported that Development has failed to submit rents for review on an annual basis in accordance with §10.403 of this Title	Up to \$750	Up to \$1,000
Failure to maintain status as a qualified Community Housing Development Organization (CHDO)	Up to \$1,000 + up to \$100 for each day the entity failed to comply	Up to \$1,000 + up to \$250 for each day the entity failed to comply
Failure to submit Audit Certification Form, a Single Audit, or other programmatic audit	Up to \$1,000	Up to \$1,000 plus up to \$100 for each day not in compliance
Failure to timely enter into an Information Privacy and Security Agreement	Up to \$1,000 per violation	Up to \$1,000 per violation
Failure to comply with Labor Standards requirements in accordance with program rule, policy or agreement	Up to \$500	Up to \$1,000
Failure to comply with displacement policies as required by program rule, policy or agreement	Up to \$500	Up to \$1,000
Casualty loss not corrected during restoration period	Up to \$100 per unit per day	Up to \$500 per unit per day

Unit leased to Household that is not qualified for the Section 811 PRA program	Up to \$500	Up to \$1,000
Failure to submit documentation for mail in review	Up to \$1,000 per day	Up to \$1,000 per day
Noncompliance with CHDO requirements	Up to \$500	Up to \$1,000
Failure to properly calculate security deposit (Section 811 PRA only)	Up to \$250	Up to \$500
Failure to prominently display required Fair Housing Posters (Section 811 PRA only)	Up to \$250	Up to \$500
Failure to comply with Section 3 requirements in 24 CFR 135.34 and 24 CFR 135.5 in accordance with program rule, policy, or agreement	Up to \$500	Up to \$1,000

Figure 3: 10 TAC §2.302(k)

<p>Penalty table for Single Family Program Findings of Noncompliance. These are the maximum potential administrative penalty amounts possible for each finding of noncompliance. When an administrative penalty is to be considered, this matrix must be considered in conjunction with the statutory factors at Tex. Gov't Code §2306.042.</p>		
<p>Finding of Noncompliance</p>	<p>Maximum first time administrative penalty assessment</p>	<p>Maximum administrative penalty assessment for a Responsible Party that has previously paid a penalty for the same finding type</p>
<p>Noncompliance related to Affirmative Marketing requirements</p>	<p>Up to \$500</p>	<p>Up to \$1,000</p>
<p>Program Accessibility violations</p>	<p>Up to \$100 per violation</p>	<p>Up to \$200 per violation</p>
<p>Failure to meet CHDO Board requirements</p>	<p>Up to \$1,000 + up to \$100 for each day the entity failed to comply</p>	<p>Up to \$1,000 + up to \$250 for each day the entity failed to comply</p>
<p>Repeated violations of interim loan terms or timeline</p>	<p>Up to \$500</p>	<p>Up to \$1,000</p>
<p>Records retention violations</p>	<p>Up to \$100 per violation</p>	<p>Up to \$200 per violation</p>
<p>Failure to attend required training as required by program rule, policy or agreement</p>	<p>Up to \$100 per violation</p>	<p>Up to \$200 per violation</p>
<p>Providing assistance to households that are not income eligible</p>	<p>Up to \$500</p>	<p>Up to \$1,000</p>
<p>Violations of construction standards</p>	<p>Up to \$500</p>	<p>Up to \$1,000</p>

Violations of property condition standards	Up to \$500	Up to \$1,000
Violation of Conflict of Interest Policies	Up to \$500	Up to \$1,000
Violation of program policies regarding use of funds for sectarian or religious activity	Up to \$500	Up to \$1,000
Failure to comply with Limited English Proficiency ("LEP") policies in accordance with program rule, policy or agreement	Up to \$500	Up to \$1,000
Failure to comply with labor standards requirements in accordance with program rule, policy or agreement	Up to \$500	Up to \$1,000
Violation of Procurement Requirements	Up to \$1,000 for each service or product not properly procured	Up to \$1,000 for each service or product not properly procured
Failure to comply with Section 3 requirements in accordance with program rule, policy, or agreement	Up to \$500	Up to \$1,000
Failure to comply with displacement policies as required by program rule, policy, or agreement	Up to \$500	Up to \$1,000
Failure to provide Tenant Income Certification and documentation	Up to \$250 per violation	Up to \$250 violation
Failure to collect data required by program	Up to \$50 per violation	Up to \$100 per violation

rules, policies or agreements		
Failure to provide required documentation or corrections to documentation	Up to \$50 per day	Up to \$150 per day
Development evicted or terminated the tenancy of a low-income tenant for other than good cause	Up to \$500 per violation	Up to \$1,000 per violation
For tenant-based rental programs, Household income increased above 80 percent at recertification and Owner failed to properly determine rent	Up to \$500 per violation	Up to \$1,000 per violation
For tenant-based rental programs, gross rent exceeds the highest rent by program rule, policy or agreement	Up to \$50 per unit per day	Up to \$150 per unit per day
Failure to return or repay funds to the Department as required by rule, policy or agreements (such as contract termination, assessed penalties, disallowed costs, overpayment, Deobligation, or recapture)	Up to \$50 per day	Up to \$150 per day
Failure to meet accessibility requirements	Up to \$1,000 per violation	Up to \$1,000 per violation
Noncompliance with applicable OMB or state	Up to \$500	Up to \$1,000

financial management requirements		
Failure to timely submit Audit Certification Form	Up to \$250	Up to \$1,000 per violation
Failure to timely submit Single Audit	Up to \$1,000	Up to \$1,000 + up to \$100 for each day not in compliance
Failure to timely enter into an ISPA (Information Privacy and Security Agreement)	Up to \$1,000 per violation	Up to \$1,000 per Violation
Lack of insurance of fidelity bond coverage	Up to \$1,000 + up to \$100 a day for each day not in compliance	Up to \$1,000 + up to \$200 a day for each day not in compliance

Figure: 26 TAC §744.2403

<u>If a child is in care:</u>	<u>You must offer the child at least this amount of food:</u>
<u>(1) Less than four hours</u>	<u>One snack.</u>
<u>(2) Four to five hours</u>	<u>One meal.</u>
<u>(3) Six to eight hours</u>	<u>One meal and one snack.</u>
<u>(4) More than eight hours</u>	<u>(A) Two meals and one snack; or</u> <u>(B) One meal and two snacks.</u>
<u>(5) During the nighttime</u>	<u>Depending on the time child arrives and leaves:</u> <u>(A) An evening meal and breakfast;</u> <u>(B) A bedtime snack and breakfast; or</u> <u>(C) An evening meal, a bedtime snack, and breakfast.</u>

Figure: 26 TAC §746.3303

<u>If a child is in care:</u>	<u>You must offer the child at least this amount of food:</u>
<u>(1) Less than four hours</u>	<u>One snack.</u>
<u>(2) Four to five hours</u>	<u>One meal.</u>
<u>(3) Six to eight hours</u>	<u>One meal and one snack.</u>
<u>(4) More than eight hours</u>	<u>(A) Two meals and one snack; or</u> <u>(B) One meal and two snacks.</u>
<u>(5) During the nighttime</u>	<u>Depending on the time child arrives and leaves:</u> <u>(A) An evening meal and breakfast;</u> <u>(B) A bedtime snack and breakfast;</u> <u>or</u> <u>(C) An evening meal, a bedtime snack, and breakfast.</u>

Figure 26 TAC §747.3103

<u>If a child is in care:</u>	<u>You must offer the child at least this amount of food:</u>
<u>(1) Less than four hours</u>	<u>One snack.</u>
<u>(2) Four to five hours</u>	<u>One meal.</u>
<u>(3) Six to eight hours</u>	<u>One meal and one snack.</u>
<u>(4) More than eight hours</u>	<u>(A) Two meals and one snack; or</u> <u>(B) One meal and two snacks.</u>
<u>(5) During the nighttime</u>	<u>Depending on the time the child arrives and leaves:</u> <u>(A) An evening meal and breakfast;</u> <u>(B) A bedtime snack and breakfast; or</u> <u>(B) An evening meal, a bedtime snack, and breakfast.</u>

Figure: 26 TAC §747.2104(b)

<u>Type of Play</u>	<u>Amount of Time a Child May Engage in Activities</u>
<p><u>(1) A minimum of two daily opportunities for outdoor play, weather permitting, in which the child makes use of both small and large muscles</u></p>	<p><u>(A) An infant birth through 12 months of age may engage in outdoor play for an amount of time as tolerated by the infant; and</u></p> <p><u>(B) An infant 13 months through 17 months of age, a toddler, or a pre-kindergarten age child must engage in outdoor play for a minimum of 60 total minutes daily.</u></p>
<p><u>(2) Opportunities for active play that incorporate group and individual activities both indoors and outdoors</u></p>	<p><u>(A) A toddler must engage in moderate to vigorous active play for a minimum of 60 minutes daily; and</u></p> <p><u>(B) A pre-kindergarten age child must engage in moderate to vigorous active play for a minimum of 90 minutes daily.</u></p>

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.

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ 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 **December 23, 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 commissions 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 commissions 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 **December 23, 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: Chesapeake Land Development Company, L.L.C.; DOCKET NUMBER: 2020-0457-PWS-E; IDENTIFIER: RN106536576; LOCATION: Carrizo Springs, Dimmit County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.107(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.006 milligrams per liter for di(2-ethylhexyl) phthalate based on the running annual average; and 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 the quarter for the fourth quarter of 2019; PENALTY: \$1,167; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(2) COMPANY: City of Kerrville; DOCKET NUMBER: 2020-0718-MWD-E; IDENTIFIER: RN100844802; LOCATION: Kerrville, Kerr County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.65 and §305.125(2) and TWC, §26.121(a)(1), by failing to maintain authorization to discharge

