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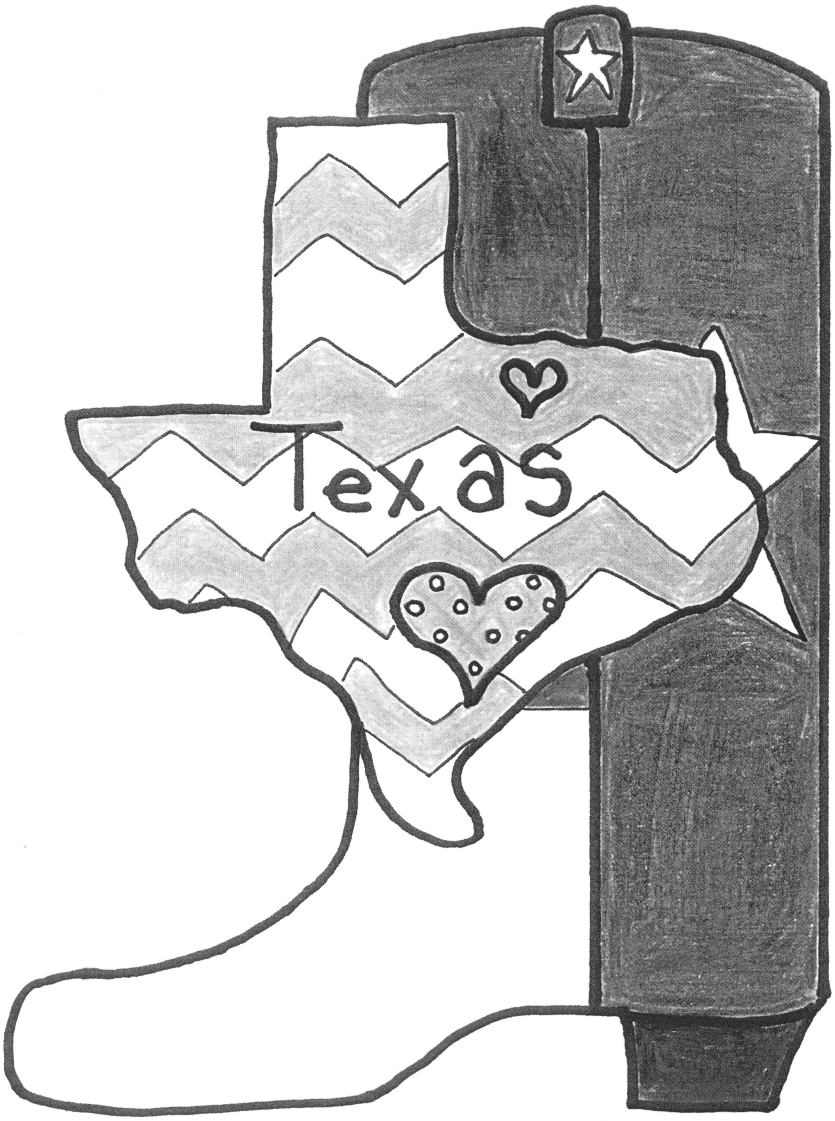
Texas

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 October 19, 2021

Appointed to the Texas Higher Education Coordinating Board, for a term to expire August 31, 2027, Daniel O. Wong, Ph.D. of Houston, Texas (replacing Ricky A. Raven of Sugar Land, whose term expired).

Appointed to the University of Houston System Board of Regents, for a term to expire August 31, 2027, Tilman J. Fertitta of Houston, Texas (Mr. Fertitta is being reappointed).

Appointed to the University of Houston System Board of Regents, for a term to expire August 31, 2027, Lorinda "Beth" Madison of Houston, Texas (Ms. Madison is being reappointed).

Appointed to the University of Houston System Board of Regents, for a term to expire August 31, 2027, Ricky A. Raven of Sugar Land, Texas (replacing Gerald W. McElvy of Southlake, whose term expired).

Appointments for October 20, 2021

Appointed to the Angelina and Neches River Authority Board of Directors, for a term to expire September 5, 2027, Erin L. Holloway of Arp, Texas (replacing John M. "Skip" Ogle of Tyler, whose term expired).

Appointed to the Angelina and Neches River Authority Board of Directors, for a term to expire September 5, 2027, Dale G. Morton of Nacogdoches, Texas (Mr. Morton is being reappointed).

Appointed to the Angelina and Neches River Authority Board of Directors, for a term to expire September 5, 2027, Francis G. Spruiell of Center, Texas (Ms. Spruiell is being reappointed).

Appointed to the Lower Colorado River Authority, for a term to expire February 1, 2027, Matthew L. "Matt" Arthur of La Grange, Texas (replacing Lori A. Berger of Flatonia, whose term expired).

Appointed to the Statewide Health Coordinating Council, for a term to expire August 31, 2023, Emily R. Hunt, D.N.P. of Houston, Texas (replacing David A. "Dave" Allen, D.N.P. of Fort Worth, who resigned).

Appointed to the Statewide Health Coordinating Council, for a term to expire August 31, 2027, Carol A. M. Boswell, Ed.D. of Andrews, Texas (Dr. Boswell is being reappointed).

Appointed to the Statewide Health Coordinating Council for a term to expire August 31, 2027, Kenneth J. "Ken" Holland Huntsville, Texas (replacing Shaukat A. Zakaria of Houston, who resigned).

Appointed to the Statewide Health Coordinating Council for a term to expire August 31, 2027, Tamara G. Rhodes of Amarillo, Texas (replacing Courtney P. Sherman, D.N.P. of Fort Worth, who resigned).

Appointed to the Statewide Health Coordinating Council for a term to expire August 31, 2027, Melinda A. Rodriguez, D.P.T. of San Antonio, Texas (Dr. Rodriguez is being reappointed).

Appointed to the Statewide Health Coordinating Council for a term to expire August 31, 2027, Yasser F. Zeid, M.D. of Tyler, Texas (Dr. Zeid is being reappointed).

Greg Abbott, Governor

TRD-202104218

♦ ♦ ♦

Executive Order GA-40

Relating to prohibiting vaccine mandates, subject to legislative action.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all Texas counties; and

WHEREAS, in each subsequent month effective through today, I have renewed the COVID-19 disaster declaration for all Texas counties; and

WHEREAS, I have issued a series of executive orders aimed at protecting the health and safety of Texans, ensuring uniformity throughout Texas, and achieving the least restrictive means of combatting the evolving threat to public health; and

WHEREAS, COVID-19 vaccines are strongly encouraged for those eligible to receive one, but must always be voluntary for Texans; and

WHEREAS, I issued Executive Orders GA-35, GA-38, and GA-39 to prohibit governmental entities and certain others from imposing COVID-19 vaccine mandates or requiring vaccine passports; and

WHEREAS, in yet another instance of federal overreach, the Biden Administration is now bullying many private entities into imposing COVID-19 vaccine mandates, causing workforce disruptions that threaten Texas's continued recovery from the COVID-19 disaster; and

WHEREAS, countless Texans fear losing their livelihoods because they object to receiving a COVID-19 vaccination for reasons of personal conscience, based on a religious belief, or for medical reasons, including prior recovery from COVID-19; and

WHEREAS, through Chapter 161 of the Texas Health and Safety Code, as well as other laws including Chapters 38 and 51 of the Texas Education Code, the legislature has established its primary role over immunizations, and all immunization laws and regulations in Texas stem from the laws established by the legislature; and

WHEREAS, the legislature has taken care to provide exemptions that allow people to opt out of being forced to take a vaccine for reasons of conscience or medical reasons; and

WHEREAS, I am adding this issue to the agenda for the Third Called Session of the legislature that is currently convened so that the legislature has the opportunity to consider this issue through legislation; and

WHEREAS, I will rescind this executive order upon the effective date of such legislation;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective immediately:

1. No entity in Texas can compel receipt of a COVID-19 vaccine by any individual, including an employee or a consumer, who objects to such vaccination for any reason of personal conscience, based on a religious belief, or for medical reasons, including prior recovery from COVID-19. I hereby suspend all relevant statutes to the extent necessary to enforce this prohibition.

2. The maximum fine allowed under Section 418.173 of the Texas Government Code and the State's emergency management plan shall apply to any "failure to comply with" this executive order. Confinement in jail is not an available penalty for violating this executive order.

3. This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster. Pursuant to Section 418.016(a) of the Texas Government Code, I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order.

This executive order does not supersede Executive Orders GA-13, GA-37, GA-38, or GA-39. This executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.

Given under my hand this the 11th day of October, 2021.

Greg Abbott, Governor

TRD-202104097

♦ ♦ ♦

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

TITLE 1. ADMINISTRATION

PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 160. GENERAL ADMINISTRATION
SUBCHAPTER B. GENERAL PROVISIONS

1 TAC §§160.10 - 160.12

The State Office of Administrative Hearings (SOAH) proposes new Subchapter B, §§160.10 - 160.12, in Texas Administrative Code, Title 1, Administration, Part 7, State Office of Administrative Hearings, Chapter 160, General Administration.

The proposal will establish a new subchapter within the current Chapter 160, entitled General Administration, relating to general agency administration. The proposed new Subchapter B is entitled General Provisions, and includes rules relating to the administration of training and education for agency administrators and employees, the administration of the agency's sick leave pool, and the establishment of the agency's family leave pool.

A proposed new §160.10 describes the parameters and requirements for training and education of SOAH administrators and employees, and includes provisions relating to the eligibility of agency administrators and employees for training and education supported by SOAH, the obligations assumed by the administrators and employees on receiving the training and education, and the requirements for administrator or employee reimbursement for a training or education program. The new rule is necessary to comply with Texas Government Code §656.048, which requires that each state agency shall adopt rules relating to the training and education of agency administrators and employees.

A proposed new §160.11 describes the administration of the agency's employee sick leave pool in accordance with Texas Government Code Chapter 661. The new rule is necessary to comply with the requirement of Texas Government Code §661.002(c) for state agencies to adopt rules and prescribe procedures relating to the administration of the agency sick leave pool for employees.

A proposed new §160.12 establishes the agency's family leave pool in compliance with House Bill 2063, 87th Leg., R.S. The new rule describes the administration of the family leave pool.

The rules proposed herein are consistent with the statutory parameters and requirements of Texas Government Code §§656.048, 661.002, and 661.022 accordingly.

No other rules are proposed under the Chapter at this time.

Fiscal Note

Kristofer S. Monson, Chief Administrative Law Judge for SOAH, has determined that for the first five-year period the proposed rules are in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of the proposed rules regarding the administration of education and training as well as the leave pool programs for all agency employees. Additionally, Chief Judge Monson has determined that the proposed rules do not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Chief Judge Monson has determined for the first five-year period the proposed rules are in effect, there will be a benefit to the general public because the proposed rules will provide all current and potential agency employees with clear information on the parameters and requirements for training and education during employment with SOAH, as well as the knowledge of the agency's establishment and operation of available leave pool programs that allow its employees to voluntarily transfer accrued leave to the pool programs that may be used for the benefit of eligible employees in order to attend to family or personal important events and serious illnesses.

Probable Economic Costs. Chief Judge Monson has determined for the first five-year period the proposed rules are in effect, there will be no additional economic costs to persons required to comply with the rule.

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. Because the agency has determined that the proposed rule will have no adverse economic effects on small businesses, micro-businesses, or rural communities, preparation of an

Economic Impact Statement and Regulatory Analysis, as provided in Government Code §2006.002, is not required.

Local Employment Impact Statement. Chief Judge Monson has determined that the proposed rules will not affect the local economy so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

Government Growth Impact Statement. Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For 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, but rather implement existing programs that are already authorized by statute.

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

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

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

(5) The proposed rules do not create a new regulation.

(6) The proposed rules do not expand, limit, or repeal existing regulations.

(7) The proposed rules do not increase the number of individuals subject to the rules.

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

Takings Impact Assessment. Chief Judge Monson has determined that the proposed rules will not affect private real property interests, therefore SOAH is not required to prepare a takings impact assessment under Government Code §2007.043.

Submission of Comments. Written comments on the proposed rules may be submitted to Angela Pardo, State Office of Administrative Hearings, P.O. Box 13025, Austin, Texas 78711-3025 or by email to: SOAH.Questions@soah.texas.gov with the subject line "Employee Training and Leave Pool Rules." The deadline for receipt of comments is 5:00 p.m. on November 29, 2021. All requests for a public hearing on the proposed rules, submitted under the Administrative Procedure Act, must be received by the State Office of Administrative Hearings no more than fifteen (15) days after the notice of proposed rules have been published in the *Texas Register.*

Statutory Authority. The rules are proposed under Texas Government Code §656.048, which requires that each state agency shall adopt rules relating to the training and education of agency administrators and employees; Texas Government Code §661.002(c), which requires state agencies to adopt rules and prescribe procedures relating to the administration of the agency sick leave pool; and Texas Government Code §661.022, which requires state agencies to adopt rules and prescribe procedures relating to the operation of a family leave pool.

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

§160.10. Employee Training and Education.

(a) The agency may use state funds to provide education and training for its employees in accordance with the State Employees Training Act (Texas Government Code §§656.041 - 656.104).

(b) The education or training shall be related to the employee's current position or prospective job duties within the agency.

(c) The agency's education and training program benefits both the agency and the employees participating by:

(1) preparing for technological and legal developments;

(2) increasing work capabilities;

(3) increasing the number of qualified employees in areas for which the agency has difficulty in recruiting and retaining employees; and

(4) increasing the competence and professionalism of agency employees.

(d) Agency employees may be required to complete an education or training program related to the employee's duties or prospective duties as a condition of employment.

(e) Participation in an education or training program requires the appropriate approval prior to participation and is subject to the availability of funds within the agency's budget.

(f) As part of the agency's education and training program, employees may be eligible for reimbursement for a training, development, or education program offered by a state agency, an institution of higher education, or a private entity.

(g) Reimbursement of costs to an employee for completing a training, development, or education program offered by a state agency, an institution of higher education, or a private entity, requires the approval of the Chief Administrative Law Judge or the Chief Administrative Law Judge's designee. The agency shall only reimburse the expenses for a program course successfully completed by an employee.

(h) The employee education and training program for the agency may include:

(1) mandatory agency-sponsored training required for all employees;

(2) education relating to technical or professional certifications and licenses;

(3) education and training relating to the promotion of employee development;

(4) employee-funded external education;

(5) agency-funded external education, including continuing legal education, online courses, and courses not credited towards a degree; and

(6) other agency-sponsored education and training determined by the agency to fulfill the purposes of the State Employees Training Act.

(i) The Human Resources Manager for the State Office of Administrative Hearings is designated as the administrator of the agency's education and training program.

(j) The administrator, in conjunction with the agency executive management, shall develop policies for administering each of the components of the employee education and training program. These policies shall provide clear and objective guidelines and shall include, at a minimum, the following:

(1) eligibility requirements for participation;

(2) approval procedures for participation; and

(3) obligations of program participants.

(k) Approval to participate in any portion of the agency's education and training program shall not in any way affect an employee's at-will status or constitute a guarantee or indication of continued employment, nor shall it constitute a guarantee or indication of future employment in a current or prospective position.

(l) Permission to participate in any education and training program may be withdrawn if the agency determines, in its sole discretion, that participation would negatively impact the agency or the employee's job duties or performance.

§160.11. Sick Leave Pool.

(a) A sick leave pool is established to alleviate hardship caused to an employee and the employee's immediate family if a catastrophic

injury or illness forces the employee to exhaust all eligible leave time earned by that employee and to lose compensation time from the state.

(b) The Human Resources Manager for the State Office of Administrative Hearings is designated as the pool administrator.