wastewater into or adjacent to any water in the state; PENALTY: \$9,000; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Kuraray America, Incorporated; DOCKET NUMBER: 2018-0987-AIR-E; IDENTIFIER: RN106155849; LOCATION: La Porte, Harris County; TYPE OF FACILITY: petrochemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(2), 113.500, 116.115(c), and 116.615(6), 40 Code of Federal Regulations §63.990 and §63.997(c)(1)(ii), Standard Permit Registration Number 147896, Air Quality Standard Permit for Pollution Control Projects, Special Conditions (SC) Number (2)(E), and Texas Health and Safety Code (THSC), §382.085(b), by failing to conduct a performance test within 180 days after initial start-up; 30 TAC §§116.110(a), 116.116(a)(1), and 116.116(b)(1) and THSC, §382.0518(a) and §382.085(b), by failing to comply with the representations with regard to construction plans and operation procedures in a permit application; 30 TAC §116.115(b)(2)(F) and (c), New Source Review Permit Number 96510, SC Number 1, and THSC, §382.085(b), by failing to comply with the maximum allowable emissions rates; and 30 TAC §116.115(b)(2)(F) and §116.615(2), Standard Permit Registration Number 147896, and THSC, §382.085(b), by failing to comply with the maximum emissions rate; PENALTY: \$243,900; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$97,560; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: LIFE SCIENCE PLAZA INVESTMENT GROUP, LP; DOCKET NUMBER: 2020-0698-PST-E; IDENTIFIER: RN105860894; LOCATION: Houston, Harris County; TYPE OF FACILITY: fleet refueling facility; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tank; PENALTY: \$829; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: LONGHORN SEPTIC SERVICE, L.C.; DOCKET NUMBER: 2019-1514-SLG-E; IDENTIFIER: RN102761384; LOCATION: Livingston, Polk County; TYPE OF FACILITY: domestic septage land application area; RULES VIOLATED: 30 TAC §305.125(1) and §312.44(c)(2)(E) and Domestic Septage Registration Number 710901, Part V.D.3.h, by failing to maintain a buffer zone of 50 feet from the property boundary for the application area; and 30 TAC §305.125(1) and §312.44(h)(3) and Domestic Septage Registration Number 710901, Part V.D.8, by failing to cease the land application of domestic septage during rainstorms or during periods in which surface soils are water-saturated, and when pooling of water is evident on the land application site; PENALTY: \$1,350; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: LUCKYS HAPPY KAMPERS INC dba Happy Kamper; DOCKET NUMBER: 2020-0985-PST-E; IDENTIFIER: RN102892056; LOCATION: Bonham, Fannin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 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: \$3,750; ENFORCEMENT COORDINATOR: Terrany Binford, (512) 567-3302; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: MarkWest Energy East Texas Gas Company, L.L.C.; DOCKET NUMBER: 2020-0016-AIR-E; IDENTIFIERS: RN102198470 and RN102704855; LOCATION: Carthage, Panola County; TYPE OF FACILITY: gas compressor stations; RULES VIOLATED: 30 TAC §106.6(b) and §122.143(4), Federal Operating Permit (FOP) Number O3523/General Operating Permit (GOP) Number 514, Site-wide Requirements Number (b)(9)(B), and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with representations with regard to construction plans, operation procedures, and maximum emissions rates in any certified registration; and 30 TAC §116.110(a) and §122.143(4), FOP Number O3605/GOP Number 514, Site-wide Requirements Number (b)(9)(A), and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$207,000; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: Quadvest, L.P.; DOCKET NUMBER: 2020-0711-MWD-E; IDENTIFIER: RN107834962; LOCATION: Tomball, Montgomery County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0015317001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; PENALTY: \$10,937; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Rayburn Country Municipal Utility District; DOCKET NUMBER: 2020-0990-PWS-E; IDENTIFIER: RN101213890; LOCATION: Brookeland, Jasper County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 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 milligrams per liter for total trihalomethanes based on the locational running annual average; PENALTY: \$1,012; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(10) COMPANY: Rowena Water Supply Corporation; DOCKET NUMBER: 2020-0744-PWS-E; IDENTIFIER: RN101450757; LOCATION: Rowena, Runnels County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(e)(2), by failing to conduct an operation evaluation and submit a written operation evaluation report to the executive director (ED) within 90 days after being notified of analytical results that caused an exceedance of the operational evaluation level for total trihalomethanes (TTHM) for Stage 2 Disinfection Byproducts (DBP2) at Site 1 during the fourth quarter of 2019; and 30 TAC §290.115(f)(1) and §290.122(b)(2)(A) and (f) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter for TTHM based on the locational running annual average, and failing to provide public notification, accompanied with

a signed Certificate of Delivery, to the ED regarding the failure to comply with the MCL for TTHM for DBP2 at Site 1 for the fourth quarter of 2019; PENALTY: \$1,625; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(11) COMPANY: SET ENVIRONMENTAL, INCORPORATED; DOCKET NUMBER: 2020-0592-IHW-E; IDENTIFIER: RN100607126; LOCATION: Houston, Harris County; TYPE OF FACILITY: hazardous waste treatment and disposal facility; RULES VIOLATED: 30 TAC §305.125(1) and Hazardous Waste Permit Number 50267 Permit Provision (PP) II.A.2 and V.A.1, by failing to clearly identify authorized storage units with signs indicating TCEQ Permit Unit Number; 30 TAC §§305.125(1), 335.2, and 335.4(3) and Hazardous Waste Permit Numbers 50267 PP II.A.2, II.A.7, and IV.B.3.a, by failing to prevent the receipt, storage, and shipment of industrial and hazardous waste (IHW) without the required permit and allowed disposal of the IHW at an unauthorized facility; and 30 TAC §335.152(a)(7) and 40 Code of Federal Regulations §264.173(a) and Hazardous Waste Permit Numbers 50267 PP II.A.2, II.C.1.j, and C.2.g, by failing to ensure that hazardous waste containers remain closed when in storage except when adding or removing waste; PENALTY: \$27,951; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: Targa Pipeline Mid-Continent WestTex LLC; DOCKET NUMBER: 2020-0517-AIR-E; IDENTIFIER: RN100215102; LOCATION: Midland, Midland County; TYPE OF FACILITY: natural gas distribution plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and §122.143(4), Federal Operating Permit (FOP) Number O4036/General Operating Permit (GOP) Number 514, Site-wide Requirements (b)(42)(F), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; and 30 TAC §116.615(2) and §122.143(4), Standard Permit Registration Number 149080, FOP Number O4036/GOP Number 514, Site-wide Requirements (b)(9)(B) and (E)(ii), and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$19,393; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(13) COMPANY: Texas A & M University; DOCKET NUMBER: 2020-1228-WQ-E; IDENTIFIER: RN103670659; LOCATION: College Station, Brazos County; TYPE OF FACILITY: central utility plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Multi-Sector General Permit Number TXR05DA89, Part III, Section E, Item 2(c)(1), by failing to prevent the unauthorized discharge of pollutants into or adjacent to any water in the state; PENALTY: \$5,625; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: Thelin Recycling Company, L.P.; DOCKET NUMBER: 2020-0880-AIR-E; IDENTIFIER: RN100762954; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: municipal solid waste processing facility; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent nuisance dust conditions; PENALTY: \$6,000; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Weiss Sand and Clay, LP; DOCKET NUMBER: 2020-0410-WQ-E; IDENTIFIER: RN105427744; LOCATION: Katy,

Fort Bend County; TYPE OF FACILITY: aggregate production operation; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(2), and Texas Pollutant Discharge Elimination System Multi-Sector General Permit Number TXR05AP83, Part III, Section E, 2(b), by failing to take all reasonable steps to minimize or prevent any discharge or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment; PENALTY: \$7,275; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202004676
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: November 6, 2020

◆ ◆ ◆
Notice of Opportunity to Comment on an Agreed Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. TWC, §7.075, requires that notice of 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 **December 23, 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 the proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 23, 2020**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Baronox, LLC; DOCKET NUMBER: 2019-1480-PWS-E; TCEQ ID NUMBER: RN109612002; LOCATION: 1719 North United States Highway 87 near Fredericksburg, Gillespie County; TYPE OF FACILITY: public water system (PWS); RULES VIOLATED: Texas Health and Safety Code, §341.0315(c) and 30 TAC §290.45(d)(2)(A)(ii), by failing to provide a minimum pressure tank capacity of at least 220 gallons - specifically, the facility is a transient/non-community PWS that requires a minimum pressure tank capacity of at least 220 gallons. However, the facility only provided a pressure tank capacity of 160 gallons, indicating a 27% deficiency; 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: \$100; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-202004715
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: November 6, 2020

◆ ◆ ◆
Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is 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 **December 23, 2020**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO 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 DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 23, 2020**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: CIRCLE "R" RANCHETTES RECREATION AND COMMUNITY CORPORATION; DOCKET NUMBER: 2018-0709-PWS-E; TCEQ ID NUMBER: RN101256063; LOCATION: corner of Circle R Road North and Circle R Road South, Tarrant County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §§290.46(f)(4), 290.106(e), 290.207(e), and 290.122(c)(2)(A) and (f), by failing to provide the results of synthetic organic chemical (SOC) contaminants (Methods 504, 515, and 531) sampling and mineral sampling to the executive director (ED), and failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to provide the results of SOC contaminants (Methods 504, 515, and 531) sampling and mineral sampling; 30 TAC §§290.46(f)(4), 290.115(e),

and 290.122(c)(2)(A) and (f), by failing to provide the results of Stage 2 Disinfection Byproducts (DBP2) sampling to the ED, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to provide the results of DBP2 sampling; 30 TAC §290.109(d)(4)(B), by failing to collect, within 24 hours of notification of the routine distribution total coliform-positive samples, at least one raw groundwater source *Escherichia coli* (or other approved fecal indicator) sample from each active groundwater source in use at the time the distribution coliform-positive samples were collected; 30 TAC §290.117(c)(2)(C), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED, and failing to provide publication notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples; 30 TAC §290.117(c)(2)(B), (h), and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and reported the results to the ED; 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay annual Public Health Service fees and/or any associated late fees for TCEQ Financial Administration Account Number 92200148; 30 TAC §291.76 and TWC, §5.702, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 12298; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to provide the results of nitrate sampling and volatile organic contaminants sampling to the ED; PENALTY: \$1,232; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Donald S. Fletcher dba Equestrian Estates; DOCKET NUMBER: 2017-1574-PWS-E; TCEQ ID NUMBER: RN101239077; LOCATION: 133 Horseshoe Bend near Stephenville, Erath County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.117(c)(2)(A), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the executive director (ED), and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples; 30 TAC §§290.117(f)(1)(A)(ii) and (i)(7) and 290.122(b)(2)(A) and (f), by failing to perform and submit a corrosion control study to identify optimal corrosion control treatment for the system, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to perform and submit a corrosion control study; 30 TAC §290.117(i)(6) and (j), by failing to provide 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; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples; and TWC, §5.702 and 30 TAC §291.76, by failing to pay Regulatory Assessment Fees for TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 13099; PENALTY: \$953; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Stewart McCrary dba Country Pines R V Park; DOCKET NUMBER: 2019-1751-PWS-E; TCEQ ID NUMBER: RN101200988; LOCATION: 5935 United States Highway 59 North near Marshall, Harrison County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.106(c) and (e), by

failing to collect and report the results of nitrate sampling to the executive director (ED); and 30 TAC §290.122(c)(2)(A) and (f), by failing to issue a public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED; PENALTY: \$401; STAFF ATTORNEY: Roslyn Dubberstein, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-202004716
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: November 6, 2020

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of November 3, 2020, to November 6, 2020. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, November 13, 2020. The public comment period for this project will close at 5:00 p.m. on Sunday, December 13, 2020.

FEDERAL AGENCY ACTIONS:

Applicant: Texas Parks and Wildlife

Location: The project site is located in wetlands, approximately 11.8 miles southwest of the city of Galveston, within Galveston Island State Park, within Galveston County, Texas.

Latitude & Longitude (NAD 83): 29.191622, -94.958151

Project Description: The applicant proposes to modify their existing permit in order to fit within the available budget, minimize wetland impacts, and accommodate emergency vehicles. As a component of this modification, the applicant requests authorization to permanently fill an additional 0.127 acres of palustrine emergent wetlands, consisting of 0.095 acres of roadside ditch and 0.032 acres of emergent wetlands.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2012-00631. This application will be reviewed pursuant to Section 404 of the Clean Water Act (CWA). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 21-1078-F1

Applicant: Accutrans Fleeting Services, LLC

Location: The project site is located in Old River Channel, near 17002 Market Street, in Channelview, Harris County, Texas.

Latitude & Longitude (NAD 83): 29.785828, -95.095301

Project Description: The applicant requests to retain work via an after-the-fact (ATF) authorization for dredging activities performed in Old River Channel. Work to retain includes dredging and bulkheading affecting the navigable waters of Old River Channel. The applicant installed a bulkhead and dock in uplands then excavated the upland material to extend the Mean High Tide line to the bulkhead.

Specifically, the applicant proposes to retain 300-linear-feet (LF) of steel sheet piling, which will act as bulkheading for the development and armor the shoreline against potential daily tidal erosion. This bulkhead was installed above the high tide line in uplands. During the bulkhead construction, the applicant installed concrete pilings landward of the bulkhead to assist in the stabilization of the project site and to provide footing for other facilities. The area behind the bulkhead was then backfilled with earthen soil excavated during construction and grading activities from the remainder of the project site. These upland areas were graded to pre-determined elevations and paved with crushed gravel. A dock was also constructed behind the bulkheading in uplands for bulk material unloading and loading. All of this work was completed within uplands adjacent to the shoreline. After the upland work was complete, approximately 9,970 cubic yards (CY) (0.25 acre) was excavated 10-feet in front of the installed bulkhead, landward of the mean high tide line (MHT) to a depth of 12-feet below mean lower low water (MLLW) as part of the proposed barge terminal which extended the MHT to the bulkhead. Soil excavated from this upland portion of the project site was utilized on-site as backfill material for the bulkhead and upland fill material for the remainder of the proposed development.

Additional new work being proposed consists of dredging a 7.18-acre area to a depth of 10-feet below MLLW, with a two-foot over dredge, and proposed bi-annual maintenance dredging. Approximately 10,000 CY of material would be excavated during the proposed dredging. Dredging activities would utilize land-based, long-armed track hoes, and dredged material would be evenly spread in existing uplands on private property owned by the applicant. The proposed total dredging depth (12-feet) would match the existing bottom elevations of the adjacent Old River Channel and allow bulk material barges access to the dock area of the project site. Once dredging is complete, 30 CY of dolphins and moorings would be installed into the dredged area to provide barge tie-offs, navigation aids, and delineate the extended reach of the applicant's property. The overall project would deepen and widen the existing channel within the project site to accommodate barge traffic.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2017-00654. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 21-1086-F1

Applicant: Enterprise Products Operating LLC

Location: The project site is located in and adjacent to the Neches River, at the Beaumont Marine West (BMW) Terminal, approximately 6.5 miles southeast of Beaumont, within Jefferson County, Texas.

Latitude & Longitude (NAD 83): 30.036085, -94.034659

Project Description: Following a compliance investigation initiated by the Corps, the applicant has requested the following:

a. To retain minor variations in dock and berthing area design versus construction including:

--T-heads added at end of shoreline revetment (Page 16 of 21).

--Change in revetment configuration; flattening of revetment curvature was resolved with property acquisition (Page 18 of 21).

--Six protection piles were permitted abutting the dock platform; only four were constructed (Page 18 of 21).

b. To consolidate the following permits: DA #10446, #10446(01), DA #21826, #21826(01, 02, 03, 04), LOP SWG-2000-02956, and SWG-2000-02956 that was transferred from Oiltanking Beaumont Partners to Enterprise (February 4, 2016).

c. To construct 555 cubic yards of concrete revetment mat bank stabilization in 0.0267 acres of palustrine emergent wetlands adjacent to Barge Dock A.

d. To perform maintenance dredging on all barge and ship docks located at the BMW Terminal for 10 years.

e. To dispose of dredged material from all docks to DMPAs: 8, 11, 12, 13, 14, 15, 15A, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, or 27A. (Page 8 of 21).

f. To revise the wetland mitigation plan associated with permit SWG-2000-02956 to address construction discrepancies, which include an increase of mitigation planting acres from 24.6 to 42 acres, a decrease in the number of transplants from ~119,000 to ~67,000, changes to species selection, changes in herbicide application frequency, changes to monitoring frequency, changes to success criteria due to rapid colonization of desirable species.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2000-02956. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

CMP Project No: 21-1087-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202004755

Mark A. Havens

Chief Clerk and Deputy Land Commissioner

General Land Office

Filed: November 9, 2020

Texas Health and Human Services Commission

Public Notice - Methodology for Determining Caseload Reduction Credit for the Temporary Assistance for Needy Families (TANF) Program for Federal Fiscal Year 2021

The Texas Health and Human Services Commission (HHSC) announces its intent to seek comments from the public on its estimate and methodology for determining the Temporary Assistance for Needy Families (TANF) Program caseload reduction credit for Federal Fiscal Year (FFY) 2021. HHSC will base the methodology on caseload reduction occurring from FFY 2005 to FFY 2020. This methodology and the resulting estimated caseload reduction credit will be submitted for approval to the United States Department of Health and Human Services, Administration for Children and Families.

Section 407(b)(3) of the Social Security Act provides for a TANF caseload reduction credit, which gives a state credit for reducing its

TANF caseload between a base year and a comparison year. To receive the credit, a state must complete and submit a report that, among other things, describes the methodology and the supporting data that the state used to calculate its caseload reduction estimates. See 45 C.F.R. §261.41(b)(5). Prior to submitting the report, the state must provide the public with an opportunity to comment on the estimate and methodology. See 45 C.F.R. §261.41(b)(6).

As the state agency that administers the TANF program in Texas, HHSC believes it is eligible for a caseload reduction credit and has developed the requisite estimate and methodology. HHSC hereby notifies the public of the opportunity to submit comments.

HHSC will post the methodology and the estimated caseload reduction credit on the HHSC website for FFY 2021 at <https://hhs.texas.gov/about-hhs/records-statistics/data-statistics/temporary-assistance-needy-families-tanf-statistics> by November 20, 2020. The public comment period begins November 20, 2020, and ends December 4, 2020.

Written Comments. Written comments may be sent by U.S. mail, fax, or email.

U.S. Mail

Texas Health and Human Services Commission

Attention: Hilary Davis

909 W. 45th Street

Bldg. 2, MC 2115

Austin, Texas 78751

Phone number for package delivery: (512) 206-5556

Fax

Attention: Access and Eligibility Services - Program Policy, Hilary Davis

Fax Number: (512) 206-5141

Email

Hilary.Davis@hhs.texas.gov

TRD-202004658

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: November 5, 2020



Department of State Health Services

Licensing Actions for Radioactive Materials

During the first half of October 2020, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Business Filing and Verification Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
SAN MARCOS	CHRISTUS SANTA ROSA HEALTH CARE CORPORATION	L07081	SAN MARCOS	00	10/07/20

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
AUSTIN	ST DAVIDS HEALTHCARE PARTNERSHIP LP LLPDBA ST DAVIDS MEDICAL CENTER	L00740	AUSTIN	173	10/09/20
CARROLLTON	JUBILANT DRAXIMAGE RADIOPHARMACIES INC DBA JUBILANT RADIOPHARMA	L06943	CARROLLTON	11	10/12/20
CORPUS CHRISTI	RADIOLOGY ASSOCIATES LLP	L04169	CORPUS CHRISTI	61	10/06/20
CUERO	DEWITT MEDICAL DISTRICTDBA CUERO REGIONAL HOSPITAL	L02448	CUERO		10/12/20
DALLAS	BTDI JV LLP	L06580	DALLAS	03	10/12/20
DALLAS	MTV IR PLLC	L07025	DALLAS	05	10/06/20
DALLAS	TEXAS HEALTH PHYSICIANS GROUP	L05412	DALLAS	13	10/12/20
DALLAS	SOFIE CO	L06174	DALLAS	33	10/12/20
DALLAS	RLS (USA) INC	L05529	DALLAS	55	10/09/20
DALLAS	HEARTPLACE PA	L04607	DALLAS	74	10/01/20
FORT WORTH	BTDI JV LLP DBA TOUCHSTONE IMAGING DOWNTOWN FORT WORTH PET	L06728	FORT WORTH	09	10/09/20
FREEPORT	BASF CORPORATION	L01021	FREEPORT	69	10/08/20
HOUSTON	ERIC A ORZECK MD PA	L01599	HOUSTON	19	10/09/20
HOUSTON	CHCA WEST HOUSTON LP DBA WEST HOUSTON MEDICAL CENTER	L06055	HOUSTON	28	10/07/20
HOUSTON	RLS (USA) INC	L05517	HOUSTON	31	10/07/20

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

HOUSTON	THE UNIVERSITY OF TEXAS MD ANDERSON CANCER CENTER	L06227	HOUSTON	54	10/07/20
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM DBA MEMORIAL HERMANN NORTHEAST HOSPITAL	L02412	HOUSTON	139	10/13/20
HOUSTON	AMERICAN DIAGNOSTIC TECH LLC	L05514	HOUSTON	149	10/12/20
KINGWOOD	LIEBER-MOORE CARDIOLOGY ASSOCIATES	L04622	KINGWOOD	22	10/07/20
LA PORTE	BAYPORT POLYMERS LLC DBA BAY-POL LLC	L06922	LA PORTE	07	10/16/20
LUBBOCK	METHODIST CHILDRENS HOSPITAL DBA JOE ARRINGTON CANCER CENTER	L06903	LUBBOCK	03	10/06/20
PLANO	ORANO MED LLC	L06781	PLANO	21	10/12/20
PLANO	TEXAS HEALTH PRESBYTERIAN HOSPITAL PLANO	L04467	PLANO	81	10/14/20
SAN ANTONIO	METHODIST HEALTHCARE SYSTEM OF SAN ANTONIO LTD LLP	L05076	SAN ANTONIO	38	10/13/20
SAN ANTONIO	RLS (USA) INC	L04764	SAN ANTONIO	51	10/09/20
SHERMAN	NORTH TEXAS COMPREHENSIVE CARDIOLOGY PLLC	L06797	SHERMAN	03	10/06/20