(c) The pool administrator shall develop and maintain a policy, operating procedures, and forms, as necessary, for the administration of the sick leave pool subject to approval by the Chief Administrative Law Judge.

(d) Operation of the sick leave pool shall be consistent with Texas Government Code, Chapter 661.

§160.12. Family Leave Pool.

(a) A family leave pool is established to provide eligible employees more flexibility in bonding with and caring for children during a child's first year following birth, adoption, or foster placement, and caring for a seriously ill family member or the employee's own serious illness, including pandemic-related illnesses or complications caused by a pandemic.

(b) All contributions by employees to the family leave pool are voluntary. There is no limitation on the amount or frequency of contributions. Employees who contribute accrued sick or vacation leave hours to the pool may not designate the contributed hours for use by a specific employee. An employee who contributes leave hours to the pool may not withdraw the contributed hours.

(c) An employee may only apply to withdraw time from the family leave pool if the employee has exhausted all eligible personal leave due to:

(1) the birth of a child;

(2) the placement of a foster child or adoption of a child under 18 years of age;

(3) the placement of any person 18 years of age or older requiring guardianship;

(4) a serious illness to an immediate family member of the employee, including pandemic-related illness;

(5) an extenuating circumstance created by an ongoing pandemic, including providing essential care to a family member; or

(6) a previous donation of time to the pool.

(d) The Human Resources Manager for the State Office of Administrative Hearings is designated as the pool administrator.

(e) The pool administrator shall develop and maintain a policy, operating procedures, and forms, as necessary, for the administration of the family leave pool subject to approval by the Chief Administrative Law Judge.

(f) Operation of the family leave pool shall be consistent with Texas Government Code, Chapter 661.

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 October 15, 2021.

TRD-202104102

Laurel Parke
Assistant General Counsel
State Office of Administrative Hearings
Earliest possible date of adoption: November 28, 2021
For further information, please call: (512) 475-4993

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TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 58. EMERGENCY RESPONSE AND MANAGEMENT

SUBCHAPTER A. GENERAL REQUIREMENTS

4 TAC §58.1, §58.2

The Texas Animal Health Commission proposes amendments to §58.1 concerning Definitions and §58.2 concerning Disease Control in Chapter 58 of the Texas Administrative Code, titled "Emergency Response and Management".

The proposed amendments update the reference from §161.041 of the Texas Agriculture Code to §45.3 of the Texas Administrative Code in accordance with Senate Bill 705 enacted during the 87th Regular Legislative Session. Senate Bill 705 amended §161.041 of the Texas Agriculture Code, and now requires the commission to adopt rules listing the diseases that require control or eradication.

The commission adopted amendments to Chapter 45, titled "Reportable and Actionable Diseases", in a duly noticed meeting on September 21, 2021. The proposed amendments to Chapter 58 update the reference. The name of the international animal health agency is updated to the World Organisation for Animal Health, and "List A" is removed for accuracy and aligns with §161.0415 of the Texas Agriculture Code. The definition of "Emergency Management Plan - Appendix Four to Annex H" is proposed for deletion because that part of the plan is now outdated. Finally, grammatical and editorial changes are proposed for improved readability.

FISCAL NOTE

Ms. Myra Sines, Chief of Staff of the Texas Animal Health Commission, determined for each year of the first five years the rules are in effect, there will be no additional fiscal implications for state or local government as commission employees currently allocated to these activities will continue to administer and enforce these rules as part of their current job duties and resources.

PUBLIC BENEFIT NOTE

Ms. Sines determined that for each year of the first five years the rules are in effect, the anticipated public benefit as a result of enforcing the rules will be updating the rule to accurately state the name of the international animal health agency and that list of diseases, removing an outdated reference to parts of the Emergency Management Plan, correctly referencing the new commission rule identifying diseases in response to the statutory change, and improving readability.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission determined that the proposed rules would not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission pursuant to Texas Government Code §2001.022.

MAJOR ENVIRONMENTAL RULE

The commission determined that Texas Government Code §2001.0225 does not apply to the proposed amendments because the specific intent of these rules is not primarily to protect the environment or reduce risks to human health from environmental exposure and, therefore, is not a major environmental rule.

TAKINGS ASSESSMENT

The commission determined that the proposal does not restrict, limit, or impose a burden on an owner's right to his or her private real property that would otherwise exist in the absence of government action. As such, the activities under the proposed amendments do not require a Takings Assessment pursuant to Texas Government Code §2007.043.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

The commission determined that because the proposed rules would not result in any direct economic effect on any small business, microbusiness, or rural community, neither the economic impact statement nor the regulatory flexibility analysis described in Texas Government Code, Chapter 2006, is required.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, the commission prepared the following Government Growth Impact Statement (GGIS). For each year of the first five years the proposed rules would be in effect, the commission determined the following:

1. The proposed rules would not create or eliminate a government program;

2. Implementation of the proposed rules would not require the creation of new employee positions or the elimination of existing employee positions;

3. Implementation of the proposed rules would not require an increase or decrease in future legislative appropriations to the commission;

4. The proposed rules would not require an increase or decrease in fees paid to the commission;

5. The proposed rules would not create a new regulation;

6. The proposed rules would not expand existing rules and would not otherwise limit or repeal an existing regulation;

7. The proposed rules would not increase the number of individuals subject to the regulation; and

8. The proposed rules would not adversely affect this state's economy.

COST TO REGULATED PERSONS

The commission determined that for each year of the first five years in which the proposed rules are in effect, the proposed rules do not impose a direct cost on regulated persons, a state agency, a special district, or a local government within the state. Therefore, it is not necessary to repeal or amend any other existing rule.

REQUEST FOR COMMENT

Comments regarding the proposed rules may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax to (512) 719-0719, or by email to comments@tahc.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal in the *Texas Register.*

STATUTORY AUTHORITY

The amendments to Chapter 58 of the Texas Administrative Code are proposed pursuant to Chapter 161 of the Texas Agriculture Code.

Pursuant to Texas Agriculture Code §161.041, titled "Disease Control", the commission shall protect all livestock, exotic livestock, domestic fowl, and exotic fowl from diseases the commission determines require control or eradication. The commission shall adopt and periodically update rules listing the diseases that require control or eradication by the commission.

Pursuant to Texas Agriculture Code §161.046, titled "Rules", the commission is authorized to adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to Texas Agriculture Code §161.0415, titled "Disposal of Diseased or Exposed Livestock or Fowl", the commission by order may require the slaughter of livestock, domestic fowl, or exotic fowl, under the direction of the commission, or the sale of livestock, domestic fowl, or exotic fowl for immediate slaughter at a public slaughtering establishment maintaining federal or state inspection if the livestock, domestic fowl, or exotic fowl is exposed to or infected with a disease other than bluetongue or vesicular stomatitis that is recognized by the United States Department of Agriculture as a foreign animal disease or reportable animal disease, is the subject of a cooperative eradication program with the United States Department of Agriculture, is an animal disease reportable to the World Organisation for Animal Health, or is the subject of a state of emergency, as declared by the Governor.

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

§58.1. Definitions.

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

(1) "Animal" includes livestock, exotic livestock, domestic fowl water fowl, and exotic fowl or any invertebrate or vertebrate [~~non-invertebrate~~].

(2) "Animal Product" means hides; bones; hoofs; horns; viscera; parts of animal bodies; litter, straw, or hay used for bedding; and any other substance capable of carrying insects or a disease that may endanger the livestock industry.

(3) "Caretaker of Animal" means a person [~~is~~] presumed to control the animal if the person is the owner or lessee of the pen, pasture, or other place where [~~in which~~] the animal is located and has control of that place, or exercises care or control over the animal.

(4) "Dealer" means a person engaged in the business of buying or selling animals in commerce on the person's own account; as an employee or agent of the vendor, the purchaser, or both; or on a commission basis.

(5) "Declaration of State of Disaster" The Governor [~~governor~~] by executive order or proclamation may declare a state of disaster if the Governor [~~governor~~] finds a disaster has occurred or that the occurrence or threat of disaster is imminent.

(6) "Effect of Disaster Declaration" An executive order or proclamation issued by the Governor declaring a state of disaster:

(A) activates the disaster recovery and rehabilitation aspects of the state emergency management plan applicable to the area subject to the declaration; and

(B) authorizes the deployment and use of any forces to which the plan applies and the use or distribution of any supplies, equipment, and materials or facilities assembled, stockpiled, or arranged to be made available under this chapter or other law relating to disasters.

(7) "Emergency Management Plan Council" is composed of the heads of state agencies, boards, and commissions and representatives of organized volunteer groups to advise and assist the Governor in all matters relating to disaster mitigation, preparedness, response, and recovery. The commission is a member of that council.

(8) "Emergency Management Plan" is a state prepared plan together with annexes designed to address all emergency management functional responsibilities. This plan defines the organization, establishes operational concepts, assigns responsibilities, and outlines coordination procedures for accomplishing comprehensive emergency management objectives in Texas.

[(9) "Emergency Management Plan - Appendix Four to Annex H (Health and Medical Services)" means the State of Texas Emergency Management Plan annex which provides the state guidance for mitigating against, preparing for, identifying and responding to, and recovering from any highly contagious animal disease affecting Texas livestock and wildlife.]

(9) [(10)] "Exotic livestock" means grass-eating or plant-eating, single-hooved or cloven-hooved mammals that are not indigenous to this state and are known as ungulates, including animals from the swine, horse, tapir, rhinoceros, elephant, deer, and antelope families.

(10) [(11)] "Exotic fowl" means any avian species that is not indigenous to this state. The term includes ratites.

(11) [(12)] "Exposure or Infection" means if a veterinarian employed by the commission determines that a communicable disease exists among livestock, domestic animals, or domestic fowl or on certain premises or that livestock, domestic animals, or domestic fowl have been exposed to an agent of transmission of a communicable disease, the exposure or infection is considered to continue until the commission determines that the exposure or infection has been eradicated through methods prescribed by rule of the commission.

(12) [(13)] "Feedlot" means a confined drylot area for finish feeding of cattle on concentrated feed with no facilities for pasturing or grazing. All cattle in a feedlot are considered a "herd" for purposes of these regulations.

(13) [(14)] "Foreign Animal Diseases" means [these are] animal diseases recognized by the United States Department of Agriculture as not being found in the United States.

(14) [(15)] "Hold Order" means a written commission order and action [document] restricting movement of a herd, animal, or animal product [unit, or individual animal] pending the determination of disease status.

(15) [(16)] "Livestock" includes cattle, horses, mules, asses, sheep, goats, hogs, domestic fowl, exotic livestock and exotic fowl.

(16) [(17)] "Livestock market" means a stockyard, sales pavilion, or sales ring where livestock, exotic livestock, or exotic fowl are assembled or concentrated at regular or irregular intervals for sale, trade, barter, or exchange.

[(18) "Office International Des Epizooties List A Diseases" are diseases which have the potential for very serious and rapid spread, irrespective of national borders, which are of serious socio-economic or public health consequence and which are of major importance in the international trade of animals and animal products.]

(17) [(19)] "Show, fair, or exhibition" means a show, fair, or exhibition that permits livestock and poultry to enter for the purpose of showing or exhibiting livestock.

[(20) "Texas Emergency Response Team" (TERT) is comprised of members of the Commission and the USDA, APHIS, VS. The TERT plans, coordinates, and collaborates in order be able respond effectively and efficiently to a foregin animal disease outbreak.]

(18) World Organisation for Animal Health (OIE) Diseases--Animal diseases which have the potential for very serious and rapid spread, irrespective of national borders, which are of serious socioeconomic or public health consequence and of major importance in the international trade of animals and animal products.

§58.2. Disease Control.

(a) The Executive Director is authorized [Purpose: The purpose of this chapter is to provide the executive director the necessary authorization] to act for the commission in order to respond expeditiously to an animal health emergency. All actions of the Executive Director [executive director], under this chapter, will be in accordance with any direction, action or authorization provided by the commission.

(b) The commission may act to eradicate or control any disease or agent of disease transmission that affects livestock, exotic livestock, domestic fowl, or exotic fowl if the disease or agent of disease transmission is: [will protect all livestock from any exposure to a disease or an agent of transmission of one of the diseases which:]

(1) [is] recognized by the United States Department of Agriculture as a foreign animal disease or a reportable animal disease;

(2) the subject of a cooperative eradication program with the United States Department of Agriculture;

(3) reportable to the World Organisation for Animal Health (OIE);

[(2) is named on "List A" of the Office International Des Epizooties; or]

(4) [(3)] is the subject of a state of emergency, as declared by the Governor; [governor.]

(5) any individual case report, outbreak, emerging disease, or unusual group expression of disease or agent of disease transmission, which affects livestock, exotic livestock, domestic fowl, or exotic fowl other than bluetongue; or

(6) a disease or agent of disease transmission designated by the Texas Animal Health Commission in §45.3(c) of this title.

(c) If the Executive Director [executive director] determines that livestock have been exposed to or infected with a disease, other than bluetongue, or an agent of transmission of one of the diseases listed in §45.3(a) - (c) of this title [subsection (b)] and determines that an animal health emergency exists, then the Executive Director [executive director] is authorized to exercise all the necessary authority through this chapter to act for the commission to respond as expediently as possible to the emergency.

(d) The Executive Director [~~executive director~~] is authorized to determine the necessary requirements related to quarantine, disposal, testing, movement, inspection, and treatment.

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 October 18, 2021.

TRD-202104143
Myra Sines
Chief of Staff
Texas Animal Health Commission
Earliest possible date of adoption: November 28, 2021
For further information, please call: (512) 719-0724

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CHAPTER 59. GENERAL PRACTICES AND PROCEDURES

4 TAC §59.12, §59.15

The Texas Animal Health Commission (commission) proposes amendments to §59.12, concerning Carcass Disposal Requirements and the addition of §59.15, concerning Leave Pool in Chapter 59 of the Texas Administrative Code, titled "General Practices and Procedures".

The proposed amendments to §59.12 update the reference from §161.041 of the Texas Agriculture Code to §45.3 of the Texas Administrative Code in accordance Senate Bill 705 enacted by the Texas Legislature during the 87th Regular Session. Senate Bill 705 amended §161.041 of the Texas Agriculture Code, and now requires the commission to adopt rules listing the diseases that require control or eradication. The commission adopted amendments to Chapter 45, titled "Reportable and Actionable Diseases", in a duly noticed meeting on September 21, 2021. The proposed amendments to Chapter 59 update the reference. Additionally, grammatical and editorial changes are proposed for consistency and improved readability.

The proposed addition of §59.15 follows House Bill 2063 enacted by the Texas Legislature during the 87th Regular Session. House Bill 2063 amended Texas Government Code, Chapter 661 by requiring each state agency to create and administer a state employee family leave pool. The new section is also proposed in accordance with Texas Government Code §661.002, which requires each state agency to adopt rules to prescribe procedures relating to the operation of the agency's sick leave pool.

FISCAL NOTE

Ms. Myra Sines, Chief of Staff of the Texas Animal Health Commission, determined for each year of the first five years the rules are in effect, there will be no additional fiscal implications for state or local government as commission employees currently allocated to these activities will continue to administer and enforce these rules as part of their current job duties and resources.

PUBLIC BENEFIT NOTE

Ms. Sines determined that for each year of the first five years the rules are in effect, the anticipated public benefit as a result of enforcing the rules is updating the rules pursuant to amendments in the Texas Agriculture Code and to comply with requirements in the Texas Government Code as enacted by the 87th Texas Legislature.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission determined that the proposed rules would not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission pursuant to Texas Government Code §2001.022.

MAJOR ENVIRONMENTAL RULE

The commission determined that Texas Government Code §2001.0225 does not apply to the proposed amendments because the specific intent of these rules is not primarily to protect the environment or reduce risks to human health from environmental exposure and, therefore, is not a major environmental rule.

TAKINGS ASSESSMENT

The commission determined that the proposal does not restrict, limit, or impose a burden on an owner's right to his or her private real property that would otherwise exist in the absence of government action. As such, the activities under the proposed amendments do not require a Takings Assessment pursuant to Texas Government Code §2007.043.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

The commission determined that because the proposed rules would not result in any direct economic effect on any small business, microbusiness, or rural community, neither the economic impact statement nor the regulatory flexibility analysis described in Texas Government Code, Chapter 2006, is required.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, the commission prepared the following Government Growth Impact Statement (GGIS). For each year of the first five years the proposed rules would be in effect, the commission determined the following:

1. The proposed rules would not create or eliminate a government program;

2. Implementation of the proposed rules would not require the creation of new employee positions or the elimination of existing employee positions;

3. Implementation of the proposed rules would not require an increase or decrease in future legislative appropriations to the commission;

4. The proposed rules would not require an increase or decrease in fees paid to the commission;

5. The proposed rules would not create a new regulation;

6. The proposed rules would not expand existing rules and would not otherwise limit or repeal an existing regulation;

7. The proposed rules would not increase the number of individuals subject to the regulation; and

8. The proposed rules would not adversely affect this state's economy.

COST TO REGULATED PERSONS

The commission determined that for each year of the first five years in which the proposed rules are in effect, the proposed

rules do not impose a direct cost on regulated persons, a state agency, a special district, or a local government within the state. Therefore, it is not necessary to repeal or amend any other existing rule.

REQUEST FOR COMMENT

Comments regarding the proposed rules may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax to (512) 719-0719, or by email to comments@tahc.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal in the *Texas Register.*

STATUTORY AUTHORITY

The amendments to Chapter 59 of the Texas Administrative Code are proposed pursuant to Chapter 161 of the Texas Agriculture Code.

Pursuant to Texas Agriculture Code §161.041, titled "Disease Control", the commission shall protect all livestock, exotic livestock, domestic fowl, and exotic fowl from diseases the commission determines require control or eradication. The commission shall adopt and periodically update rules listing the diseases that require control or eradication by the commission.

Pursuant to Texas Agriculture Code §161.046, titled "Rules", the commission is authorized to adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to Texas Government Code §661.002, titled "Sick Leave Pool", the governing body of a state agency shall, through the establishment of a program, allow an agency employee to voluntarily transfer to a sick leave pool sick leave earned by the employee. The executive director of the agency or another individual appointed by the governing body shall administer the sick leave pool. The governing body of the state agency shall adopt rules and prescribe procedures relating to the operation of the agency sick leave pool.

Pursuant to Texas Government Code §661.022, titled "Guidelines", the governing body of a state agency shall, through the establishment of a program, allow an agency employee to voluntarily transfer sick or vacation leave earned by the employee to a family leave pool. The executive head of the state agency or another individual appointed by the governing body shall administer the family leave pool. The governing body of the state agency shall adopt rules and prescribe procedures relating to the operation of the agency family leave pool.

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

§59.12. Carcass Disposal Requirements.

(a) Definitions:

(1) "Animal" means livestock, exotic livestock, domestic fowl, or exotic fowl.

(2) "Executive Director" means the Executive Director of the Texas Animal Health Commission.

(3) "Air Curtain Incineration" means a mechanical process of incineration by which super-heated air is continuously circulated to enhance combustion.

(4) "Burial" means interment of a dead animal below the natural surface of the ground.

(5) "Burning" means the act of consuming or destroying by fire with or without the use of an accelerant.

(6) "Composting" means the biological decomposition of organic matter under controlled conditions.

(7) "Dead Animals" means carcasses and parts of carcasses from animals that are dead from a disease.

(8) "Dead Animal Emergencies" means those situations involving dead animals that may require extenuating disposal measures as determined by the Executive Director.

(9) "Decomposition" means the decay of dead animals under natural conditions.

(10) "Digestion" means a process by which organic matter is hydrolyzed.

(11) "Disposal" means the management of a dead animal.

(12) "Incineration" means the controlled and monitored combustion of dead animals for the purposes of volume reduction and pathogen control.

(13) "Person" means any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state or federal government department, agency or instrumentality, or any legal entity, which is recognized by law as the subject of rights and duties.

(14) "Rendering" means the process or business of recycling dead animals and animal by-products.

(15) "Sanitary Landfill" means a solid waste disposal site permitted or approved by the Texas Commission on Environmental Quality.

(b) Carcass Disposal. A person who is the owner or caretaker of livestock, exotic livestock, domestic fowl, or exotic fowl that die from a disease or agent of disease transmission listed in §45.3(a) - (c) of this title (relating to Reportable and Actionable Disease List) [~~listed in §161.041 of the Texas Agriculture Code~~], or who owns or controls the land on which the livestock, exotic livestock, domestic fowl, or exotic fowl die or upon which a diseased carcass of a dead animal is exposed to other animals, shall dispose of the carcass in the manner required by the commission under this section.

(c) Executive Director Authorization. The Commission [~~commission~~] authorizes the Executive Director [~~executive director~~] to issue orders [~~Orders~~] regarding the disposal of carcasses of livestock, exotic livestock, domestic fowl, or exotic fowl as necessary to eradicate or control the disease as well as to protect the livestock of this state. The Executive Director may also publish directives, guidelines and standards to be followed for carcass disposal in general events involving a diseased animal.

(d) Disposal of Diseased Carcass. A person who is the owner or caretaker of livestock, exotic livestock, domestic fowl, or exotic fowl, if ordered by the Executive Director [~~executive director~~], shall dispose of the carcasses under the direction of authorized agents of the commission and in accordance with all applicable [~~appropriate~~] legal standards and requirements.

(e) Disposal Methods Determined by the Executive Director. The Executive Director may determine the appropriate method of disposal for animals that die of infectious or contagious diseases or agents of disease transmission listed in §45.3(a) - (c) of this title (relating to Reportable and Actionable Disease List) [~~as listed in §161.041 of the Texas Agriculture Code or any other high consequence disease~~].

(1) Rendering. If a licensed and approved rendering facility accepts the dead animal, rendering is an approved method of disposal.

(2) Burial. Dead animals shall be buried to such a depth that no part of the dead animal shall be nearer than three (3) feet to the natural surface of the ground. Every part of the dead animal shall be covered with at least three (3) feet of earth. The location of a burial site shall comply [~~be in compliance~~] with any applicable setbacks [~~set backs~~] for sanitary or public health reasons.

(3) Disposal in an Approved Sanitary Landfill. Arrangements shall be made with a city, county, regional, or private landfill official in order to dispose of a dead animal in a city, county, regional, or private landfill.

(4) Composting. Composting [~~of~~] dead animals shall be accomplished in a manner approved by the Executive Director.

(5) Digestion. Digestion of dead animals shall be accomplished in a properly designed and sized dead animal digester approved by the Executive Director.

(6) Incineration.

(A) Incineration of dead animals shall be accomplished in an approved incineration facility, or by a mobile air curtain incinerator at a site approved by the Executive Director.

(B) The incineration shall be thorough and complete, reducing the carcass to mineral residue.

(7) Burning. Any person who is the owner or caretaker of animals that have died from anthrax, or who owns or controls the land on which the animals have died, is responsible for assuring that the carcass of each animal is set on fire and burned until it is thoroughly consumed as found in §31.3 of this title (relating to Disposal).

(8) Decomposition. Animals that die on private or state rangeland from causes other than significant infectious or contagious diseases or agents may be left to decompose naturally provided their location is not in violation of another legal requirement.

(9) Waiver [~~Wavier~~] of Requirements by the Executive Director. The Executive Director may grant variances from the requirements on a case-by-case basis.

(f) Dead Animal Emergencies. Dead animal emergencies are those situations involving dead animals that have been determined by the Executive Director to require extraordinary disposal measures.

(1) Situations Requiring Extraordinary Disposal Measures. These situations include, but are not limited to, the following:

(A) Situations where one (1) or more animals die of an infectious or contagious disease or agent that may pose a significant threat to humans or animals;

(B) Situations wherein the number of dead animals is large enough to require extraordinary disposal measures.

(2) Executive Director to Determine Disposal Methods. The Executive Director may employ exceptional or extraordinary methods of dead animal disposal as necessary to protect the health and welfare of the human and animal populations of the State [~~state~~] of Texas. Such methods may include, but shall not be limited to:

(A) Open burning;

(B) Pit burning;

(C) Burning with accelerants;

(D) Pyre burning;

(E) Air curtain incineration;

(F) Mass burial; or

(G) Natural decomposition.

§59.15. Leave Pool.

(a) Sick Leave Pool.

(1) A sick leave pool is established to provide for the alleviation of hardship caused to an employee or the employee's immediate family if a catastrophic illness or injury forces the employee to exhaust all leave time earned by that employee and to lose compensation from the state.

(2) The Chief of Staff of the Texas Animal Health Commission is designated as the sick leave pool administrator.

(3) The sick leave pool administrator, with the advice and consent of the Executive Director, will establish operating procedures consistent with the requirements of this section and relevant law governing operation of the sick leave pool.

(4) Donations to the sick leave pool are strictly voluntary.

(b) Family Leave Pool.

(1) A family leave pool is established to provide eligible employees more flexibility in bonding with and caring for children during a child's first year following birth, adoption, or foster placement, and caring for a seriously ill family member or the employee, including pandemic-related illnesses or complications caused by a pandemic.

(2) The Chief of Staff of the Texas Animal Health Commission is designated as the family leave pool administrator.

(3) The family leave pool administrator, with the advice and consent of the Executive Director, will establish operating procedures consistent with the requirements of this section and relevant law governing operation of the family leave pool.

(4) Donations to the family leave pool are strictly voluntary.

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 October 18, 2021.

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Myra Sines
Chief of Staff
Texas Animal Health Commission
Earliest possible date of adoption: November 28, 2021
For further information, please call: (512) 719-0724

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TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 78. WRAP MORTGAGE LOANS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes new rules in 7 TAC Chapter 78, Wrap Mortgage Loans, §§78.1 - 78.3, 78.100 - 78.102, 78.200, 78.201, 78.300 - 78.303, 78.400 - 78.403. The proposed new rules as proposed by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

During the 87th Legislature (Regular Session), Senate Bill 43 (SB43) was enacted into law (eff. January 1, 2022) which, among other things, amended the Finance Code to create new Finance Code Chapter 159, concerning Wrap Mortgage Loan Financing (Chapter 159). A wrap mortgage loan is a loan made to finance the purchase of residential real estate that leaves a preexisting loan and lien owed by the previous owner (wrap lender) in place when the property is sold (and is therefore thought to encapsulate or "wrap around" the preexisting loan). The borrower (wrap borrower) signs a new promissory note and deed of trust to secure the purchase price of the residential real estate (less any down payments). The wrap loan is thus subordinated and becomes "junior" or "inferior" to the preexisting lien. The wrap borrower makes periodic payments to the wrap lender or its third-party servicer for the wrap lender or third-party servicer to then make payments toward and satisfy the amounts owed on the preexisting lien. The proposed rules, if adopted, would: (i) create definitions necessary to administer Chapter 159; (ii) clarify how time periods measured in days by Chapter 159 are to be calculated; (iii) clarify and establish requirements related to the written disclosure a wrap lender is required to provide to the wrap borrower in accordance with Finance Code §159.101, including: adoption of a model disclosure form by the commission, as mandated by such section; establishing formatting requirements for the disclosure; clarifying when a wrap lender is deemed to have provided the disclosure for purposes of the statute; establishing requirements concerning the requirement that a wrap lender provide a foreign-language version of the disclosure, for negotiations with the wrap borrower conducted primarily in a language other than English; and clarifying that the disclosure may be delivered by the wrap lender and signed by the wrap borrower electronically; (iv) clarify and establish requirements related to the requirement, pursuant to Finance Code §159.105, that a wrap mortgage loan be "closed by an attorney or a title company"; (v) establish requirements related to the wrap borrower's right to make deductions from the amounts the wrap borrower is required to pay under the terms of the wrap mortgage loan for payments made to the preexisting lienholder or other obligee in connection with the preexisting loan or lien, as provided by Finance Code §159.202; (vi) clarify and establish requirements related to the fiduciary duties owed to a wrap borrower by a person who collects or receives payment from a wrap borrower, as provided by Finance Code §159.152, including: clarifying that a wrap lender may not delegate or assign its fiduciary duties to another person except as a result of selling or assigning the wrap mortgage loan; clarifying that, unless agreed to otherwise in writing by the wrap borrower and wrap lender, funds received from a wrap borrower must be placed in a trust account maintained for the benefit of the wrap borrower; and establishing requirements for the wrap lender to maintain a separate accounting for each wrap mortgage loan made by the wrap lender; (vii) clarify and establish requirements concerning the wrap lender's use of a third party to act as residential mortgage loan servicer; (viii) establish requirements concerning the books and records a wrap lender that is required to register as a residential mortgage loan servicer under Finance Code Chapter 158 (wrap lender registrant) must create and maintain, as mandated of the commission by Finance Code §159.252(d)(1); and (ix) clarify and establish requirements related to the savings and mortgage lending commissioner's authority to make inspections (examinations) of and conduct investigations on a wrap lender registrant, including: establishing what constitutes reasonable cause for an investigation, as mandated of the commission by Finance Code §159.252(d)(2); and, addressing the reimbursement of expenses for examination by the commissioner (by and through the commissioner's examiners) of records located outside of Texas, as mandated of the commission by Finance Code §159.252(g).

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue, to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund. Enforcement or administration of the proposed rules may result in monies paid to the department by a wrap lender registrant to reimburse the department for its costs in examining records of a wrap lender registrant located outside of Texas. However, any estimate of such expenses would be: inherently speculative; unreliable for budgetary planning purposes; directly attributable to (and will offset) the actual costs borne by the department and allocable to the wrap lender registrant examined by the commissioner; and, will not actually function as additional revenue to the department.

Public Benefits

William Purce, Director of Mortgage Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be for the public to have a clearer understanding of the department's administration and enforcement of Chapter 159, including the rights and responsibilities under Chapter 159, Subchapter E of a member of the public who is a borrower under the terms of a wrap mortgage loan.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

William Purce, Director of Mortgage Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5)(B) (direct costs). The proposed rules establish requirements for a wrap lender to maintain a written accounting for each wrap mortgage loan made by the wrap lender. However, the information comprising such accounting is already generated in the ordinary course of business of the wrap lender or its third-party servicer, and merely requires the wrap lender (or its servicer)

to transpose or otherwise capture such information in order to fulfill the fiduciary duties owed to the wrap borrower pursuant to Finance Code §159.152, and facilitate the potential duty of the wrap lender to rescind the wrap mortgage loan transaction in accordance with Finance Code §159.101 and §159.104. As a result, maintenance of such an accounting does not impose substantial economic costs on persons required to comply with the proposed rules. The proposed rules require a person who collects or receives a payment from a wrap borrower, in the absence of a written agreement with the wrap borrower providing otherwise, to hold such funds in a trust account at a financial institution, and may have some attendant costs. However, the agreement between the wrap lender and wrap borrower concerning the borrower's payments ultimately determines the handling of such funds (the wrap lender and wrap borrower may agree, in writing, to elect not to use a trust account), and therefore use of a trust account is not required to comply with the proposed rules. The proposed rules establish requirements concerning the books and records a wrap lender registrant must create and maintain, and may have some attendant costs. However, the statutory requirements of Finance Code §159.252 direct a wrap lender registrant to create and maintain records sufficient to facilitate examination by the commissioner, and not the proposed rules. Moreover, many of the records required to be maintained under the proposed rules are already created in the wrap lender registrant's ordinary course of business and such creation costs are therefore not directly attributable to the proposed rules. Similarly, any direct requirement to create records to comply with the proposed rules involves information already generated in the ordinary course of the wrap lender registrant, and merely requires the wrap lender registrant to transpose or otherwise capture such information in a manner readily examinable by the commissioner; and, therefore does not impose substantial economic costs to persons required to comply with the proposed rules.