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

TEXARKANA	CHRISTUS HEALTH ARK-LA-TEX DBA CHRISTUS ST MICHAEL HEALTH SYSTEMS	L04805	TEXARKANA	40	10/13/20
THROUGHOUT TX	TEXAS DEPARTMENT OF STATE HEALTH SERVICES	L05865	AUSTIN	13	10/06/20
THROUGHOUT TX	WEATHERFORD INTERNATIONAL LLC	L00747	BENBROOK	112	10/09/20
THROUGHOUT TX	TEXAS A&M UNIVERSITY	L05683	COLLEGE STATION	43	10/09/20
THROUGHOUT TX	PSC INDUSTRIAL OUTSOURCING LP	L06155	DEER PARK	07	10/08/20
THROUGHOUT TX	PROFESSIONAL SERVICES INDUSTRIES INC	L02476	EL PASO	34	10/05/20
THROUGHOUT TX	GORRONDONA & ASSOCIATES INC	L06359	FORT WORTH	10	10/06/20
THROUGHOUT TX	ENERCON SERVICES INC	L05447	FRIENDSWO OD	015	10/06/20
THROUGHOUT TX	HOUSTON POLICE DEPARTMENT	L06809	HOUSTON	03	10/12/20
THROUGHOUT TX	VERSA INTEGRITY GROUP INC	L06669	HOUSTON	28	10/08/20
THROUGHOUT TX	NUCLEAR SOURCES & SERVICES INC DBA NSSI/SOURCES & SERVICES INC NSSI	L02991	HOUSTON	50	10/06/20
THROUGHOUT TX	QSA GLOBAL INC	L06566	LA PORTE	12	10/09/20
THROUGHOUT TX	TCC SANDBLASTING & COATING LLC	L07079	MIDLAND	02	10/01/20
THROUGHOUT TX	RRC POWER & ENERGY LLC	L06105	ROUND ROCK	14	10/09/20
THROUGHOUT TX	IIA NUCLEAR SERVICES INC	L05278	SAN ANTONIO	20	10/05/20
THROUGHOUT TX	DMS HEALTH TECHNOLOGIESINC	L05594	SIOUX FALLS	32	10/13/20
THROUGHOUT TX	SCHLUMBERGER TECHNOLOGY CORPORATION (STC)	L06880	SUGAR LAND	10	10/15/20

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

THROUGHOUT TX	SCHLUMBERGER TECHNOLOGY CORPORATION	L00764	SUGAR LAND	169	10/12/20
THROUGHOUT TX	BRAUN INTERTEC CORPORATION	L06681	TYLER	15	10/15/20
TOMBALL	NORTHWEST HOUSTON HEART CENTER PA	L05958	TOMBALL	22	10/05/20

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
THROUGHOUT TX	TURNER SPECIALTY SERVICES LLC	L05417	NEDERLAND	53	10/01/20
THROUGHOUT TX	JOHNSON MATTHEY INC DBA TRACERCO	L03096	PASADENA	102	10/12/20

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
NEW BRAUNFELS	DEAN WORD COMPANY LTD	L04588	NEW BRAUNFELS	11	10/01/20
ROCKDALE	ROCKDALE BLACKHAWK LLC DBA LITTLE RIVER HEALTHCARE	L06092	ROCKDALE	11	10/06/20

IMPOUND ORDERS ISSUED:

Name	Type of Order	License #	Address	Action	Date of Issuance
Paul Resignato, DPM d/b/a Adult & Childrens Foot Care	Impound Order	R30059	1722 North Zaragosa Road, Suite C El Paso, Texas	Impound Special Purpose Radiographic Unit	10/08/2020
Pro-Care Injury & Rehab Incorporated	Impound Order	Unregistered	3456 Webb Chapel Extension Dallas, Texas	Impound General Purpose Radiographic Unit	10/08/2020

TRD-202004648
 Barbara L. Klein
 General Counsel
 Department of State Health Services
 Filed: November 4, 2020



Texas Department of Insurance

Company Licensing

Application for Bestow Life Insurance Company, a domestic life, health and/or accident company, to change its name to Bestow National Life Insurance Company. The home office is in Austin, Texas.

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-202004750
 James Person
 General Counsel
 Texas Department of Insurance
 Filed: November 9, 2020



Texas Commission of Licensing and Regulation

Public Notice - Criminal Conviction Guidelines

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that, at its regularly scheduled meeting held September 29, 2020, the Commission adopted amendments to the Texas Department of Licensing and Regulation's (Department's) Criminal Conviction Guidelines pursuant to Texas Occupations Code §53.025(a). The Criminal Conviction Guidelines are updated from the original guidelines published in the *Texas Register* on December 5, 2003 (28 TexReg 11018) to include the Behavior Analysts program.

The Criminal Conviction Guidelines (guidelines) describe the process by which the Department determines whether a criminal conviction renders an applicant an unsuitable candidate for the license, or whether a conviction warrants revocation or suspension of a license previously granted. The guidelines present the general factors that are considered in all cases and the reasons why particular crimes are considered to relate to each type of license issued by the Department.

The Texas Legislature enacted Senate Bill 2119 (S.B. 2119), 86th Legislature, Regular Session (2019), which transferred oversight of the Motor Fuel Metering and Quality program from the Texas Department of Agriculture to the Texas Department of Licensing and Regulation.

The Criminal Conviction Guidelines for the Motor Fuel Metering and Quality program will become a part of the overall guidelines that are already in place for other Department programs. The Department presented the applicable guidelines to the Motor Fuel Metering and Quality Workgroup at its meeting on July 27, 2020, and received the workgroups recommendation for approval.

The Criminal Conviction Guidelines for Motor Fuel Metering and Quality program

Motor Fuel Metering and Quality

Licensed Service Companies (LSC) and Licensed Service Technicians (LST)

Crimes involving fraud or deceptive trade/business practices.

Reasons:

1. Licensees have the means and the opportunity to practice deceit, fraud and misrepresentation related to the need for service.
2. A person with the predisposition and experience in misrepresentations of fact in the business setting would have the opportunity to engage in further similar conduct.
3. A licensee practicing deception or corruption involving the sale or other transfer of regulated products subject to inspection and quality control puts purchasers or other recipients, those who resell those prod-

ucts, users of the products, owners of devices that store and/or use the products, their family, friends, employees and others at risk.

Crimes involving bribery, forgery, tampering with records, or perjury.

Reasons:

1. Licensees have the means and the opportunity to practice deceit, fraud and misrepresentation related to the need for service.
2. A person with the predisposition and experience in misrepresentations of fact in the business setting would have the opportunity to engage in further similar conduct.
3. A licensee practicing deception or corruption involving the sale or other transfer of regulated products subject to inspection and quality control puts purchasers or other recipients, those who resell those products, users of the products, owners of devices that store and/or use the products, their family, friends, employees and others at risk.

Crimes involving the unauthorized interception, acquisition, possession, or use of financial account information, such as credit cards, debit cards, or bank account information.

Reasons:

1. Licensees have the opportunity to unlawfully install electronic devices that record confidential bank, credit card, or debit card account information without the knowledge or consent of the account owners.
2. A person with the predisposition and experience in unlawfully obtaining, using, or distributing confidential financial account information of others would have the opportunity to engage in further similar conduct.
3. A licensee involved in the unlawful acquisition of confidential financial account information poses a financial risk to motor fuels purchasers or others engaged in similar transactions.

Crimes involving racketeering, organized crime, or criminal influence.

Reason:

Persons with the predisposition and experience in committing crimes depriving others of money or property through a criminal enterprise would have the opportunity to engage in further similar conduct.

Crimes involving interference with or refusal to allow sample collection and/or testing of motor fuels or other regulated substances, or inspection of documents required to be kept or delivered pursuant to Chapter 2310, Texas Occupations Code.

Reasons:

1. A person having the predisposition and experience in committing offenses, such as those listed in Chapter 2310, Texas Occupations Code, would have the opportunity to engage in further similar conduct.
2. A licensee interfering with or practicing deception involving the testing, sale or other transfer of regulated products subject to inspection and quality control puts purchasers or other recipients, those who resell those products, users of the products, owners of devices that store and/or use the products, their family, friends, employees and others at risk. These types of offenses include:
 - A. Refusal to permit an authorized person to test any motor fuel sold or held for sale in this state;
 - B. Refusal to permit inspection of any document required to be kept or delivered by Occupations Code Chapter 2310 on request of a person authorized to inspect those documents; or

C The mutilation, destruction, secretion, forgery, or falsification of any document, record, report, or sign required to be delivered, kept, filed, or posted by Occupations Code Chapter 2310 or any rule adopted by the Commission of Licensing and Regulation to enforce Chapter 2310.

Crimes involving environmental law violations.

Reasons:

1. Violations of environmental law not only jeopardize the environment but also may put the general public at risk from the resulting environmental hazards.
2. A person having the predisposition and experience in committing environmental law violations would have the opportunity to engage in further similar conduct.

Crimes against property such as arson, theft, criminal mischief or burglary.

Reasons:

1. Licensees have access to businesses and would have access to unsecured personal property belonging to others.
2. Licensees have access to fuel storage facilities and fuel dispensing devices and may have access to transportation facilities and equipment.
3. A person with the predisposition and experience in committing crimes against property would have the opportunity to engage in further similar conduct.

Crimes involving the use, possession, manufacture, or delivery of controlled substances, dangerous drugs or other dangerous substances.

Reasons:

1. Due to the safety concerns pertaining to the collection, sampling, handling, and analysis or other testing of motor fuels, a person with convictions involving illegal use of controlled substances, dangerous drugs or other dangerous substances has not demonstrated fitness to perform the duties required of licensees.
2. Licensees must travel to and from locations where the licensed work is performed. The mobility of licensees allows them the opportunity to receive, sell or otherwise distribute illegal goods or substances.
3. A person with a predisposition and experience in committing such crimes would have the opportunity to engage in further similar conduct.

Crimes involving intoxication from alcohol, drugs, controlled substances, or other dangerous substances.