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department 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. The department anticipates enforcement and administration of Chapter 159 will require two additional full-time equivalent employee positions; however, these employee positions are required as a result of the statutory requirements of Chapter 159, and not the proposed rules; (3) implementation of the proposed rules does not require an increase or decrease in 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 (rule requirement). The proposed rules establish requirements for a wrap borrower to provide notice to the wrap lender of amounts the wrap borrower deducts from the amounts the wrap borrower is required to pay under the terms of the wrap mortgage loan, as provided by Finance Code §159.202. The proposed rules further establish requirements for a wrap lender to maintain a written accounting for each wrap mortgage loan made by the wrap lender. The proposed rules further establish requirements concerning the books and records a wrap lender registrant must create and maintain under Finance Code §159.252; (6) the proposed rules do not expand, limit, or repeal an existing regulation (rule requirement); (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code§2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Associate General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §§78.1 - 78.3

Statutory Authority

This proposal is made under the authority of Finance Code §159.108 which authorizes the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159.

This proposal affects the statutes contained in Finance Code Chapter 159, Wrap Mortgage Loan Financing.

§78.1. Purpose and Applicability.

This chapter governs the Commissioner's administration and enforcement of Finance Code Chapter 159, governing wrap mortgage loans concerning residential real estate located in Texas. This chapter applies to wrap mortgage lenders, borrowers, and any person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan, including servicers of a wrap mortgage loan.

§78.2. Definitions.

The following terms, when used in this chapter, and in the Commissioner's administration and enforcement of Finance Code Chapter 159, have the following meanings, unless the context clearly indicates otherwise:

(1) "Application" means a request, in any form, for an offer (or a response to a solicitation for an offer) of wrap mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social

security number to obtain a credit report, property address, an estimate of the value of the real estate, and/or the mortgage loan amount.

(2) "Attorney" has the meaning assigned by Texas Insurance Code §2501.003.

(3) "Commissioner" means the savings and mortgage lending commissioner appointed under Finance Code Chapter 13.

(4) "Department" means the Department of Savings and Mortgage Lending.

(5) "E-Sign Act" refers to the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§7001-7006.

(6) "Inspection" includes examination.

(7) "Legal holiday" means the federal legal public holidays set forth in 5 U.S.C. §6103(a).

(8) "Nationwide Mortgage Licensing System and Registry" or "NMLS" has the meaning assigned by Finance Code §180.002.

(9) "Residential mortgage loan" has the meaning assigned by Finance Code §159.001. The term does not include a loan which is secured by structure that is suitable for occupancy as a dwelling but is used for a commercial purpose such as a professional office, salon, or other non-residential use, and is not used as a residence.

(10) "Residential mortgage loan originator" has the meaning assigned by Finance Code §180.002.

(11) "Residential mortgage loan servicer" has the meaning assigned by Finance Code §158.002.

(12) "Residential real estate" has the meaning assigned by Finance Code §159.001. For purposes of Finance Code §159.002(b)(1), the term does not include "unimproved residential estate," as that term is defined by Finance Code §159.002(a).

(13) "Superior lien" refers to any lien described by Finance Code §159.001(7)(A).

(14) "Superior lienholder" means the holder of any lien described by Finance Code §159.001(7)(A).

(15) "Third-party servicer" means a person other than the wrap lender acting as residential mortgage loan servicer for a wrap mortgage loan.

(16) "Title company" means a "title insurance company" as that term is defined by Texas Insurance Code §2501.003

(17) "UETA" refers to the Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code Chapter 322.

(18) "Wrap borrower" has the meaning assigned by Finance Code §159.001.

(19) "Wrap lender" has the meaning assigned by Finance Code §159.001.

(20) "Wrap lender registrant" means a wrap lender who is required to register as a residential mortgage loan servicer under Finance Code Chapter 158.

(21) "Wrap mortgage applicant" means an applicant for a wrap mortgage loan or a person who is solicited (or contacts a wrap lender in response to a solicitation) to obtain a wrap mortgage loan, and includes a person who has not completed or started completing a formal loan application on the appropriate form (e.g., Fannie Mae's Form 1003 Uniform Residential Mortgage Loan Application), but has submitted financial information constituting an application, as provided by paragraph (1) of this section.

(22) "Wrap mortgage loan" has the meaning assigned by Finance Code §159.001.

§78.3. Computation of Time.

The calculation of any time period measured in days by Finance Code Chapter 159 is to be made using calendar days. In computing a period of days, the first day is excluded and the last day is included. Except with respect to the disclosure required by Finance Code §159.101 and §78.101 of this title (relating to Required Disclosure), if the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

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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Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending
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SUBCHAPTER B. LENDER REQUIREMENTS AND RESPONSIBILITIES

7 TAC §§78.100 - 78.102

Statutory Authority

This proposal is made under the authority of Finance Code §159.108 which authorizes the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159. §78.101(b) is further proposed under the authority of, and to implement, Finance Code §159.101(c).

This proposal affects the statutes contained in Finance Code Chapter 159, Wrap Mortgage Loan Financing.

§78.100. Purpose and Applicability.

The purpose of this subchapter is to clarify and establish requirements related to a wrap lender's requirements and responsibilities under a wrap mortgage loan, as provided by Finance Code Chapter 159, Subchapter C, and §159.105.

§78.101. Required Disclosure.

(a) Purpose. The purpose of this section is to clarify and establish requirements related to the written disclosure a wrap lender is required to provide the wrap borrower in accordance with Finance Code §159.101 (disclosure).

(b) Model Disclosure Form. In accordance with Finance Code §159.101(c), the following form (Figure: 7 TAC §78.101(b)(3); model disclosure form) is deemed to satisfy the substantive requirements of Finance Code §159.101(a). Interested persons should visit the Department's website (sml.texas.gov) for a form-fillable version of the model disclosure form and an editable version in Word format (including for purposes of attaching additional sheets to supplement the form with additional information, as necessary). A wrap lender may modify and customize the model disclosure form; provided, the form:

(1) contains all substantive information contained in the model disclosure form that is applicable to the person issuing the disclosure;

(2) conforms to the formatting requirements of subsection (c) of this section; and

(3) otherwise fulfills the requirements of Finance Code §159.101(a).

Figure: 7 TAC §78.101(b)(3)

(c) Formatting Requirements. The disclosure must be made in 12-point font using an easily readable typeface. A font point generally equates to 1/72 of an inch. Those portions of the disclosure comprising the body must use a normal font type. Those portions of the disclosure comprising a heading must use a bolded font type. Those portions of the disclosure comprising the content required by Finance Code §159.101(a)(2) and Texas Property Code §5.016(a)(7) must use an "all caps" or "small caps" font type. The following typefaces are deemed to be easily readable for purposes of this section (this list is not exhaustive and other typefaces may be used; provided, the typeface is easily readable):

(1) Arial;

(2) Calibri;

(3) Century Schoolbook;

(4) Garamond;

(5) Georgia;

(6) Lucida Sans;

(7) Times New Roman;

(8) Trebuchet; and

(9) Verdana.

(d) Effective Date. The disclosure is deemed to be provided by the wrap lender and received by the wrap borrower for purposes of Finance Code §159.101 on the date the disclosure is dated and signed by the wrap borrower, as provided by Finance Code §159.101(b).

(e) Foreign Language Requirement. The wrap borrower must be provided an English-language version of the disclosure in addition to and contemporaneously with the foreign-language version required by Finance Code §159.102, if applicable. A wrap lender may provide the English-language and foreign-language disclosure in a single, combined disclosure. A wrap borrower receiving a foreign-language version of the disclosure may, but is not required to, date and sign the foreign-language disclosure. A wrap borrower receiving a foreign-language version of the disclosure must date and sign the English-language version of the disclosure, which determines the effective date the disclosure is received by the wrap borrower, as provided by subsection (d) of this section. A Spanish-language version of the model disclosure form is available on the Department's website (sml.texas.gov) and is deemed to satisfy the substantive requirements of Finance Code §159.101(a) and §159.102, with respect to negotiations with a wrap borrower conducted primarily in Spanish.

(f) Electronic Delivery and Signature. The wrap lender may provide, and the wrap borrower may sign, the disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and E-Sign Act include requirements for electronic signatures and delivery.

(g) Computation of Time. Computation of the time period for a wrap lender to provide the disclosure required by Finance Code §159.101(a) is made using calendar days, irrespective of any Saturdays, Sundays, or legal holidays.

§78.102. Closing Requirements.

(a) Purpose. The purpose of this section is to clarify and establish requirements related to the requirement that a wrap mortgage loan be closed by an attorney or title company, as provided by Finance Code §159.105.

(b) Closing by Title Company. For purposes of Finance Code §159.105, a wrap mortgage loan may only be closed by a title company issuing an owner's title insurance policy to the wrap borrower for the residential real estate secured or designed to be secured by the wrap mortgage loan.

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 C. BORROWER'S RIGHTS AND RESPONSIBILITIES

7 TAC §78.200, §78.201

Statutory Authority

This proposal is made under the authority of Finance Code §159.108 which authorizes the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159.

This proposal affects the statutes contained in Finance Code Chapter 159, Wrap Mortgage Loan Financing.

§78.200. Purpose and Applicability.

The purpose of this subchapter is to clarify and establish requirements related to a wrap borrower's rights under a wrap mortgage loan, as provided by Finance Code Chapter 159, Subchapter E.

§78.201. Right to Deduct; Notice of Deduction.

(a) Purpose. The purpose of this section is to clarify and establish requirements related to a wrap borrower's right to make deductions from the amounts the wrap borrower owes to the wrap lender under the terms of a wrap mortgage loan, as provided by Finance Code §159.202.

(b) Notice of Deduction. To the extent the wrap borrower seeks to exercise its right to deduct amounts owed to the wrap lender pursuant to Finance Code §159.202, the wrap borrower must, at the time the wrap borrower makes the deduction, provide the wrap lender or its third-party servicer notice of the amounts deducted including:

(1) an itemized list of the deductions made, describing in detail the amounts paid by the wrap borrower on behalf of the wrap lender;

(2) the dates on which such payments were made; and

(3) supporting documentation evidencing paragraphs (1) and (2) of this subsection.

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

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SUBCHAPTER D. WRAP LENDER AND SERVICER REQUIREMENTS

7 TAC §§78.300 - 78.303

Statutory Authority

This proposal is made under the authority of Finance Code §159.108 which authorizes the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159.

This proposal affects the statutes contained in Finance Code Chapter 159, Wrap Mortgage Loan Financing.

§78.300. Purpose and Applicability.

The purpose of this subchapter is to clarify and establish requirements applicable to persons who collect or receive a payment from a wrap borrower under the terms of a wrap mortgage loan, as provided by Finance Code Chapter 159, Subchapter D. The rules in this subchapter apply to a wrap lender or any other person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan, including a third-party servicer servicing a wrap mortgage loan.

§78.301. Fiduciary Duties; Required Accounting.

(a) Purpose. The purpose of this section is to clarify and establish requirements related to the fiduciary duties owed to a wrap borrower by a person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan, as provided by Finance Code §159.152.

(b) Non-Delegation of Duties. A wrap lender or other person collecting or receiving a payment from a wrap borrower under the terms of a wrap mortgage loan may not delegate or assign its fiduciary duties owed under Finance Code §159.152 to another person except as a result of the wrap lender selling, assigning, transferring, or conveying the wrap mortgage loan. Any sale, assignment, transfer, or conveyance by a wrap lender of a wrap mortgage loan is deemed to include an assignment of the fiduciary duties owed by the wrap lender to the wrap borrower under Finance Code §159.152. A sale, assignment, transfer, or conveyance by a wrap lender of a wrap mortgage loan does not extinguish the assigning wrap lender's fiduciary duties to the wrap borrower in connection with amounts collected or received by the wrap lender from the wrap borrower prior to the effective date of the sale, assignment, transfer, or conveyance of the wrap mortgage loan.

(c) Required Accounting. The wrap lender must, either directly, or through use of a third-party servicer it has contracted with, maintain, on a current basis, separate written accountings for each wrap mortgage loan made by the wrap lender sufficient to account for, track, and retrospectively trace all payments received from the wrap borrower under the terms of the wrap mortgage loan, and all disbursements, transfers, or assignments of such funds, including, but not limited to, disbursements made to a superior lienholder, taxing authority, or insurance company in connection with the residential real estate secured by the wrap mortgage loan. The accounting required by this subsection must be maintained by the wrap lender or its successor-in-interest until the limitations period for the wrap borrower to bring any cause of action against the wrap lender arising from a violation of law in connection with the wrap mortgage loan transaction has lapsed. To the extent the wrap lender utilizes the services of a third-party servicer, a wrap lender must establish and maintain policies and procedures that are reasonably designed to acquire from the third-party servicer any information or supporting documentation necessary or prudent to ensure the wrap lender satisfies the accounting required by this subsection. The accounting required by this subsection may be accomplished through administration of and the retention of records in connection with a trust account as provided by §78.302 of this title (relating to Trust Account; Maintenance of Funds Held in Trust).

§78.302. Trust Account; Maintenance of Funds Held in Trust.

(a) Purpose. The purpose of this section is to clarify and establish requirements related to the requirement of a person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan to hold such funds in trust, as provided by Finance Code §159.151.

(b) Definitions. The following terms in this section have the following meanings, unless the context clearly indicates otherwise:

(1) "Financial institution" has the meaning assigned by Finance Code §201.101(1).

(2) "Trust account" means a custodial, trust, or escrow account managed by one person for the benefit of another person.

(3) "Trust funds" means the funds collected or received from a wrap borrower under the terms of a wrap mortgage loan.

(4) "Receiver" means a wrap lender or other person collecting or receiving trust funds.

(c) Trust Account Required. Unless otherwise agreed to in writing by the wrap borrower and wrap lender in connection with the wrap mortgage loan, trust funds must be placed in a trust account meeting the requirements of this section, and maintained or disbursed in accordance with this section.

(d) Trust Account Requirements.

(1) The trust account must be clearly identified as such at the financial institution.

(2) The receiver may, but is not required to, maintain separate trust accounts for each wrap mortgage loan or wrap borrower. To the extent the receiver maintains separate trust accounts for each wrap mortgage loan or wrap borrower, the same trust account may also be used for purposes of administering an escrow account for the wrap mortgage loan or wrap borrower.

(3) Funds in the trust account must be capable of being disbursed by the receiver on-demand or in an amount of time sufficient to timely effect disbursements reasonably anticipated from the trust account.

(4) A receiver, in addition to depositing trust funds, may deposit and maintain a limited amount of money in the trust account necessary to avoid or cover potential fees imposed by the financial in-

stitution in connection with the trust account including account maintenance fees or fees charged for insufficient funds.

(e) A receiver may not:

(1) commingle trust funds with non-trust funds;

(2) deposit or maintain trust funds in a personal account or any form of business account; or

(3) pay operating expenses or otherwise make withdrawals or disbursements from a trust account for any purpose other than the proper disbursement of trust funds.

(f) Disbursement of Trust Funds.

(1) A receiver may only disburse money from a trust account in accordance with the terms of the wrap mortgage loan or such other agreement as may be entered into with the wrap borrower to govern the disbursement of trust funds.

(2) If a receiver is unable to reasonably determine to which party or parties trust funds should be disbursed, the receiver may tender trust funds into the registry of a court of competent jurisdiction and interplead the relevant party or parties.

§78.303. Use of a Third-Party Servicer.

(a) Purpose. The purpose of this section is to clarify and establish requirements concerning a wrap lender's use of a third party to act as a residential mortgage loan servicer of wrap mortgage loan.

(b) Use of a Third-Party Servicer. A wrap lender is authorized to use the services of a third party to act as the residential mortgage loan servicer of a wrap mortgage loan (also known as a "subservicer").

(c) Handling of Payments and Disbursements. To the extent a wrap lender uses the services of a third-party servicer, the handling of payments and disbursement of funds received by the third-party servicer is governed by the agreement between the wrap lender and third-party servicer, including:

(1) whether or not and on what terms the third-party servicer makes disbursements to the superior lienholder;

(2) disbursements made to the wrap lender; and

(3) how payments by the wrap borrower in excess of the current amount due under the terms of the wrap mortgage loan are handled, applied, or disbursed.

(d) No Limitation on Liability. As provided by Finance Code §159.107, any agreement between a wrap lender and a third-party servicer may not seek to waive or limit the wrap lender's or third-party servicer's liability to the wrap borrower arising from the fiduciary duties owed to the wrap borrower pursuant to Finance Code §159.152. However, an agreement between a wrap lender and third-party servicer may contain an indemnification agreement concerning potential liability arising from the fiduciary duties owed to the wrap borrower under Finance Code §159.152.

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 E. COMPLIANCE AND ENFORCEMENT

7 TAC §§78.400 - 78.403

Statutory Authority

This proposal is made under the authority of Finance Code §159.108 which authorizes the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159. §§78.401 - 78.403 are further proposed under the authority of, and to implement, Finance Code §159.252(d). §78.402(g) is further proposed under the authority of, and to implement, Finance Code §159.252(g).

This proposal affects the statutes contained in Finance Code Chapter 159, Wrap Mortgage Loan Financing.

§78.400. Purpose and Applicability.

The purpose of this subchapter is to clarify and establish requirements related to the Commissioner's authority to conduct inspections of, and investigations on, a wrap lender who is required to register as a residential mortgage loan servicer under Finance Code Chapter 158 (wrap mortgage registrant), as provided by Finance Code Chapter 159, Subchapter F. This subchapter further clarifies and establishes requirements concerning the Commissioner's authority to seek enforcement action against a wrap mortgage registrant under Finance Code Chapter 159, Subchapter G.

§78.401. Required Books and Records by a Wrap Lender Registrant.

(a) Purpose. This section clarifies and establishes requirements related to the wrap lender's requirement to maintain information and records necessary to facilitate the Commissioner's inspection of a wrap lender required to register as a residential mortgage loan servicer under Finance Code Chapter 158, as provided by Finance Code §159.252(d)(1). The requirements of this section are in addition to and supplement the requirements a wrap lender registrant or other person is required to maintain as a licensee or registrant under Finance Code Chapters 156, 157, 158, or 342, as applicable.

(b) Maintenance of Records, Generally. Each wrap lender registrant must maintain records with respect to each wrap mortgage loan under Finance Code Chapter 159 and make those records available for examination under Finance Code §159.252. The records required by this section may be maintained using a paper, manual, electronic, or digitally-imaged recordkeeping system, or a combination thereof, unless otherwise specified by other applicable law. The records must be accurate, complete, current, legible, and readily accessible and sortable. If the requirements of other applicable law governing recordkeeping by the wrap loan registrant differ from the requirements of this section, such other applicable law prevails only to extent this section conflicts with the requirements of this section.

(c) Required Records. A wrap lender registrant must maintain the following items:

(1) Wrap Mortgage Servicing Log. A wrap mortgage servicing log for each wrap mortgage loan serviced by a wrap lender registrant, maintained on a current basis (which means that all entries must

be made within seven days from the date on which the matters they relate to occurred), setting forth, at a minimum:

(A) the loan or account number, or other unique identifier assigned by the wrap lender registrant to the wrap mortgage loan;

(B) the name and contact information of each wrap borrower; and

(C) the date the wrap mortgage loan was entered into by the wrap lender and wrap borrower.

(2) Wrap Borrower Index. The current alphabetical index or a report of outstanding wrap mortgage loans of the wrap lender registrant, regardless of whether or not it services the wrap mortgage loan, reflecting the name of each wrap borrower and the loan or account number, or other unique identifier assigned by the wrap lender to the wrap mortgage loan. A wrap lender registrant may maintain the wrap borrower index as a part of other records maintained by the wrap lender registrant; provided, the wrap lender registrant is able to sort, generate, and print, as a separate record, the wrap borrower index in strict alphabetical order.

(3) Wrap Mortgage Transaction File. A wrap lender registrant must maintain a wrap mortgage transaction file for each wrap mortgage loan or be able to produce the same information within a reasonable time upon request. The wrap mortgage transaction file must contain documents demonstrating the wrap lender registrant's compliance with applicable law, including Finance Code Chapter 159, and any applicable state and federal statutes, rules, or regulations. The wrap mortgage loan transaction file must include the following records or documents:

(A) for all wrap mortgage loan transactions:

(i) the promissory note, loan agreement, or repayment agreement, signed by the wrap borrower(s);

(ii) the recorded deed of trust, contract, security deed, security instrument, or other lien transfer document signed by the wrap borrower(s);

(iii) the title insurance policy or abstract of title;

(iv) the initial and final mortgage application (including any attachments, supplements, or addenda thereto), signed and dated by the mortgage applicant and the residential mortgage loan originator, and any other written or recorded information used to evaluate the mortgage application, as required by Regulation B, 12 C.F.R. §1002.4(c);

(v) the real estate contract documenting the sale of the residential real estate securing the wrap mortgage loan;

(vi) the disclosure statement requirement by Finance Code §159.101 and §78.101 of this title (relating to Required Disclosure), including any foreign-language disclosure required by Finance Code §159.102;

(vii) the initial and any revised integrated loan estimate disclosure required by Regulation Z - Truth-in-Lending, 12 C.F.R. §1026.37;

(viii) the initial, revised, and final closing disclosure as required by Regulation Z - Truth-in-Lending, 12 C.F.R. §1026.38;

(ix) any rate lock agreements, or similar document;

(x) the records relating to the ability-to-repay the wrap mortgage loan required by Regulation Z, 12 C.F.R. §1026.25 and §1026.43;

(xi) copies of any appraisal reports or written valuation reports used to determine the value of the residential real estate;

(xii) the privacy notice required by Regulation P, 12 C.F.R. §1016.5; and

(xiii) the wrap borrower's authorization and consent to receive electronic documents as required by the E-sign Act and Regulation Z - Truth-in-Lending, 12 C.F.R. §1026.17(a)(1);

(B) with respect to servicing the wrap mortgage loan, the following additional records are required to be maintained:

(i) any payoff requests received from the wrap borrower, agent of the wrap borrower, another lender, or a title company;

(ii) any payoff statements issued to the wrap borrower, agent of the wrap borrower, another lender, or a title company;

(iii) if the wrap mortgage loan is paid off or otherwise satisfied, a copy of the release of lien;

(iv) receipts or invoices along with proof of payment for any attorneys' fees assessed, charged, or collected in the collection of a delinquent wrap mortgage loan;

(v) if collateral protection insurance is acquired or purchased, a copy of the insurance policy or certificate of insurance and the notice required by Finance Code §307.052;

(vi) any periodic statements or billing invoices sent to the wrap borrower;

(vii) copies of any collection letters or notices sent by the wrap lender registrant or its agent to the wrap borrower;

(viii) any modification, reinstatement, or settlement agreement that is proposed or entered into between the wrap borrower and the wrap lender registrant;

(ix) any records related to a consumer inquiry, complaint, or error resolution;

(x) any records or documents relating to a request for protection under the Servicemembers Civil Relief Act, 50 U.S.C. §3901 et seq.; and

(xi) any other servicing notice, disclosure, or record required by federal or state law;

(C) for wrap mortgage loan transactions involving a foreclosure or attempted foreclosure, the following records:

(i) for transactions involving judicial foreclosure:

(I) any records pertaining to a judicial foreclosure including records from the wrap lender registrant's attorneys, the court, or the wrap borrower or the wrap borrower's agent;

(II) any notice to cure the default sent to the wrap borrower and each superior lienholder as required by Texas Property Code §51.002(d), including verification of delivery of the notice;

(III) any notice of intent to accelerate sent to the wrap borrower and each superior lienholder, including verification of delivery of the notice;

(IV) any notice of acceleration sent to the wrap borrower and each superior lienholder; and

(V) any records related to receipt of the foreclosure proceeds;

(ii) for transactions involving non-judicial foreclosure:

(I) the notice to cure the default sent to the wrap borrower and each superior lienholder as required by Texas Property Code §51.002(d), including verification of delivery of the notice;

(II) the notice of intent to accelerate sent to the wrap borrower and each superior lienholder, including verification of delivery of the notice;

(III) the notice of acceleration sent to the wrap borrower and each superior lienholder;

(IV) the notice of sale required by Texas Property Code §51.002(b) including verification of delivery of the notice;

(V) any records related to the foreclosure sale by the trustee including the person purchasing the property, and the dollar amount of the proceeds received from the foreclosure sale;

(VI) any records related to a short sale, deed-in-lieu of foreclosure, or similar disposition;

(VII) proof of payment of reasonable fees or charges paid by the trustee in connection with the deed of trust or similar instrument including fees for enforcing the lien against or posting for sale, selling, or releasing the residential real estate secured by the deed of trust; and

(VIII) the foreclosure deed upon sale of the property;

(D) for wrap mortgage loan transactions where the wrap borrower provided an actionable notice of rescission and the wrap lender registrant did not avoid the rescission, a copy of the notice of rescission and documentation reflecting that the wrap lender registrant refunded to the wrap borrower all amounts required by Finance Code §159.104(c);

(E) for wrap mortgage loan transactions where the wrap lender avoided the rescission, documentation reflecting that the wrap lender:

(i) paid the outstanding balance due on the debt owed on the residential real estate to the superior lienholders;

(ii) paid any due and unpaid taxes or other governmental assessments owed on the residential real estate;

(iii) paid to the wrap borrower as damages for noncompliance the sum of $1,000 and any reasonable attorneys' fees incurred by the wrap borrower; and

(iv) evidence of compliance with clause (i) or (ii) above provided to the wrap borrower;

(F) for wrap mortgage loan transactions where the wrap borrower has deducted from the amount owed to the wrap lender under the terms of the wrap mortgage loan as authorized by Finance Code §159.202, any records related to this action including the written notice from the wrap borrower required by §78.201 of this title (relating to Right to Deduct; Notice of Deduction), and any actions taken to address the deductions;

(4) General Business Records. General business records include:

(A) all servicing and sub-servicing agreements entered into by the wrap lender registrant as a residential mortgage loan servicer;

(B) policies and procedures related to the origination and servicing of wrap mortgage loans by the wrap lender registrant, including, but not limited to, Quality Control Policy / Compliance Manual, Identify Theft Prevention Program / Red Flags Rule required by 16 C.F.R. §681 et seq., Anti-Money Laundering Program required by Title X of the Financial Institutions Regulatory and Interest Rate Control Act of 1978, Personnel Administration / Employee Policies, Ability-to-Repay Underwriting Policies, and an information security program required by 16 C.F.R. §314.1 et seq.;

(C) records reflecting the disbursement of money to pay the superior lienholders and payment of taxes and insurance for which the wrap lender registrant has received from the wrap borrower;

(D) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to disbursements made in connection with wrap mortgage loans by the wrap lender registrant;

(E) complete records (including invoices and supporting documentation) for all expenses and fees paid in connection with the wrap mortgage loan, including the date and amount of all such payments;

(F) copies of all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any and all correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(G) copies of all contractual agreements or understandings with third parties in any way relating to a wrap mortgage loan transaction;

(H) copies of all reports of audits, examinations, reviews, investigations, or other similar matters performed by any third party, including any regulatory or supervisory authorities; and

(I) copies of all advertisements in the medium (e.g., recorded audio, video, and print) in which they were published or distributed;

(5) Record of the wrap borrower's account (payment and collection history). A separate record must be maintained for the servicing account of each wrap borrower and the record must contain at least the following information on each wrap mortgage loan serviced by the wrap lender registrant:

(A) loan identification number;

(B) loan repayment schedule and terms, itemized to reflect:

(i) the date of the loan;

(ii) the number of installments;

(iii) the due date of installments;

(iv) the amount of each installment; and

(v) the maturity date;

(C) name, address, and phone number of the wrap borrower(s);

(D) legal description of the residential real estate;

(E) principal amount;

(F) total interest charges, including the scheduled base finance charge, points (i.e., prepaid finance charge), and per diem interest;

(G) amount of official fees for recording or releasing a security interest that are collected at the time the loan is made;

(H) individual payment entries, itemized to show:

(i) the date payment was received (dual postings are acceptable if the date of posting is other than the date of receipt);

(ii) actual amounts received for application to principal and interest; and

(iii) actual amounts paid for default, deferment, or other authorized charges;

(I) individual entries for disbursements of funds from a wrap borrower under the terms of wrap mortgage loan to superior lienholders, taxing authorities, insurance companies, or other payees, itemized to show:

(i) the actual date of disbursement; and

(ii) the actual amounts disbursed;

(J) any refunds of unearned charges that are required in the event a loan is prepaid in full, including records of final entries, and entries to substantiate that refunds due were paid to the wrap borrower(s), with refund amounts itemized to show interest charges refunded, including the refund of any unearned points; and

(K) collection contact history, including a record of each contact made by a wrap lender registrant with the wrap borrower or any other person and each contact made by the wrap borrower with the wrap lender registrant, in connection with amounts due, with each record including the date, method of contact, contacted party, person initiating the contact, and a summary of the contact.

(d) A wrap lender registrant must maintain such other books and records as may be required to evidence compliance with applicable state and federal laws, rules, and regulations, including, but not limited to: the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(e) A wrap lender registrant must maintain such other books and records as the Commissioner or the Commissioner's designee may from time to time specify in writing.

(f) Production of Records. All books and records required by this section must be maintained in good order and must be produced for the Commissioner or the Commissioner's designee upon request.

(g) Records Retention Period. All books and records required by this section must be maintained for three years or such longer period(s) as may be required by applicable state or federal laws, rules, and regulations.

(h) Records Retention After Dissolution. Within ten days of termination of operations, a wrap lender registrant must provide the Department with written notice of where the required records will be maintained for the prescribed periods. If such records are transferred to another wrap lender registrant, the transferee must provide the Department with written notice within ten days after receiving such records.

§78.402. Examination of Wrap Lender Registrants.

(a) Purpose. This section clarifies and establishes requirements related to the Commissioner's authority to make inspections of a wrap lender required to register as a residential mortgage loan servicer under Finance Code Chapter 158, as provided by Finance Code §159.252.

(b) Notice of Examination. Except when the Department determines that giving advance notice would impair the examination, the Department will give the primary contact person of the wrap lender registrant listed in NMLS, or a person designated by the primary contact person, advance notice of each examination. Such notice will be sent to the primary contact person's or designated person's mailing address or email address of record with NMLS and will specify the date on which the Department's examiners are scheduled to begin the examination. Failure to actually receive the notice will not be grounds for delay or postponement of the examination. The notice will include a list of the documents and records that must be produced or made available to facilitate the examination.