Reasons:

1. A person who may be intoxicated would pose a risk to the public.
2. Due to the safety concerns pertaining to the collection, transportation, storage of test samples, and testing of motor fuels, a person with convictions involving intoxication by use of alcohol, drugs, controlled substances or dangerous substances has not demonstrated fitness to perform the duties required of a licensee.
3. Licensees typically operate a motor vehicle to travel to locations where licensed work is performed. Persons who show a history of operating a motor vehicle while not having the normal use of their mental or physical faculties due to alcohol or drugs, especially when others are killed or injured as a result, would have the opportunity to engage in further behavior when operating a motor vehicle while traveling to and from work locations.

Crimes against the person such as homicide, kidnapping and assault.

Reasons:

1. Licensees have direct contact with persons at businesses, test and inspection sites, and other facilities in situations that have potential for confrontational behavior.
2. A person with a predisposition for a violent response would pose a risk to the public.
3. This occupation provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving prohibited sexual conduct and public indecency.

Reasons:

1. Licensees perform some of their duties in direct view and potentially in direct contact with the general public.
2. Licensees have direct access to business facilities and deal directly with the owners, employees and agents of the businesses, often in private settings such as offices or other facilities.
3. Licensees typically travel from one location to another to perform the work of the licensed occupation, which allows them to leave a work location or the surrounding area without returning and being recognized for a significant period of time, which would hinder an investigation and facilitate the commission of such offenses.
4. Licensees with the predisposition and experience in committing crimes of this nature would put the public at risk.
5. This occupation provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving children, the elderly or the disabled as victims.

Reasons:

1. Licensees interact with business owners, and their employees and agents, as well as the general public, and occupy a position of trust and authority. Persons who have a history of committing such crimes could exploit this position and would pose a danger to the business owners, their employees and agents, and the general public.
2. This occupation provides persons with this type of criminal history the opportunity to engage in further similar conduct.

A copy of the complete Criminal Conviction Guidelines is posted on the Department's website and may be obtained at www.tdlr.texas.gov. You may also contact the Enforcement Division at (512) 539-5600 or by email at enforcement@tdlr.texas.gov to obtain a copy of the complete guidelines.

This agency hereby certifies that this notice has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

TRD-202004653

Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: November 5, 2020



Public Notice - Enforcement Plan

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that at their regularly scheduled meeting held August 4, 2020, the Commission adopted the Texas Department of Licensing and Regulation's (Department) revised enforcement plan which was established in compliance with Texas Occupations Code, §51.302(c).

The enforcement plan gives all license holders notice of the specific ranges of penalties and license sanctions that apply to specific alleged violations of the statutes and rules enforced by the Department. The enforcement plan also presents the criteria that are considered by the Department's Enforcement staff in determining the amount of a proposed administrative penalty or the magnitude of a proposed sanction. The enforcement plan is revised to include the penalty matrix for the Registered Sanitarians program.

The Texas Legislature enacted Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session (2015), which transferred regulatory authority of 13 programs, to include Registered Sanitarians from the Texas Department of State Health Services to the Commission and Department. The Sanitarians penalty matrix provides for a single range of penalties for each class to eliminate confusion and allow the industry to fully understand the penalties assessed. The penalty matrix describes the specific ranges of penalties and license sanctions that apply to specific violations of the statutes and rules enforced by the Department. This penalty matrix may differ slightly from others as the agency focuses on aligning strategic plan goals with agency resources.

The Registered Sanitarian Advisory Committee recommended approval of the penalty matrix at their meeting held February 3, 2020. The penalty matrix was presented to the Commission on August 4, 2020, and was adopted as recommended.

A copy of the revised enforcement plan is posted on the Department's website and may be downloaded at www.tdlr.texas.gov. You may also contact the Enforcement Division at (512) 539-5600 or by e-mail at enforcement@tdlr.texas.gov to obtain a copy of the revised plan.

SANITARIANS
(SAN)

Texas Occupations Code, Chapter 1953

16 Texas Administrative Code, Chapter 119

Texas Occupations Code, Chapter 51

16 Texas Administrative Code, Chapter 60

CLASS A:

Penalty Range:

\$500 up to \$2,000

Administrative Violations

Failed to maintain certificates of completion for approved continuing education courses

119.27(k)

Public Notice Violations

Failed to display Department information as required

119.70(b)

CLASS B:

Penalty Range:

\$1,000 to \$3,500 and/or up to one-year full suspension

Unlicensed Activity

Used the titles “sanitarian” or “sanitarian in training” while registration was expired

119.26(e)

CLASS C:

Penalty Range:

\$2,000 to \$5,000 plus one-year probated suspension up to revocation

Unlicensed Activity

Claimed or used the title “sanitarian” before holding a valid registration

1953.101

Standard of Conduct

Engaged in conduct that was unprofessional, constituted dishonesty, was negligent or considered misconduct in practice	1953.201(a)(1)
Previously found guilty of conduct that was unprofessional, constituted dishonesty, was negligent or considered misconduct in practice	1953.201(a)(2)

Advertising

Used false, misleading, or deceptive advertising	119.70(a)
Used advertising that is not readily subject to verification	119.70(a)
Used advertising that makes a material misrepresentation of fact	119.70(a)(1)
Used advertising that omitted a necessary fact	119.70(a)(1)
Advertising created an unjustified expectation of results from a service or procedure	119.70(a)(2)
Advertising compared services between professionals without factual substantiation	119.70(a)(3)
Advertising caused confusion as to credentials, education or registration of a professional	119.70(a)(4)
Advertising utilized a professional name, title, or identification expressly or commonly reserved by another profession or professional	119.70(a)(5)

CLASS D:

<u>Penalty Range:</u>
\$5,000 and/or Revocation

Failed to obtain and show proof of completed continuing education hours for renewal	1953.106(a)(2); 119.27(a)
Failed to comply with previous order of Commission/Executive Director	51.353(a); 119.90
Engaged in fraud, deceit or false representation in obtaining certificate	1953.201(b)(1); 60.23(a)(1)
Cheated on an examination	1953.201(b)(1); 60.52(a)
Committed actions that were grossly negligent, incompetent, or considered misconduct in the practice of sanitation	1953.201(b)(2)
Failed to pay the Department for a dishonored payment	60.82; 119.80(b)(7)

This agency hereby certifies that this notice been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

TRD-202004647

Brian E. Francis

Executive Director

Texas Department of Licensing and Regulation

Filed: November 4, 2020



Public Notice - Enforcement Plan

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that at their regularly scheduled meeting held September 29, 2020, the Commission adopted the Texas Department of Licensing and Regulation's (Department) revised enforcement plan which was established in compliance with Texas Occupations Code, §51.302(c).

The enforcement plan gives all license holders notice of the specific ranges of penalties and license sanctions that apply to specific alleged violations of the statutes and rules enforced by the Department. The enforcement plan also presents the criteria that are considered by the Department's Enforcement staff in determining the amount of a proposed administrative penalty or the magnitude of a proposed sanction.

The enforcement plan is revised to include the penalty matrix for the Motor Fuel Metering and Quality program.

The Texas Legislature enacted Senate Bill 2119 (S.B. 2119), 86th Legislature, Regular Session (2019), which transferred oversight of the Motor Fuel Metering and Quality program from the Texas Department of Agriculture to the Texas Department of Licensing and Regulation. The Motor Fuel Metering and Quality penalty matrix provides for a single range of penalties for each class to eliminate confusion and allow the industry to fully understand the penalties assessed. The penalty matrix describes the specific ranges of penalties and license sanctions that apply to specific violations of the statutes and rules enforced by the Department. This penalty matrix may differ slightly from others as the agency focuses on aligning strategic plan goals with agency resources.

The Motor Fuel Metering and Quality Workgroup recommended approval of the penalty matrix at their meeting held July 27, 2020. The penalty matrix was presented to the Commission on September 29, 2020, and was adopted as recommended.

A copy of the revised enforcement plan is posted on the Department's website and may be downloaded at www.tdlr.texas.gov. You may also contact the Enforcement Division at (512) 539-5600 or by e-mail at enforcement@tdlr.texas.gov to obtain a copy of the revised plan.

MOTOR FUEL METERING AND QUALITY (FMQ)

Texas Occupations Code, Chapter 2310
Texas Occupations Code, Chapter 51
Business and Commerce Code, Chapter 607

16 Texas Administrative Code, Chapter 97
16 Texas Administrative Code Chapter 60

Class A:

Penalty Range:

Warning letter up to \$800

Posting and Public Information Violations

Violation	Rule/Statute
Displayed in an advertisement the price of motor fuel with a fraction not of proportionate size and legibility to that of the whole number.	2310.055(a)
Failed to visibly display a current certificate of registration in an area accessible to the public.	97.24(a)
Failed to replace an original certificate of registration which is not legible or available to the consumer within 30 days of discovery.	97.24(b)
Failed to place a consumer information sticker with the Department's contact information and current motor fuel tax rate on each face of each motor fuel dispenser.	97.25(a)
Failed to replace a consumer information sticker which is not fully legible or in plain sight of a consumer within 30 days of discovery.	97.25(b)
Placed a consumer information sticker in a manner which affects the accuracy, readability, or lawful operation of a device.	97.25(c)

Administrative Violations

Violation	Rule/Statute
Failed to submit a new registration application upon a change in the owner or operator's federal employer identification number or, for sole proprietors, a change in the person's social security number.	97.20(c)
Failed to submit change of owner or operator's name or contact information to the department within 30 days.	97.20(d)

Service company failed to notify the Department of a change in name or contact information for the business or a controlling person of the business within 30 calendar days.	97.52(d)
Service company failed to notify the Department of a change in insurance carrier or minimum general liability insurance within 30 calendar days.	97.53(c)
Jobber, supplier, or wholesaler failed to notify the Department of a change in name or contact information within 30 calendar days.	97.40(b)
Service technician failed to notify the Department of a change in name or contact information within 30 calendar days	97.55(d)

Dealer - Records Violations

Violation	Rule/Statute
Failed to maintain documents required to be delivered to the dealer for four years.	2310.2013(a); 97.43(a)
Failed to maintain for one year a copy of each document required to be retained by Section 2310.2014.	2310.2014; 97.43(b)
Failed to maintain a Device Performance Review report for a period of two years.	97.28(a)

Distributor, Supplier, Wholesaler, or Jobber – Records Violations

Violation	Rule/Statute
Dealer, distributor, jobber, supplier, or wholesaler failed to maintain required records for four years.	2310.2013(b); 97.43(a)
Dealer, distributor, jobber, supplier, or wholesaler failed to maintain delivery tickets and letters of certification related to automotive fuel rating for one year.	2310.2014; 97.43(b)

Service Company - Records Violations

Violation	Rule/Statute
Service company failed to maintain Device Performance Review reports for a period of two years from the date the review was performed.	97.60(a)

Service Company – Maintenance Activity Violations

Violation	Rule/Statute
Service company failed to submit a valid Device Performance Review to the Department within 10 business days of the review.	97.23(c)

Class B:

Penalty Range:

\$500 up to \$1,500 and/or up to 1-year probated suspension

Service Company – Maintenance Activity Violations

Violation	Rule/Statute
Failed to perform device maintenance activities in compliance with commission rules.	2310.163(a)

Service Technician – Maintenance Activity Violations

Violation	Rule/Statute
Failed to perform device maintenance activities in compliance with commission rules.	2310.163(a)

Posting and Public Information Violations

Violation	Rule/Statute
Removed or obliterated a tag or device placed on a motor fuel metering device that is required by the Department.	2310.109(c)
Dealer failed to post the automotive fuel rating for each grade of motor fuel offered for sale.	97.41(a)(1)

Fuel Quality Violations

Violation	Rule/Statute
Failed to prominently display required signage stating that a fuel mixture contains ethanol or methanol	2310.201(a)
Sold or offered to sell fuel which was less than the automotive fuel rating posted on the dispenser.	2310.2015(a); 97.41(a)(2)

Failed to Cooperate with the Department Violations

Violation	Rule/Statute
Failed to provide the Department with records which are required to be maintained upon request.	97.28(b); 97.43(c); 97.60(b)

Unlicensed or Unregistered Activity Violations

Violation	Rule/Statute
Failed to renew registration at or before the end of the registration period. (Expired registration)	2310.103(c); 97.20(e); 97.21(b)
Performed device maintenance activities with an expired Service Technician license.	2310.155; 97.55(e), 97.56(b);
Performed device maintenance activities with an expired Service Company license.	2310.156; 97.52(e) 97.54(b); 97.54(c)
Performed the duties of a service technician with an expired license.	2310.155; 97.56(b); 97.56(c)

Class C:

Penalty Range:

\$1,000 up to \$3,000 and/or 1-year probated suspension up to revocation

Administrative Violations

Violation	Rule/Statute
Service company failed to obtain and maintain minimum general liability insurance coverage from an insurance carrier authorized under Department rules to provide liability coverage.	2310.160; 97.53

Condemned Device Violations

Violation	Rule/Statute
Knowingly offered or exposed for sale, hire or award an incorrect motor fuel metering device.	2310.110(b)(1)
Knowingly possessed an incorrect motor fuel metering device.	2310.110(b)(2)

Failed to maintain a device which had been condemned by the Department prior to Department authorization to dispose, replace, or destroy the device.	2310.111; 97.27
Disposed of a condemned motor fuel metering device in manner contrary to law	2310.111

Dealer – Maintenance Activity Violations

Violation	Rule/Statue
Failed to have a Device Performance Review conducted at least once every two years.	2310.102(a); 97.23(a)

Service Company – Maintenance Activity Violations

Violation	Rule/Statute
Failed to only use equipment approved by the Department when performing device maintenance activities.	2310.163(b); 97.58(c)
Failed to have test standards certified annually by a recognized or accredited laboratory that adheres to ISO 17025.	2310.106; 97.58(a)
Service company failed to maintain the minimum test standards per licensed device category at all times.	97.58(c)
Failed to immediately take a test standard out of operation if it becomes damaged.	97.58(b)
Failed to recalibrate a damaged test standard prior to its use, or to take a test standard out of use permanently if it is beyond repair.	97.58(b)
Service technician failed to inspect for skimmers during a Device Performance Review and each time a motor fuel dispenser is opened to perform maintenance activities.	97.59(b); 97.23(b)(3)(B)
Service technician failed to immediately report the finding of a skimmer to the merchant.	607.053; 97.59(c)(1)
Service technician failed to immediately report the finding of a skimmer to the Department within 24 hours.	97.59(c)(2)

Integrity Violations

Violation	Rule/Statute
Misrepresented the price or quantity of motor fuel sold, offered, or exposed for sale.	2310.055(b)(1); 2310.058
Represented the price or quantity of motor fuel sold or offered or exposed for sale in a manner tending to mislead or deceive an actual or prospective customer.	2310.055(b)(2); 2310.058
Used a motor fuel metering device after it had been deemed out of order by the Department or removing an "Out of Order" tag placed by the Department on the device, before repairs are made by a service company to bring the device into compliance.	2310.105(b); 97.26

Distributor, Supplier, Wholesaler, or Jobber - Fuel Quality Violations

Violation	Rule/Statute
Delivered a motor fuel mixture that contained ethanol or methanol to an outlet without also providing documents containing information on the percentages of ethanol or methanol, and the types and percentages of cosolvents in the mixture.	2310.2012(a)
Distributor or supplier of motor fuel delivered, or transferred to a dealer, fuel that had an automotive fuel rating lower than the certification of the rating the distributor or supplier was required to make under federal law to the dealer.	2310.2015(b); 97.41(b)

Dealer – Fuel Quality Violations

Violation	Rule/Statute
Failed to comply with currently published standards relating to fuel quality.	2310.058; 97.3(2); 97.3(3)

Fuel Quantity Violations

Violation	Rule/Statute
Failed to use the legal standard for the weight or measure of motor fuel as adopted and used by the government of the United States for that motor fuel.	2310.051; 2310.058
Use of a unit of measure of capacity for liquid motor fuels other than the gallon.	2310.052; 2310.058

Sold motor fuel by other than weight or liquid measure.	2310.054; 2310.058
Sold or offered for sale a quantity of motor fuel that is less than the quantity represented.	2310.056(1)
Failed to comply with currently published standards relating to weights and measure.	2310.058; 97.3(1)

Dealer –Unregistered Activity Violations

Violation	Rule/Statute
Failed to have a license holder perform a Device Performance Review at least once every two years.	2310.102(a); 97.23(a)
Operated an unregistered device.	2310.103(a); 97.20
Employed or contracted with a person who performed, or offered to perform, device maintenance activities without a valid service company license issued by the Department.	2310.156(a)
New owner of a device failed to submit a completed registration application.	97.20(b)
Owner failed to submit required documents and fees to the Department prior to the operation of newly added device.	97.22(a)

Service Technician and Service Company – Unlicensed Activity Violations

Violation	Rule/Statute
Performed or offered to perform device maintenance activities without a Service Technician license.	2310.155; 97.55(b)
Performed or offered to perform device maintenance activities as a sole proprietor without a service technician and service company license.	2310.156(b)
Operated as a Service Company without a license.	97.52

Failed to Cooperate with the Department Violations

Violation	Rule/Statute
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Failed to permit or assist the Department in inspecting and monitoring facilities and equipment.	2310.153
Refused to allow metering device to be inspected, tested or examined by the Department.	2310.109(a)
Hindered or obstructed the Department, a Department Inspector or Employee in the performance of their duties.	2310.109(b); 60.23(a)
Failed to allow the Department or representative to collect samples and conduct testing at any location where motor fuel is kept, transferred sold or offered for sale.	2310.203(a)

Class D:

Penalty Range:

\$3500 up to \$5,000 and/or up to revocation

Violation	Rule/Statute
A person or a person's representative or agent knowingly used an incorrect weighing or measuring device in (i) buying or selling motor fuel, (2) computing a charge for services rendered on the basis of weight or measure, or (3) determining the weight or measure of motor fuel.	2310.057(a); 2310.058
Knowingly sold, offered for sale, used, or possessed for the purpose of sale or use a device or instrument used to falsify or intend to falsify a weight or measure for motor fuel.	2310.110(b)(3)
Violated an order of the Executive Director to stop the sale of motor fuel.	2310.060(a); 97.42
Failed to comply with a previous order of the Commission or Executive Director.	51.353(a)
Failed to pay the Department for a dishonored payment or processing fee.	51.210(c); 60.82
Service Technician failed to comply with examination requirements established by the Department. (Cheated on an examination)	97.57(b); 97.57(c)

This agency hereby certifies that this notice been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

TRD-202004652

Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: November 5, 2020

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Texas Lottery Commission

Scratch Ticket Game Number 2275 "777"

A. The name of Scratch Ticket Game No. 2275 is "777". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2275 shall be \$2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2275.

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, 08, 09, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 77 SYMBOL, 777 SYMBOL, \$2.00, \$5.00, \$6.00, \$10.00, \$15.00, \$30.00, \$90.00, \$900 and \$30,000.

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. 2275 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX

28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
38	TRET
39	TRNI
40	FRTY
77 SYMBOL	DBL
777 SYMBOL	TRP
\$2.00	TWO\$
\$5.00	FIV\$
\$6.00	SIX\$
\$10.00	TEN\$
\$15.00	FFN\$
\$30.00	TRTY\$
\$90.00	NITY\$
\$900	NIHN
\$30,000	30TH

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 (2275), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2275-0000001-001.

H. Pack - A Pack of the "777" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the Packs will be in an A, B, C and D configuration.

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 "777" Scratch Ticket Game No. 2275.

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 "777" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty-two (22) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "77" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. If the player reveals a "777" Play Symbol, the player wins TRIPLE the PRIZE for that symbol. 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 twenty-two (22) 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 twenty-two (22) 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 twenty-two (22) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twenty-two (22) 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. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or 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. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., \$2 and 02).

D. No matching WINNING NUMBERS Play Symbols on a Ticket.

E. A non-winning Prize Symbol will never match a winning Prize Symbol.

F. A Ticket may have up to two (2) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

G. The "77" (DBL) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

H. The "777" (TRP) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

I. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "777" Scratch Ticket Game prize of \$2.00, \$5.00, \$6.00, \$10.00, \$15.00, \$30.00 or \$90.00, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may 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 \$30.00 or \$90.00 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 "777" Scratch Ticket Game prize of \$900 or \$30,000, the claimant must sign the winning Scratch Ticket and may 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 "777" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all 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 "777" 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 "777" 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. 2275. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2275 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$2.00	679,680	10.42
\$5.00	283,200	25.00
\$6.00	283,200	25.00
\$10.00	99,120	71.43
\$15.00	99,120	71.43
\$30.00	42,598	166.20
\$90.00	7,080	1,000.00
\$900	40	177,000.00
\$30,000	10	708,000.00

*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 4.74. 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. 2275 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. 2275, 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-202004747
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: November 9, 2020



Scratch Ticket Game Number 2276 "CASH MONEY"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2276 is "CASH MONEY". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2276 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2276.