(c) Scope. Examinations will be conducted to determine compliance with Finance Code Chapter 159, and this chapter, and will specifically address whether:

(1) all required books and records are being maintained in accordance with §78.401 of this title (relating to Required Books and Records by a Wrap Lender Registrant).

(2) all legal and regulatory requirements applicable to the wrap lender registrant are being properly followed; and

(3) other matters as the Commissioner may deem necessary or advisable to carry out the purposes of Finance Code Chapter 159.

(d) The examiners will review a sample of wrap mortgage loan files identified by the examiners and randomly selected from the wrap lender registrant's wrap mortgage servicing log. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(e) The examiners may require a wrap lender registrant, at its own cost, to make copies of loan files or such other books and records as the examiners deem appropriate for the preparation of or inclusion in the examination report.

(f) Confidentiality. The work papers, compilations, findings, reports, summaries, and other materials, in whatever form, relating to an examination conducted under this section, will be maintained as confidential except as permitted or required by law.

(g) Reimbursement for Costs. When the Department must travel outside of Texas to conduct an examination of a wrap lender registrant because the required records are maintained at a location outside of Texas, the Department will require reimbursement for the actual costs incurred by the Department in connection with such travel, including, but not limited to, transportation, lodging, meals, communications, courier service, and any other reasonably related costs.

§78.403. Investigation of Wrap Lender Registrants.

(a) Purpose. The purpose of this section is to implement the requirements of Finance Code §159.252 concerning the Commissioner's authority to conduct an investigation of a wrap lender required to register as a residential mortgage loan servicer under Finance Code Chapter 158.

(b) Reasonable Cause for Investigation. Pursuant to Finance Code §159.252(b), the Commissioner may, upon a finding of reasonable cause, examine a wrap lender registrant to determine whether the wrap lender registrant is complying with Finance Code Chapter 159, and this chapter. Reasonable cause will be deemed to exist if the Commissioner has received information from a source the Commissioner has no reason to believe to be other than reliable, including documentary or other evidence, or information, indicating facts which a prudent person would deem worthy of investigation as a violation of Finance Code Chapter 159, or this chapter.

(c) Investigations will be conducted as deemed appropriate in light of all the relevant facts and circumstances then known. Such investigation may include any or all of the following:

(1) review and consideration of any complaints received by the Department against a wrap lender registrant;

(2) review of documentary evidence;

(3) interviews with complainants, licensees, and third parties;

(4) obtaining reports, advice, and other comments and assistance from other state and/or or federal regulatory, enforcement, or oversight bodies; and

(5) other lawful investigative techniques as the Commissioner deems necessary or appropriate, including, but not limited to, requesting that complainants or other parties that are the subject of a complaint provide explanatory, clarifying, or supplemental information.

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 October 18, 2021.

TRD-202104130
Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: November 28, 2021
For further information, please call: (512) 475-1535

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION
SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.3

The Texas Department of Housing and Community Affairs (the Department) proposes the amendment of 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.3, Sick Leave Pool. The purpose of the proposed amendment is to incorporate the requirements enacted by HB 2063 (87th Regular Legislative Session) which requires state agencies establish a state employee family leave pool via rule.

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

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

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

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

1. The amendment does not create or eliminate a government program but relates to changes to the Department's sick leave pool policy.

2. The amendment 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 amendment does not require additional future legislative appropriations.

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

5. The amendment is not creating a new regulation.

6. The amendment does not repeal a rule.

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

8. The amendment 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 amendment and determined that the amendment 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 amendment 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 amendment as to its possible effects on local economies and has determined that for the first five years the amendment 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 amendment is in effect, the public benefit anticipated as a result of the changed sections would be implementation of HB 2063 and the provision of a clear policy relating to the Department's family leave pool. There will not be economic costs to individuals required to comply with the amendment 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 amendment is in effect, enforcing or administering the amendment 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 October 29, 2021, to November 29, 2021, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, November 29, 2021.

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

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

§1.3. Sick Leave Pool and Family Leave Pool.

(a) A sick leave pool is established to help alleviate hardship caused to an employee and employee's immediate family if a catastrophic illness or injury forces the employee to exhaust all accrued paid leave time earned by that employee and to lose compensation from the state.

(b) A family leave pool is established to help alleviate hardship caused to an employee and employee's immediate family if they are caring for a seriously ill family member or the employee, including pandemic-related illnesses or complications caused by a pandemic or are bonding with and caring for children during a child's first year following birth, adoption, or foster placement which forces the employee to exhaust all accrued paid leave time earned by that employee and to lose compensation from the state.

(c) [~~(1)~~] The Department's Human Resources Director is designated as the pool administrator to both pools.

(d) [~~(2)~~] The pool administrator will recommend a policy, operating procedures, and forms for the administration of this section to the Executive Director for inclusion in the Department's Personnel Policies and Procedures Manual.

(e) [~~(3)~~] Operation of both pools [~~the pool~~] shall be consistent with Tex. Gov't Code, Chapter 661, as amended.

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 October 15, 2021.

TRD-202104080
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: November 28, 2021
For further information, please call: (512) 475-3959

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CHAPTER 5. SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

10 TAC §5.801

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program, §5.801, Project Access Initiative. The purpose of the proposed repeal is to expand the pool of households that may be eligible for a Project Access voucher and facilitating a more rapid exit from an institution into the community.

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

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

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

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

1. The repeal does not create or eliminate a government program but relates to changes to minimally expand the pool of households eligible to participate in the Project Access program.

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

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the changed sections would be the expanded pool of households that may be eligible for a Project Access voucher and the acceleration of a household's possible exit from an institution into the community. 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 October 29, 2021, to November 29, 2021, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, November 29, 2021.

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

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

§5.801. Project Access Initiative.

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 October 15, 2021.

TRD-202104085
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: November 28, 2021
For further information, please call: (512) 475-3959

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10 TAC §5.801

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program, §5.801, Project Access Initiative. The purpose of the proposed rule is to expand the pool of households that may be eligible for a Project Access voucher and facilitating a more rapid exit from an institution into the community.

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

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

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

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

1. The new section does not create or eliminate a government program but relate to changes to existing regulations applicable to household eligibility for the Project Access program.

2. The new section does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The new section does not require additional future legislative appropriations.

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

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

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

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

8. The new section will not negatively or positively affect the state's economy.

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

The Department has evaluated the proposed new section and determined that the proposed 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 proposed new sections do not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed new section is in effect, the public benefit anticipated as a result of the new section would expanding the pool of households that may be eligible for a Project Access voucher and facilitating a household's more rapid exit from an institution into the community. There will not be economic costs to individuals required to comply with the new sections.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 29, 2021, to November 29, 2021, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, November 29, 2021.

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

Except as described herein the proposed new section affects no other code, article, or statute.

§5.801. Project Access Initiative.

(a) Purpose. The Project Access Program (PA Program) is a program that utilizes federal Section 8 Housing Choice Vouchers, Non Elderly Disabled Vouchers, and Mainstream Vouchers administered by the Texas Department of Housing and Community Affairs (the Department) to assist low-income persons with disabilities in transitioning from institutions into the community by providing access to affordable housing. This rule provides the parameters and eligibility standards for this program.

(b) Definitions.

(1) At-Risk Applicant--A household that has applied to the Department's Section 8 Project Access program, and exited an Institution prior to issuance of a Department Section 8 Housing Choice Voucher using an alternate short term rental assistance solution and is at risk of that short term rental assistance ending.

(2) HHSC--Texas Health and Human Services Commission.

(3) HUD--The U.S. Department of Housing and Urban Development.

(4) Institution--Congregate settings populated exclusively or primarily with individuals with disabilities; congregate settings characterized by regimentation in daily activities, lack of privacy or autonomy, policies limiting visitors, or limits on individuals' ability to engage freely in community activities and to manage their own activities of daily living; or settings that provide for daytime activities primarily with other individuals with disabilities. This definition includes but is not limited to a nursing facility, state psychiatric hospital, intermediate care facility, or board and care facility as defined by HUD. The definition for Institution is further limited for vouchers funded with NED as further provided for in subsection (e)(2)(C) of this section. This definition does not include a prison, jail, halfway house, or other setting that persons reside in as part of a criminal proceeding.

(5) Mainstream Vouchers (MVP)--HUD's Mainstream Voucher Program.

(6) Non-Elderly Disabled (NED)--HUD's Non-Elderly Disabled Program.

(7) Section 8--HUD's Section 8 Housing Choice Voucher Program administered by the Department.

(c) Regulations Governing Program. All Section 8 Program rules and regulations, including but not limited to, criterion at 24 CFR Part 982 apply to the program.

(d) Project Access in the Department's PHA Plan. Project Access households have a preference in the Department's Section 8 Program, as designated in the Department's Annual PHA Plan. The total number of Project Access Vouchers will be determined each year in the Department's PHA Plan.

(e) Eligibility for the Project Access Program.

(1) A household that participates in the Project Access Program must meet all Section 8 eligibility criteria, and one member of the household must meet the eligibility criteria in subparagraphs (A) and (B) of this paragraph:

(A) Must have a disability as defined in 24 CFR §5.403; and

(B) Must meet one of the criteria in clauses (i) or (ii) of this subparagraph:

(i) be a resident of an Institution at the time of voucher issuance; or

(ii) be an At-Risk Applicant that meets one of the criteria in subclauses (I) - (IV) of this clause:

(I) A current recipient of Tenant-Based Rental Assistance (TBRA) from a HOME Investment Partnership Program, whose assistance from that HOME source is within six months of expiration and is not eligible for extension or renewal, and was a previous resident of an Institution prior to receiving the TBRA assistance;

(II) A household with a household member who meets the criteria of an At-Risk Applicant and has lost their TBRA from a HOME Investment Partnership Program due to lack of available funding;

(III) A household that is a current recipient of rental assistance funded by HHSC, whose assistance from HHSC is within six months of expiration and is not eligible for extension or renewal, and was a previous resident of an Institution immediately prior to receiving the assistance; or

(IV) A household that is a current recipient of HHSC funded group home housing that was a previous resident of a state hospital immediately prior to receiving the group home assistance.

(2) NED and Mainstream Vouchers have additional eligibility criteria described in subparagraphs (A) - (C) of this paragraph:

(A) The household member with the disability as defined in 24 CFR §5.403, must be 18 but under 62 years of age at the time of voucher issuance;

(B) For NED only, the head of household, spouse, co-head, or sole member, must be a person with a disability; and

(C) For NED only, the qualifying household member must not be an At-Risk Applicant as described in this subsection, must be residing in a nursing facility, Texas state psychiatric hospital, or intermediate care facility immediately prior to voucher issuance, and must also be referred by the applicable HHSC funded agency.

(f) Waiting List and Allocation of Vouchers.

(1) Unless no longer authorized as a set-aside by HUD, no more than 10 percent of the vouchers used in the Project Access Program will be reserved for households with a household member eligible for a pilot program in partnership with the HHSC for Texas state psychiatric hospitals who otherwise meets the criteria of the Project Access Program at the time of voucher issuance.

(2) The Department's Waiting List for PA vouchers will be kept "open" and the Department will accept an application for the PA Program at any time. An applicant for the PA Program is placed on a Waiting List until a voucher becomes available. An applicant who qualifies for the Project Access HHSC Pilot Program in paragraph (1) of this subsection is placed on a Waiting List for Project Access HHSC Pilot Program, and also for the general PA Program Waiting List.

(3) The Department will select applicants off the Waiting List for the Project Access HHSC Pilot Program, and for the general PA Program waitlist to ensure that the Department is utilizing all NED and Mainstream Vouchers before issuing other Section 8 Vouchers.

(4) Maintaining Status on the Project Access Waiting List. A household on the Project Access waiting list may maintain their order and eligibility for a Project Access voucher if the household:

(A) Applied for the PA Program and was placed on the waiting list prior to transition out of an Institution; and

(B) Received continuous rental assistance from one of the eligible sources identified under subsection (e)(1)(B)(ii) of this section, or other Department funding for rental assistance from the time of exit from an Institution until the issuance of the Project Access voucher.

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 October 15, 2021.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: November 28, 2021
For further information, please call: (512) 475-3959

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CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER E. POST AWARD AND ASSET MANAGEMENT REQUIREMENTS

10 TAC §§10.400 - 10.408

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 10, Subchapter E, §§10.400 - 10.408, Post Award and Asset Management Requirements. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

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

1. Mr. Bobby Wilkinson, Executive Director, 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 an existing activity, concerning the post award activities of Low Income Housing Tax Credit (LIHTC) and other Department-funded multifamily Developments.

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 or in a substantial 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 the simultaneous re-adoption making changes to an existing activity, Post Award and Asset Management Requirements.

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

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

2. This rule relates to the procedures for the handling of post award and asset management activities of multifamily developments awarded funds through various Department programs. Other than in the case of a small or micro-business that is an owner or a party to one of the Department's properties, no small or micro-businesses are subject to the rule. If a small or micro-business is such an owner or participant, the new rule provides for a more clear, transparent process for doing so and do not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the proposed rule because this rule is applicable only to the owners or operators of properties in the Department's portfolio, not municipalities.

3. The Department has determined that because this rule relates only to the process in use for the post award and asset management activities of the Department's portfolio, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed 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 will be in effect there will be no economic effect on local employment, as the repealed rule will be replaced with a similar rule; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that no impact is expected on a statewide basis, there are also no "probable" effects of the new rule on particular geographic regions.

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

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the 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, as the repealed rule will be replaced with a similar rule.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 29, 2021, to November 19, 2021, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Lee Ann Chance, Asset Management Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email to leeann.chance@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time November 19, 2021.

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.

§10.400. Purpose.

§10.401. General Commitment or Determination Notice Requirements and Documentation.

§10.402. Housing Tax Credit and Tax Exempt Bond Developments.

§10.403. Review of Annual HOME, NSP, TCAP-RF, and National Housing Trust Fund Rents.

§10.404. Reserve Accounts.

§10.405. Amendments and Extensions.

§10.406. Ownership Transfers (§2306.6713).

§10.407. Right of First Refusal.

§10.408. Qualified Contract Requirements.

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 October 15, 2021.

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Bobby Wilkinson
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10 TAC §§10.400 - 10.408

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter E, §§10.400 - 10.408, Post Award and Asset Management Requirements. The purpose of the proposed new sections is to assist in reviewing and ensuring the long-term affordability and safety of multifamily rental housing Developments in the Department's portfolio as required under Tex. Gov't Code §§2306.185 and 2306.186, perform the functions of processing amendments and ownership transfers as required under §§2306.6712 and 2306.6713, and perform essential functions required under various federal program (HOME, NSP, NHTF, Exchange, TCAP) rules and under Section 42 of the Internal Revenue Code.