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, STAR SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$50.00, \$60.00, \$90.00, \$100, \$300, \$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. 2276 - 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
STAR SYMBOL	TRP
\$5.00	FIV\$
\$10.00	TEN\$
\$15.00	FFN\$
\$20.00	TWY\$
\$30.00	TRTY\$
\$50.00	FFTY\$
\$60.00	SXTY\$
\$90.00	NITY\$
\$100	ONHN
\$300	THHN

\$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 (2276), 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: 2276-0000001-001.

H. Pack - A Pack of the "CASH MONEY" 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 "CASH MONEY" Scratch Ticket Game No. 2276.

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 "CASH MONEY" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-five (45) 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 "STAR" Play Symbol, the player wins TRIPLE the prize for that symbol. 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 forty-five (45) 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 forty-five (45) 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 forty-five (45) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty-five (45) 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. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or 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. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 05 and \$5).

D. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

E. No matching WINNING NUMBERS Play Symbols on a Ticket.

F. A non-winning Prize Symbol will never match a winning Prize Symbol.

G. A Ticket may have up to three (3) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

H. The "STAR" (TRP) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "CASH MONEY" Scratch Ticket Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$60.00, \$90.00 or \$300, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may 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 \$30.00, \$60.00, \$90.00 or \$300 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 "CASH MONEY" Scratch Ticket Game prize of \$1,000 or \$100,000, the claimant must sign the winning Scratch Ticket and may 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 "CASH MONEY" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social

Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all 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 "CASH MONEY" 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 "CASH MONEY" 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 9,000,000 Scratch Tickets in Scratch Ticket Game No. 2276. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2276 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5.00	900,000	10.00
\$10.00	480,000	18.75
\$15.00	300,000	30.00
\$20.00	120,000	75.00
\$30.00	180,000	50.00
\$60.00	96,375	93.39
\$90.00	22,500	400.00
\$300	2,250	4,000.00
\$1,000	15	600,000.00
\$100,000	5	1,800,000.00

*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 4.28. 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. 2276 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. 2276, 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.

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 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: November 9, 2020



Scratch Ticket Game Number 2332 "SUPER CROSSWORD"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2332 is "SUPER CROSS-WORD". The play style is "crossword".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2332 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2332.

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: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, BLACKENED SQUARE SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100 and \$500.

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. Crossword and Bingo style games do not typically have Play Symbol Captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2332 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	

Z	
BLACKENED SQUARE SYMBOL	
\$5.00	FIV\$
\$10.00	TEN\$
\$15.00	FFN\$
\$20.00	TWY\$
\$25.00	TWV\$
\$50.00	FFTY\$
\$100	ONHN
\$500	FVHN

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 (2332), 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: 2332-0000001-001.

H. Pack - A Pack of the "SUPER CROSSWORD" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse; i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

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 "SUPER CROSSWORD" Scratch Ticket Game No. 2332.

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. Each Scratch Ticket contains exactly one hundred ninety-seven (197) Play Symbols. A prize winner in the "SUPER CROSSWORD" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose all of the YOUR 20 LETTERS Play Symbols. The player then scratches all the letters found in GAME 1 and GAME 2 that exactly match the YOUR 20 LETTERS Play Symbols. If the player has scratched at least 3 complete WORDS within a GAME, the player wins the prize found in the corresponding PRIZE LEGEND. WORDS revealed in one GAME cannot be combined with WORDS revealed in the other GAME. Each GAME is played separately. Only one prize paid per GAME. Only letters within the same GAME that are matched with the YOUR 20 LETTERS Play Symbols can be used to form a complete WORD. In each GAME, every lettered square within an unbroken horizontal (left to right) or vertical (top to bottom) sequence must be matched with the YOUR 20 LETTERS Play Symbols to be considered a complete WORD. Words revealed in a diagonal sequence are not considered valid WORDS. Words within WORDS are not eligible for a prize. Words that are spelled from right to left or bottom to top are not eligible for a prize. A complete WORD must contain at least three (3) letters. GAME 1 can win by revealing 3 to 11 complete WORDS. GAME 2 can win by revealing 3 to 6 complete WORDS. BONUS WORD: The player must scratch all the letters in the BONUS WORD that exactly match the YOUR 20 LETTERS. If the player scratches a complete BONUS WORD, the player wins the BONUS WORD PRIZE. A completed BONUS WORD cannot be used to win in GAME 1 or GAME 2. Each GAME and the BONUS WORD are played separately. 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 one hundred ninety-seven (197) 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. Crossword and Bingo style games do not typically have Play Symbol Captions;
 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 one hundred ninety-seven (197) 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 one hundred ninety-seven (197) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
 17. Each of the one hundred ninety-seven (197) 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: A Ticket can win as indicated by the prize structure.

C. GENERAL: There will be no correlation between any exposed data on a Ticket and its status as a winning or Non-Winning Ticket.

D. GENERAL: Each Ticket consists of a GAME 1 puzzle grid, a GAME 2 puzzle grid, a BONUS WORD puzzle grid, a BONUS WORD PRIZE play area and a YOUR 20 LETTERS play area.

E. GENERAL: Each Ticket in a Pack will have different GAMES (i.e., the GAME 1 puzzle grid and the GAME 2 puzzle grid will have different words and configurations of words).

F. GENERAL: A Ticket can win one (1) time per GAME and BONUS WORD for a total of up to three (3) times per Ticket, as dictated by the prize structure.

G. GENERAL: The BONUS WORD Prize Symbols will only appear in the BONUS WORD PRIZE play area and will never appear in the BONUS WORD puzzle grid, GAME 1 puzzle grid, GAME 2 puzzle grid, or YOUR 20 LETTERS play area.

H. GAME 1 AND GAME 2: The GAME 1 puzzle grid will be formatted with at least one thousand (1,000) configurations and the GAME 2 puzzle grid will be formatted with at least five hundred and sixty (560) configurations (i.e., puzzle layouts not including words).

I. GAME 1 AND GAME 2: All GAME 1 puzzle grid configurations will be formatted within a grid that contains eleven (11) spaces (height) by eleven (11) spaces (width). All GAME 2 puzzle grid configurations will be formatted within a grid that contains seven (7) spaces (height) by seven (7) spaces (width).

J. GAME 1 AND GAME 2: No matching words on a Ticket.

K. GAME 1 AND GAME 2: No matching Play Symbols in the YOUR 20 LETTERS play area.

L. GAME 1 AND GAME 2: Each GAME 1 grid will contain the following: a) Four (4) 3 - letter words, b) Five (5) 4 - letter words, c) Three (3) 5 - letter words, d) Three (3) 6 - letter words, e) One (1) 7 - letter word, f) Two (2) 8 - letter words, g) One (1) 9 - letter word.

M. GAME 1 AND GAME 2: Each GAME 2 grid will contain the following: a. Two (2) - 3 letter words, b. Three (3) - 4 letter words, c. Two (2) - 5 letter words, d. Two (2) - 6 letter words.

N. GAME 1 AND GAME 2: There will be a minimum of three (3) vowels in the YOUR 20 LETTERS play area. Vowels are A, E, I, O and U.

O. GAME 1 AND GAME 2: All words will contain a minimum of three (3) letters.

P. GAME 1 AND GAME 2: Words will contain a maximum of nine (9) letters.

Q. GAME 1 AND GAME 2: All words used will be from Texas_Bonus_v3_Jan2019.doc.

R. GAME 1 AND GAME 2: Words from Texas_Prohibited_v5_30November2017.doc will not appear horizontally in the YOUR 20 LETTERS play area when read from left to right or right to left.

S. GAME 1 AND GAME 2: A player will never find a word horizontally (in either direction), vertically (in either direction) or diagonally (in either direction) in the YOUR 20 LETTERS play area that matches a word in the grid.

T. GAME 1 AND GAME 2: Each grid will have a maximum number of different grid formations with respect to other constraints. That is, for identically formatted grids (i.e., the same puzzle grid), all "approved words" will appear in every logical (i.e., 3 letter word = 3 letter space) position, with regards to limitations caused by the actual letters contained in each word (i.e., this will not place the word "ZOO" in a position that causes an intersection word to require the second letter to be "Z" when in fact, there are no approved words with a "Z" in the second letter position).

U. GAME 1 AND GAME 2: No consonant will appear more than nine (9) times in the GAME 1 grid.

V. GAME 1 AND GAME 2: No consonant will appear more than seven (7) times in the GAME 2 grid.

W. GAME 1 AND GAME 2: Each non-winning grid (GAME 1/GAME 2) will have two (2) completed words.

X. GAME 1 AND GAME 2: At least fifteen (15) of the YOUR 20 LETTERS Play Symbols will open at least one (1) letter in the GAME 1, GAME 2 and BONUS WORD play areas.

Y. GAME 1 AND GAME 2: The presence or absence of any letter in the YOUR 20 LETTERS play area will not be indicative of a winning or Non-Winning Ticket.

Z. GAME 1 AND GAME 2: GAME 1 will not have more than eleven (11) words completed.

AA. GAME 1 AND GAME 2: GAME 2 will not have more than six (6) words completed.

BB. BONUS WORD: The BONUS WORD can be completed and win, as indicated by the prize structure.

CC. BONUS WORD: The BONUS WORD will contain exactly six (6) letters and will not match any word in either the GAME 1 or GAME 2 grids.

DD. BONUS WORD: On winning Tickets when only the BONUS WORD is completed, two (2) completed words will be revealed in each of the non-winning GAME 1 and GAME 2 grids.

2.3 Procedure for Claiming Prizes.

A. To claim a "SUPER CROSSWORD" Scratch Ticket Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$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 may 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, \$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 "SUPER CROSSWORD" Scratch Ticket Game prize of \$1,000 or \$100,000, the claimant must sign the winning Scratch Ticket and may 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 "SUPER CROSSWORD" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all 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 "SUPER CROSSWORD" 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 "SUPER CROSSWORD" 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 19,440,000 Scratch Tickets in Scratch Ticket Game No. 2332. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2332 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5.00	2,203,200	8.82
\$10.00	1,036,800	18.75
\$15.00	777,600	25.00
\$20.00	388,800	50.00
\$25.00	259,200	75.00
\$50.00	222,912	87.21
\$100	48,222	403.14
\$200	4,428	4,390.24
\$500	1,674	11,612.90
\$1,000	300	64,800.00
\$100,000	8	2,430,000.00

*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 3.93. 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. 2332 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. 2332, 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-202004749
Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 9, 2020

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North Central Texas Council of Governments

Request for Proposals for the Regional Traffic Signal Program

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consultant firm(s) to implement a Regional Traffic Signal Program, which will include developing performance measures and an inventory to collect information needed to assess the status of the region's traffic signals, and also retiming of signalized intersections in the Dallas Fort-Worth Non-Attainment Area. The Regional Traffic Signal Program will include traffic signal evaluation by signal, establish a regional traffic signal minimum standard, identify traffic signal improvement needs, and develop a corridor selection process using performance measurements. In addition, the program will collect baseline data, develop and implement signal timing plans, and collect data after timing has been implemented, and develop an executive summary of the program.

Proposals must be received no later than 5:00 p.m., Central Daylight Time, on Friday, January 15, 2021, to Gregory Masota, Transportation Planner III, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 and electronic submissions to TransRFPs@nctcog.org. The Request for Proposals will be available at www.nctcog.org/rfp by the close of business on Friday, November 20, 2020.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-202004754
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: November 9, 2020

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South Texas Development Council

Request for Proposals (RFP) Regional Public Transportation Coordination Plan

The office of the South Texas Development Council (STDC) located at 1002 Dicky Lane, Laredo, Texas 78043 is accepting Sealed Proposals for:

Regional Public Transportation Coordination Plan

Specifications may be picked up at the above address between the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday or via email: marthahdz@stdc.cog.tx.us.

Sealed proposals will be accepted until 5:00 p.m. November 30, 2020, in the STDC office. Deadline for submitting questions until 5:00 p.m. November 13, 2020. Sealed proposals must be addressed to Mr. Juan E. Rodriguez, Transportation Coordinator and delivered to the address above. The envelope must be clearly marked "RFP for Regional Public Transportation Coordination Plan". Proposals opening will be held December 1, 2020, location to be determined. Award will not be made at the opening, but after further consideration. Respondents should submit the proposals on the complete package. Partial responses will not be accepted. Proposals must mirror the published specifications. If you have any questions regarding the specifications, please contact Ms. Martha D. Hernandez, Regional Services Planner at (956) 722-3995 x136.

Any item that does not perform or meet tests as specified or claimed by the seller will be replaced at no cost by STDC. Transfer of assignment of contracts by seller is prohibited.

STDC reserves the right to refuse and reject any and all proposals and to waive any and all formalities or technicalities and to accept the proposal considered to be the best and most advantageous to STDC. Proposals submitted past the date and time mentioned above or faxed proposals will not be accepted. Proposals may not be altered or amended after the submission deadline. If no proposal is accepted, the entire solicitation process may be repeated.

TRD-202004721
Martha Hernandez
Regional Services Planner
South Texas Development Council
Filed: November 6, 2020

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Texas Water Development Board

Request for Applications FY2021 Agricultural Water Conservation Grants

The Texas Water Development Board (TWDB) solicits a Request for Applications for Fiscal Year 2021 Agricultural Water Conservation Grant projects. The total amount of the grants to be awarded under this Request for Applications by the TWDB shall not exceed \$1,200,000 from the Agricultural Water Conservation Fund. The rules governing the Agricultural Water Conservation Fund may be found in 31 Texas Administrative Code, Chapter 367. Application instructions are available upon request from the TWDB.

Summary of the Request for Applications

Solicitation Date (Opening): date published in the *Texas Register*

Due Date (Closing): 2:00 p.m., Wednesday, February 10, 2021

Anticipated Award Date: May 2021

Estimated Total Funding: up to \$1,200,000 total

Eligible Grant Amount: up to \$1,200,000; local match is encouraged

Eligible applicants: state agencies and political subdivisions (as defined by 31 Texas Administrative Code, Chapter 367)

Contact: Cameron Turner, Agricultural Water Conservation, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, Phone: (512) 936-6090, E-mail: cameron.turner@twdb.texas.gov

Agricultural Water Conservation Grant Program Goals

Applications must be consistent with the format provided in the Agricultural Water Conservation Grant Application Instructions document.

Please contact the TWDB if you intend to apply. Projects awarded funding must further water conservation in the state and support the implementation of water conservation water management strategies in the state water plan (Texas Water Code §§17.900-17.902; 31 Texas Administrative Code §367.5). To receive consideration, projects must meet the eligibility criteria and achieve the following goals:

- (A) Improve irrigation efficiency through irrigation system improvements, such as the adoption of irrigation scheduling practices and irrigation district interconnections
- (B) Enhance resilience to weather extremes and climate variability
- (C) Promote innovation in agriculture by incorporating the latest water conservation technological advancements

Priority consideration may be given in the scoring and ranking of applications to projects that focus on improving soil health (also referred to as soil quality).¹

Agricultural Water Conservation Grant Project Actions and Objectives

To achieve the aforementioned goals, the project description, scope of work, and deliverables should incorporate the following actions and objectives:

- (1) Engage agricultural producers and water managers through educational outreach in the form of field days, workshops, seminars, or demonstrations in classroom settings and on farms involved in the projects
- (2) Promote the adoption of innovative water conservation practices and technologies that result in improvements to irrigation efficiency, soil health, and soil moisture retention
- (3) Identify methods to measure and report water conservation performance metrics such as water savings, soil water holding capacity, soil moisture content, plant available water, and infiltration
- (4) Determine the long-term sustainability, feasibility, and profitability of the conservation practice(s) by quantifying the return on investment
- (5) Build upon the success of existing agricultural water conservation efforts
- (6) Leverage funding support from local, state, federal, and private industry partners

Funding recipients must submit annual reports, irrigation water use data, and an estimate of actual water savings realized through the implementation of the project for a period of three to five years during the project. Additional details and the exact scope of work will be negotiated with selected applicant(s) and may include a comprehensive final report upon completion.

Grant Amount

Through this announcement, the TWDB has up to \$1,200,000 available from the Agricultural Water Conservation Fund for Fiscal Year 2021 Agricultural Water Conservation Grants. The TWDB awards these funds through a statewide competitive grants process. The TWDB evaluates all proposals based upon the specific criteria set forth in this solicitation and application instructions.

Eligible costs are those directly attributed to the project including planning, design, purchase, acquisition, installation, construction, monitoring, reporting, administration, management, educational outreach, and dissemination of project findings. Indirect expenses such as the applicant's overhead are not eligible for reimbursement and will not count towards the local match when being evaluated by the technical review team. Eligible travel expenses of the contractor and their subcontractors

are limited to the maximum amounts authorized for state employees by the General Appropriations Act. Additionally, any out-of-state travel expenses must be directly related to the approved scope of work in the contract; and, should be pre-approved by the Executive Administrator, or designated staff, prior to reimbursement.

Application Criteria and Selection Process

Prior to technical review, each application will be screened for completeness and compliance with the provisions of this notice. Incomplete applications and those that do not meet the provisions of this notice and the requirements of 31 Texas Administrative Code Chapter §§367.5-367.7, as identified in the application instructions, may be eliminated from competition. Applications meeting the provisions of this notice will be scored by a technical review panel. 31 Texas Administrative Code §367.8 and §367.9 require that in reviewing an application for an agricultural water conservation grant, the TWDB shall consider (1) degree to which the applicant has used other available resources to finance the use for which the application is being made; (2) willingness and ability of the applicant to raise revenue; (3) commitment of the applicant to agricultural water conservation; and, (4) the water conservation benefits that will be gained by making the grant.

Prior to approving a grant, the TWDB must find that the grant funds will (1) supplement rather than replace money of the applicant (to aid in making this determination, the applicant must provide an operating budget illustrating the financial need for the grant funds); (2) serve the public interest (in making this finding the TWDB shall include a finding that the grant will assist in the implementation of a water conservation water management strategy identified in the most recent applicable approved regional water plan or state water plan); and, (3) further water conservation in the state (TWC §§17.900-17.902).

In addition to the required considerations and findings, the technical review panel will further evaluate the applications using the following criteria: (1) sound and practical approach for implementing project as per the Request for Applications guidelines, by achieving the Agricultural Water Conservation Program Goals; (2) clearly identified tasks that incorporate the Agricultural Water Conservation Project Actions and Objectives, deliverables, products, and reporting timelines; (3) staff with the technical expertise needed to carry out the project; and, (4) proposed cost estimates (budget) that are reasonable, adequately justified, and include supplemental funding sources. Priority consideration may be given to projects focused on soil health that achieve multiple goals and include all actions and objectives identified in the Agricultural Water Conservation Grant Program Goals and Agricultural Water Conservation Project Actions and Objectives. All applicants must establish a metric for measuring and reporting water savings or improvements in water use efficiency as a direct result of project funding.

Funding and Partial Funding Provisions

The TWDB reserves the right to reject all proposals and make no awards under this announcement. In addition, the TWDB reserves the right to partially fund proposals by funding discrete activities, portions, or phases of a proposed project. The TWDB also reserves the right to award funding in an amount greater than any stated limits per project, if applicable. If the TWDB decides to partially fund a proposal, it will do so in a manner that does not prejudice any applicants or affect the basis upon which the proposal, or portion thereof, was evaluated or selected for award, and that maintains the integrity of the competition and the evaluation/selection process. The TWDB reserves the right to reject parts of any or all applications if staff determines that the application(s) does not adequately meet the required criteria or if the funding available is less than the requested funding. The TWDB also retains the right to not award contract funds.

Negotiations with Selected Applicants

The applicable scope of work, deliverables, timelines, budgets, and contract terms will be negotiated after the TWDB awards the selected applicants. Failure to arrive at mutually agreeable terms of a contract with the selected applicant shall constitute a rejection of the Board's offer and may result in subsequent negotiations with other applicants.

Deadline for Submission of Applications

Submit one digital copy of completed application(s) to the TWDB on or before 2:00 p.m. on Wednesday, February 10, 2021. Applications can be directed either in person to Angela Wallace, Texas Water Development Board, Stephen F. Austin Building, Room 610B, 1700 North Congress Avenue, Austin, Texas 78701; by mail to Angela Wallace, Texas Water Development Board, P.O. Box 13231 - Capitol Station, Austin, Texas 78711-3231; or submitted via email to Contracts@twdb.texas.gov with carbon copies provided to Angela.Wallace@twdb.texas.gov and Cameron.Turner@twdb.texas.gov. Application instructions are available upon request from Cameron

Turner, (512) 936-6090, cameron.turner@twdb.texas.gov, or online at <http://www.twdb.texas.gov>.

¹ According to the U.S. Department of Agriculture - Natural Resources Conservation Service website, soil health is defined as, *"the continued capacity of soil to function as a vital living ecosystem that sustains plants, animals, and humans. This definition speaks to the importance of managing soils, so they are sustainable for future generations. To do this, we need to remember that soil contains living organisms that when provided the basic necessities of life - food, shelter, and water - perform functions required to produce food and fiber."*

TRD-202004657
Ashley Harden
General Counsel
Texas Water Development Board
Filed: November 5, 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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