The updating of the rules through the proposed new sections will further clarify language and requirements on which questions are often received; remove §10.401, General Commitment or Determination Notice Requirements and Documentation and subsections of §10.402 that have been relocated to the Qualified Allocation Plan; relocate the remaining portion of what is currently §10.402, Housing Tax Credit and Tax Exempt Bond Developments to §10.401; allow for tax credit increases for Non-Competitive HTC Developments that do not exceed 120% of the credits reflected in the Determination Notice to be approved administratively by the Executive Director or designee; remove reference to NHTF cost certification requirement; replace §10.402, Housing Tax Credit and Tax Exempt Bond Developments with a new section named "Requests for Subordination Agreements, HUD Amendments to Restrictive Covenants, or HUD Riders to Restrictive Covenants" that will identify requirements to process such requests and specify that HTC Developments seeking to refinance within two years from the issuance of the IRS Form(s) 8609 must be re-evaluated to determine if the development would have been over sourced with the new financial structure, and if so, specify that the Development Owner may be required to fund a Special Reserve account; add a reference to §11.302(e)(12), which specifies the maximum amount that can be funded to the Special Reserve at cost certification; change amendments to the Right of First Refusal period in the LURA from material to non-material; clarify that amendments to remove the HUB prior to filing the IRS Form(s) 8609 are material; include deed-in-lieu of foreclosure as an exception to the ownership transfer process; change "qualified buyers" to "prospective buyers" under the list of persons and entities required to receive a notice of intent to sell under a Right of First Refusal; and incorporate revisions to the definition of a qualified entity in §10.407, Right of First Refusal in accordance with revision to Tex. Gov't Code §2306.6726(b), as a result of S.B. No. 403 passed by the House on May 25, 2021.

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

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

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed rulemaking would be in effect, the proposed rule does not create or eliminate a government program, but relates to the re-adoption making changes to an existing activity, concerning the post award activities of Low Income Housing Tax Credit (LIHTC) and other Department-funded multifamily Developments.

2. The proposed new rule does not require a change in work that would require the creation of new employee positions. Although a new section was added to the rules for Subordination Agreements, HUD Amendments to Restrictive Covenants, and HUD Riders to Restrictive Covenants, it does not add to the work currently done by staff. The rule changes do not reduce work load such that any existing employee positions could be eliminated.

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

4. The proposed rule changes do not result in an increase in fees paid to the Department. However, the Department does anticipate a nominal decrease in fees paid to the Department by changing amendments to the LURA to reduce the Right of First Refusal period from material to non-material. The addition in the rule that identifies LURA amendment requests to remove the HUB material participation prior to filing of IRS Form(s) 8609 as material does not affect the fees paid to the Department because it only provides clarification and is not a change from how this type of amendment has currently been processed.

5. The proposed rule is not creating a new regulation, but is replacing a rule being repealed simultaneously to provide for revisions. The proposed rule is an update to address sections relocated to the QAP, correct minor errors, provide additional clarification, reduce the number of material amendments, and updates the §10.407(d)(3) of the Right of First Refusal section in accordance to the revision to Tex. Gov't Code §2306.6726(b) by S.B. No. 403 passed by the House on May 25, 2021.

6. The proposed rule is not repealing an existing regulation but will reduce the number of items requiring board approval by increasing the Non-Competitive HTC Developments credit increase threshold that can be approved administratively by the Executive Director or designee from 110% to 120% in §10.401(d). This increase is to help address concerns from Development Owners over increased construction costs during the COVID-19 pandemic. The proposed rule will also reduce the number of material amendments by changing amendments to the Right of First Refusal period in the LURA from material to non-material under §10.405(b).

7. The proposed rule will not increase or decrease the number of individuals subject to the rule's applicability. Though the proposed rule §10.402 Requests for Subordination Agreements, HUD Amendments to Restrictive Covenants, or HUD Riders to Restrictive Covenants has been added, it clarifies the documentation currently requested to process the requests for these documents. It also addresses situations where the financing structure has changed significantly within two years from the issuance of the IRS Form(s) 8609 in order to ensure that the Department complies with the requirement in §42(m)(2)(a) of the Code that specifies the credit amount allocated to the project cannot exceed the amount the Department determines as necessary for the financial feasibility of the project.

8. The proposed rule will not negatively or positively affect this state's economy.

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

1. The Department has evaluated this 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 the handling of post award and asset management activities of multifamily Developments awarded funds through various Department programs. Other than in the case of a small or micro-business that is an owner or a party to one of the Department's properties, no small or micro-businesses are subject to the rule. If a small or micro-business is such an owner or participant, the new rule provides for a more clear, transparent process for doing so and do not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the proposed rule because this rule is applicable only to the owners or operators of properties in the Department's portfolio, not municipalities.

3. The Department has determined that because this rule relates only to the process in use for the post award and asset management activities of the Department's portfolio, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed 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 proposed rule as to its possible effects on local economies and has determined that for the first five years the proposed rule 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. Additionally, because this rule only provides for administrative processes required of properties in the Department's portfolio, no activities under this rule would support additional local employment opportunities. Alternatively, the rule would also not cause any negative impact on employment.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that no impact is expected on a statewide basis, there are also no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the proposed rule sections will be increased efficiency and clarity in post award requirements. The possible economic benefit to individuals required to comply with the proposed section will be a reduction to the amount of fees required to process amendments to reduce the Right of First Refusal period in the LURA.

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 proposed rule does not have any foreseeable implications related to costs or revenues of the state or local government, as the costs to administer any additional proposed requirements will potentially be offset by efficiency gains in other revised processes and will otherwise be absorbed by current Department resources.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 29, 2021, to November 19, 2021, to receive input on the proposed repealed section. Written comments

may be submitted to the Texas Department of Housing and Community Affairs, Attn: Lee Ann Chance, Asset Management Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email to leeann.chance@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time November 19, 2021.

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.

§10.400. Purpose.

(a) The purpose of this subchapter is to establish the requirements governing the post award and asset management activities associated with awards of multifamily Development assistance pursuant to Tex. Gov't Code, Chapter 2306 and its regulation of multifamily funding provided through the Texas Department of Housing and Community Affairs (the "Department") as authorized by the legislature. This subchapter is designed to ensure that Developers and Development Owners of low-income Developments that are financed or otherwise funded through the Department maintain safe, decent and affordable housing for the term of the affordability period. Therefore, unless otherwise indicated in the specific section of this subchapter, any uncorrected issues of noncompliance outside of the corrective action period or outstanding fees (related to the Development subject to the request) owed to the Department must be resolved to the satisfaction of the Department before a request for any post award activity described in this subchapter will be acted upon.

(b) The capitalized terms in this subchapter shall have the meaning as defined in this title in Chapter 1 relating to Administration, Chapter 2 relating to Enforcement, Chapter 10 relating to Uniform Multifamily Rules, Chapter 11 relating to the Qualified Action Plan (QAP), Chapter 12 relating to the Multifamily Housing Revenue Bond Rules, Chapter 13 relating to the Multifamily Direct Loan Rule, Tex. Gov't Code Chapter 2306, Internal Revenue Code (the Code) §42, the HOME Final Rule, the NHTF Interim Rule, and other federal or Department rules, as applicable.

§10.401. Housing Tax Credit and Tax Exempt Bond Developments.

(a) 10% Test (Competitive HTC Only). No later than July 1 of the year following the submission of the Carryover Allocation Agreement or as otherwise specified in the applicable year's Qualified Allocation Plan, documentation must be submitted to the Department verifying that the Development Owner has expended more than 10% of the Development Owner's reasonably expected basis, pursuant to §42(h)(1)(E)(i) and (ii) of the Code and Treasury Regulations, 26 CFR §1.42-6. The Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - (7) of this subsection, along with all information outlined in the Post Award Activities Manual. Satisfaction of the 10% Test will be contingent upon the submission of the items described in paragraphs (1) - (7) of this subsection as well as all other conditions placed upon the Application in the Commitment. Requests for an extension will be reviewed on a case by case basis as addressed in §10.405(c) of this subchapter (relating to Amendments and Extensions) and §11.2 of this title (relating to Program Calendar for Housing Tax Credits), as applicable, and a point deduction evaluation will be completed in accordance with Tex. Gov't Code §2306.6710(b)(2) and §11.9(f) of this title (relating to Competitive HTC Selection Criteria). Documentation to be submitted for the 10% Test includes:

(1) An Independent Accountant's Report and Taxpayer's Basis Schedule form. The report must be prepared on the accounting firm's letterhead and addressed to the Development Owner or an Affiliate of the Development Owner. The Independent Accountant's Report and Taxpayers Basis Schedule form must be signed by the Development Owner. If, at the time the accountant is reviewing and preparing their report, the accountant has concluded that the taxpayer's reasonably expected basis is different from the amount reflected in the Carryover Allocation agreement, then the accountant's report should reflect the taxpayer's reasonably expected basis as of the time the report is being prepared;

(2) Any conditions of the Commitment or Real Estate Analysis underwriting report due at the time of 10% Test submission;

(3) Evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site and a current title policy. The Development Site must be identical to the Development Site that was submitted at the time of Application submission. For purposes of this paragraph, any changes to the Development Site acreage between Application and 10% Test must be addressed by written explanation or, as appropriate, in accordance with §10.405 of this subchapter;

(4) A current survey or plat of the Development Site, prepared and certified by a duly licensed Texas Registered Professional Land Surveyor. The survey or plat must clearly delineate the flood plain boundary lines and show all easements and encroachments;

(5) For New Construction, Reconstruction, and Adaptive Reuse Developments, a certification from a Third Party civil engineer or architect stating that all necessary utilities will be available at the Development Site and that there are no easements, licenses, royalties, or other conditions on or affecting the Development that would materially or adversely impact the ability to acquire, develop, and operate as set forth in the Application. Copies of supporting documents may be required by the Department;

(6) For the Development Owner and on-site or regional property manager, training certificate(s) from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager attended and passed at least five hours of Fair Housing training. For architects and engineers, training certificate(s) from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineer responsible for certifying compliance with the Department's accessibility and construction standards has attended and passed at least five hours of Fair Housing training. Certifications required under this paragraph must not be older than two years from the date of submission of the 10% Test Documentation, and must verify that all parts or phases of the offered training have been completed; two certificates supplied for the same part or phase of an offered training will not be counted towards the five hour required minimum, even if they were attended on different dates; and

(7) A Certification from the lender and syndicator identifying all known Guarantors. If identified Guarantors have changed from the Guarantors or Principals identified at the time of Application, a non-material amendment may be required in accordance with §10.405 of this subchapter, and the new Guarantors or Principals must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(b) Construction Status Report (All Multifamily Developments). All multifamily developments must submit a construction status report. Construction status reports shall be due by the tenth day of the month following each reporting quarter's end (January, April, July, and October) and continue on a quarterly basis until the entire

Development is complete as evidenced by one of the following: Certificates of occupancy for each building, the Architect's Certificate(s) of Substantial Completion (AIA Document G704 or equivalent form) for the entire Development, the final Application and Certificate for Payment (AIA Document G702 and G703), or an equivalent form approved for submission by the construction lender and/or investor. For Competitive Housing Tax Credit Developments, the initial report must be submitted no later than October 10th following the year of award (this includes Developments funded with HTC and TDHCA Multifamily Direct Loans), and for Developments awarded under the Department's Multifamily Direct Loan programs only, the initial report must be submitted 90 calendar days after loan closing. For Tax Exempt Bond Developments, the initial construction status report must be submitted as part of the Post Bond Closing Documentation due no later than 60 calendar days following closing on the bonds. The initial report for all multifamily Developments shall consist of the items identified in paragraphs (1) - (6) of this subsection, unless stated otherwise. All subsequent reports shall contain items identified in paragraphs (4) - (6) of this subsection and must include any changes or amendments to items in paragraphs (1) - (3) of this subsection if applicable:

(1) The executed partnership agreement with the investor or, for Developments receiving an award only from the Department's Direct Loan Program, other documents setting forth the legal structure and ownership. If identified Guarantors or Principals of a Guarantor entity were not already identified as a Principal of the Owner, Developer, or Guarantor at the time of Application, a non-material amendment must be requested in accordance with §10.405 of this subchapter, and the new Guarantors and all of its Principals, as applicable, must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee);

(2) The executed construction contract for the General Contractor, prime subcontractor(s) and Affiliates or Related Party subcontractor(s);

(3) The construction loan agreement. If the loan has not closed, the anticipated closing date must be provided and, upon closing, the agreement must be provided to the Department;

(4) The most recent Application and Certificate for Payment (AIA Document G702 and G703) certified by the Architect of Record (or equivalent form approved for submission by the construction lender and/or investor) for the General Contractor, prime subcontractor(s) and Affiliates or Related Party subcontractor(s);

(5) All Third Party construction inspection reports not previously submitted. If the lender and/or investor does not require third party construction inspection reports, the Development Owner must hire a third party inspector to perform these inspections on a quarterly basis and submit the reports to the Department. Third Party construction inspection reports must include, at a minimum, a discussion of site conditions as of the date of the site visit, current photographs of the construction site and exterior and interior of buildings, an estimated percentage of construction completion as of the date of the site visit, identification of construction delays and other relevant progress issues, if any, and the anticipated construction completion date; and

(6) Minority Owned Business Report (HTC only) showing the attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as required and further described in Tex. Gov't Code §2306.6734.

(c) LURA Origination.

(1) The Development Owner must request origination of the HTC LURA as directed in the Post Award Activities Manual. The Department will draft a LURA for the Development Owner that will impose the income and rent restrictions identified in the Development's final underwriting report and other representations made in the Application, including but not limited to specific commitments to provide tenant services, to lease to Persons with Disabilities, and/or to provide specific amenities. After origination, the Department executed LURA and all exhibits and addendums will be sent to the Development Owner to execute and record in the real property records for the county in which the Development is located. A copy of the fully executed, recorded LURA must be returned to the Department no later than the end of the first year of the Credit Period. In general, no Housing Tax Credits are allowed to be issued for a building unless there is a properly executed and recorded LURA in effect at the end of the first year of the Credit Period. Nothing in this section negates a Development Owner's responsibility for full compliance with §42(h)(6) of the Code. The Department will not issue IRS Form(s) 8609 until it receives a copy of the fully executed, recorded LURA.

(2) LURAs for Direct Loan awardees will be prepared by the Department's Legal Division and executed at loan closing.

(d) Cost Certification (Competitive and Non-Competitive HTC, and related activities only). The Department conducts a feasibility analysis in accordance with §42(m)(2)(C)(i)(III) of the Code and Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) to make a final determination on the allocation of Housing Tax Credits. For Non-Competitive HTC Developments, the amount of tax credits reflected in the IRS Form(s) 8609 may be greater or less than the amount set forth in the Determination Notice based upon the Department's determination as of each building's placement in service. Any increase of tax credits will only be permitted if it is determined necessary by the Department, as required by §42(m)(2)(D) of the Code through the submission of the Cost Certification package. Increases to the amount of tax credits that exceed 120% of the amount of credits reflected in the Determination Notice must be approved by the Board. Increases to the amount of tax credits that do not exceed 120% of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director or designee. All credit increases are subject to the Tax-Exempt Bond Credit Increase Request Fee as described in Chapter 11, Subchapter E of this title (relating to Fee Schedule, Appeals, and other Provisions). The requirements for cost certification include those identified in paragraphs (1) - (3) of this subsection.

(1) Development Owners must file cost certification documentation no later than January 15 following the first year of the Credit Period, as defined in §42(f)(1) of the Code.

(2) The Department will evaluate the cost certification documentation and notify the Development Owner of any additional required documentation needed to complete the review. The Department reserves the right to request additional documents or certifications as it deems necessary or useful in the determination of the Development's eligibility for a final Housing Tax Credit allocation amount. Any communication issued to the Development Owner pertaining to the cost certification documentation may also be sent to the syndicator.

(3) IRS Form(s) 8609 will not be issued until the conditions as stated in subparagraphs (A) - (G) of this paragraph have been met. The Development Owner has:

(A) Provided evidence that all buildings in the Development have been placed in service by:

(i) December 31 of the year the Commitment was issued;

(ii) December 31 of the second year following the year the Carryover Allocation Agreement was executed; or

(iii) the approved Placed in Service deadline;

(B) Provided a complete final cost certification package in the format prescribed by the Department. As used herein, a complete final cost certification package means a package that meets all of the Department's criteria with all required information and exhibits listed in clauses (i) - (xxxiv) of this subparagraph, and pursuant to the Post Award Activities Manual. If any item on this list is determined to be unclear, deficient, or inconsistent with the cost certification review completed by the Department, a Request for Information (RFI) will be sent to the Development Owner. Requirements include:

(i) Owner's signed and notarized Statement of Certification verifying the CPA firm's licenses and validity, including any restrictions;

(ii) Owner Summary & Organization Charts for the Owner, Developer, and Guarantors;

(iii) Evidence of Qualified Nonprofit or CHDO Participation;

(iv) Certification and evidence of Historically Underutilized Business (HUB) Participation;

(v) Development Team List;

(vi) Development Summary with Architect's Certification;

(vii) Development Change Documentation;

(viii) As Built Survey;

(ix) A copy of the fully executed Closing Statement for each parcel of land and/or buildings purchased and included in the Development;

(x) Development Owner's Title Policy for the Development;

(xi) Title Policy Update;

(xii) Placement in Service;

(xiii) Evidence of Placement in Service;

(xiv) Architect's Certification of Completion Date and Date Ready for Occupancy (for Developments located in areas where Certificates of Occupancy (COs) are not issued by a local government or rehabilitation Developments that cannot provide COs);

(xv) Auditor's Certification of Acquisition/Rehabilitation Placement in Service Election;

(xvi) Independent Auditor's Report;

(xvii) Independent Auditor's Report of Bond Financing;

(xviii) Development Cost Schedule;

(xix) Contractor's Application for Final Payment (G702/G703) for the General Contractor, all prime subcontractors, Affiliated Contractors, and Related Party Contractors;

(xx) Additional Documentation of Offsite Costs;

(xxi) Rent Schedule;

(xxii) Utility Allowances;

(xxiii) Annual Operating Expenses;

(xxiv) 30 Year Rental Housing Operating Pro Forma;

(xxv) Current Operating Statement in the form of a trailing twelve month statement;

(xxvi) Current Rent Roll;

(xxvii) Summary of Sources and Uses of Funds;

(xxviii) Final Limited Partnership Agreement with all amendments and exhibits;

(xxix) All Loan Agreements and Promissory Notes (except for Agreements and Notes issued directly by the Department);

(xxx) Architect's Certification of Accessibility Requirements;

(xxxi) Development Owner Assignment of Individual to Compliance Training;

(xxxii) TDHCA Compliance Training Certificate (not older than two years from the date of cost certification submission);

(xxxiii) TDHCA Final Inspection Clearance Letter or evidence of submitted final inspection request to the Compliance Division (IRS Form(s) 8609 will not be issued without a TDHCA Final Inspection Clearance Letter); and

(xxxiv) Other Documentation as Required, including but not limited to conditions to be satisfied at cost certification as reflected in the Development's latest Underwriting Report;

(C) Informed the Department of and received written approval for all amendments, extensions, and changes in ownership relating to the Development in accordance with §10.405 of this subchapter (relating to Amendments and Extensions) and §10.406 of this subchapter (relating to Ownership Transfers (§2306.6713));

(D) Paid all applicable Department fees, including any past due fees;

(E) Met all conditions noted in the Department underwriting report, Determination Notice, and Commitment;

(F) Corrected all issues of noncompliance, including but not limited to noncompliance status with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject Development, as described in this chapter. Developments in the corrective action period and/or with any uncorrected issues of noncompliance outside of the corrective action period will not be issued IRS Form(s) 8609s until all events of noncompliance are corrected or otherwise approved by the Executive Director or designee; and

(G) Completed an updated underwriting evaluation in accordance with Chapter 11, Subchapter D of this title based on the most current information at the time of the review.

§10.402. Requests for Subordination Agreements, HUD Amendments to Restrictive Covenants, or HUD Riders to Restrictive Covenants.

(a) Requests for Subordination Agreements, HUD Amendments to Restrictive Covenants or HUD Riders to Restrictive Covenants from the Department must be reviewed and approved by the Department's Asset Management Division and Legal Division prior to execution. The Development Owner must demonstrate that the Development will remain feasible with the proposed new debt. For HTC Developments seeking to refinance within two years from the issuance of the IRS Form(s) 8609, a review of the Development's cost certification will be conducted to determine if the change in the

financing structure would have affected the credit award. If it is determined that the change to the financing structure, net of additional costs associated with the refinance, would have resulted in over sourcing the Development, thereby resulting in an adjustment to the credit award, the Development Owner may be required to fund a Special Reserve Account in accordance with §10.404 of this subchapter (relating to Reserve Accounts) and in an amount as allowed under §11.302(e)(12) of this title (relating to Underwriting and Loan Policy). Approval from the Board will be required for loan amounts that would cause the Developments to be over-sourced after accounting for the additional costs associated with the refinance and the deposit into the Special Reserve Account. Subordinations or re-subordinations of Developments with Direct Loans from the Department are also subject to the requirements under §13.13(c)(2) of this title (relating to Multifamily Direct Loan Rule) and Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy), including but not limited to §11.302(g)(4).

(b) All requests must include:

(1) Requested document on Department approved template, if available, and completed with the Development specific information;

(2) Documentation such as a loan commitment or application that identifies the proposed loan amount and terms;

(3) If the proposed legal description is different from the legal description in the Department's regulatory agreement, a survey, title commitment, or recorded plat that agrees with the legal description in the requested document. Changes to the Development Site may be subject to further review and approval under §10.405 of this subchapter (relating to Amendments and Extensions); and

(4) Development's most recent 12-month trailing operating statement. If the financial statement indicates that the proposed new debt cannot be supported by the Development, the Development Owner must submit an operating pro forma and a written explanation for the differences from the actual performance of the Development.

§10.403. Review of Annual HOME, NSP, TCAP-RF, and National Housing Trust Fund Rents.

(a) Applicability. For participants of the Department's Multifamily HOME and NSP Direct Loan program, where Commitment of Funds occurred on or after August 23, 2013, the Department is required by 24 CFR §92.252(f) and for all National Housing Trust Fund (NHTF) recipients by 24 CFR §93.302(c)(2), to review and approve or disapprove HOME/NSP/NHTF rents on an annual basis. The Department is also required by 24 CFR §92.219 and §92.252(d)(2) to approve rents where Multifamily Direct Loan funds (including TCAP-RF) are used as HOME match. Development Owners must submit documentation for the review of HOME/NSP/NHTF/TCAP-RF rents by no later than July 1st of each year as further described in the Post Award Activities Manual.

(b) Documentation for Review. The Department will furnish a rent approval request packet for this purpose that will include a request for Development information and an Owner's proposed rent schedule and will require submission of a current rent roll, the most recent 12-month operating statement for the Development, and utility allowance information. The Department may request additional documentation to perform a determination, as needed, including but not limited to annual operating statements, market surveys, or other information related to determining whether rents are sufficient to maintain the financial viability of a project or are in compliance with maximum rent limits.

(c) Review Process. Rents will be approved or disapproved within 30 days of receipt of all items required to be submitted by the Development Owner, and will be issued in the form of a signed letter from the Asset Management Division. Development Owners must keep copies of all approval letters on file at the Development site to be reviewed at the time of Compliance Monitoring reviews.

(d) Compliance. Development Owners for whom this section is applicable are subject to compliance under §10.622 of this chapter (relating to Special Rules Regarding Rents and Limit Violations) and may be subject to penalties under §10.625 of this chapter (relating to Events of Noncompliance). Approval of rents by the Asset Management Division will be limited to a review of the documentation submitted and will not guarantee compliance with the Department's rules or otherwise absolve an Owner of any past, current, or future non-compliance related to Department rules, guidance, Compliance Monitoring visits, or any other rules or guidance to which the Development or its Owner may be subject.

§10.404. Reserve Accounts.

(a) Replacement Reserve Account (§2306.186). The Department will require Development Owners to provide regular maintenance to keep housing sanitary, safe and decent by establishing and maintaining a reserve for replacement account for the Development in accordance with Tex. Gov't Code, §2306.186. The reserve account must be established, in accordance with paragraphs (3) - (6) of this subsection, and maintained through annual or more frequent regularly scheduled deposits, for each Unit in a Development of 25 or more rental Units regardless of the amount of rent charged for the Unit. If the Department is processing a request for loan modification or other request under this subchapter and the Development does not have an existing replacement reserve account or sufficient funds in the reserve to meet future capital expenditure needs of the Development as determined by a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in this section, or as indicated by the number or cost of repairs included in a third party Physical Needs Assessment (PNA), the Development Owner will be required to establish and maintain a replacement reserve account or review whether the amount of regular deposits to the replacement reserve account can be increased, regardless of the number of Units at the Development. The Department shall, through cooperation of its divisions responsible for asset management and compliance, ensure compliance with this section. The duties of the Development Owner under this section cease on the date of a change in ownership of the Development; however, the subsequent Development Owner of the Development is subject to the requirements of this section and any additional or revised requirements the Department may impose after reviewing a Development's compliance history, a PNA submitted by the Owner, or the amount of reserves that will be transferred at the time of any property sale.

(1) The LURA requires the Development Owner to begin making annual deposits to the replacement reserve account on the later of the:

(A) Date that occupancy of the Development stabilizes as defined by the First Lien Lender or, in the absence of a First Lien Lender other than the Department, the date the Property is at least 90% occupied; or

(B) The date when the permanent loan is executed and funded.

(2) The Development Owner shall continue making deposits into the replacement reserve account until the earliest of the:

(A) Date on which the owner suffers a total casualty loss with respect to the Development or the date on which the Devel-

opment becomes functionally obsolete, if the Development cannot be or is not restored;

(B) Date on which the Development is demolished;

(C) Date on which the Development ceases to be used as a multifamily rental property; or

(D) End of the Affordability Period specified by the LURA, or if an Affordability Period is not specified and the Department is the First Lien Lender, then when the Department's loan has been fully repaid or as otherwise agreed by the Owner and Department.

(3) If the Department is the First Lien Lender with respect to the Development or if the establishment of a Reserve Account for repairs has not been required by the First Lien Lender or Bank Trustee, each Development Owner receiving Department assistance for multifamily rental housing shall deposit annually into a separate, Development-specific Reserve Account through the date described in paragraph (2) of this subsection as described in subparagraphs (A) or (B) of this paragraph:

(A) For New Construction and Reconstruction Developments, not less than $250 per Unit. Withdrawals from such account will be restricted for up to five years following the date of award except in cases in which written approval from the Department is obtained relating to casualty loss, natural disaster, reasonable accommodations, or demonstrated financial hardship (but not for the construction standards required by the NOFA or program regulations); or

(B) For Adaptive Reuse and Rehabilitation Developments, the greater of the amount per Unit per year either established by the information presented in a Scope and Cost Review in conformance with Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) or $300 per Unit per year.

(4) For all Developments, a PNA must be conducted at intervals that are consistent with requirements of the First Lien Lender, other than the Department. If the Department is the First Lien Lender, or the First Lien Lender does not require a Third Party PNA, a PNA must be conducted at least once during each five-year period beginning with the 11th year after the awarding of any financial assistance from the Department. PNAs conducted by the Owner at any time or for any reason other than as required by the Department in the year beginning with the 11th year of award must be submitted to the Department for review within 30 days of receipt by the Owner.

(5) Where there is a First Lien Lender other than the Department or a Bank Trustee as a result of a bond trust indenture or tax credit syndication, the Development Owner shall comply with the lesser of the replacement reserve requirements of the First Lien Lender or the requirements in paragraph (3) of this subsection. In addition, the Department should be listed as a party to receive notice under any replacement reserve agreement entered into by the Development Owner. The Development Owner shall submit on an annual basis, within the Department's required Development Owner's Financial Certification packet, requested information regarding:

(A) The reserve for replacement requirements under the first lien loan agreement (if applicable) referencing where those requirements are contained within the loan documents;

(B) Compliance with the first lien lender requirements outlined in subparagraph (A) of this paragraph;

(C) If the Owner is not in compliance with the lender requirements, the Development Owner's plan of action to bring the Development in compliance with all established reserve for replacement requirements; and

(D) Whether a PNA has been ordered and the Owner's plans for any subsequent capital expenditures, renovations, repairs, or improvements.

(6) Where there is no First Lien Lender but the allocation of funds by the Department and Tex. Gov't Code, §2306.186 requires that the Department oversee a Reserve Account, the Development Owner shall provide at their sole expense an escrow agent acceptable to the Department to act as Bank Trustee as necessary under this section. The Department shall retain the right to replace the escrow agent with another Bank Trustee or act as escrow agent at a cost plus fee payable by the Development Owner due to breach of the escrow agent's responsibilities or otherwise with 30 days prior notice of all parties to the escrow agreement.

(7) Penalties and Non-Compliance. If the Development Owner fails to comply with the replacement reserve account requirements stated in this paragraph, and request for extension or waiver of these requirements is not approved by the Department, then a penalty of up to $200 per dwelling Unit in the Development and/or characterization of the Development as being in default with this requirement, may be imposed. Causes include:

(A) A Reserve Account, as described in this section, has not been established for the Development;

(B) The Department is not a party to the escrow agreement for the Reserve Account, if required;

(C) Money in the Reserve Account:

(i) is used for expenses other than necessary repairs, including property taxes or insurance; or

(ii) falls below mandatory annual, monthly, or Department approved deposit levels;

(D) Development Owner fails to make any required deposits;

(E) Development Owner fails to obtain a Third-Party PNA as required under this section or submit a copy of a PNA to the Department within 30 days of receipt; or

(F) Development Owner fails to make necessary repairs in accordance with the Third Party PNA or §10.621 of this chapter (relating to Property Condition Standards).

(8) Department-Initiated Repairs. The Department or its agent may make repairs to the Development within 30 calendar days of written notice from the Department if the Development Owner fails to complete necessary repairs indicated in the submitted PNA or identified by Department physical inspection. Repairs may be deemed necessary if the Development Owner fails to comply with federal, state, and/or local health, safety, or building code requirements. Payment for necessary repairs must be made directly by the Development Owner or through a replacement Reserve Account established for the Development under this section. The Department or its agent will be allowed to produce a Request for Bids to hire a contractor to complete and oversee necessary repairs. In the event the circumstances identified in subparagraphs (A) or (B) of this paragraph occur, funds withdrawn must be replaced from Cash Flow after payment of Operating Expenses but before return to Development Owner or deferred Developer Fee until the mandatory deposit level is replenished. The Department reserves the right to re-evaluate payments to the reserve, increase such payments or require a lump sum deposit to the reserve, or require the Owner to enter into a separate Reserve Agreement if necessary to protect the long term feasibility of the Development. On a case-by-case basis, the Department may determine that the money in the Reserve Account may

be used for expenses other than necessary repairs, including property taxes or insurance, if:

(A) Development income before payment of return to Development Owner or deferred Developer Fee is insufficient to meet operating expense and debt service requirements; or

(B) Development income after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is insufficient to fund the mandatory deposit levels.

(9) Exceptions to Replacement Reserve Account. This section does not apply to a Development for which the Development Owner is required to maintain a Reserve Account under any other provision of federal or state law.

(10) In the event of paragraph (7) or (8) of this subsection occurring, the Department reserves the right to require by separate Reserve Agreement a revised annual deposit amount and/or require Department concurrence for withdrawals from the Reserve Account to bring the Development back into compliance. Establishment of a new Bank Trustee or transfer of reserve funds to a new, separate and distinct account may be required if necessary to meet the requirements of such Agreement. The Agreement will be executed by the Department, Development Owner, and financial institution representative.

(b) Lease-up Reserve Account. A lease-up reserve funds start-up expenses in excess of the revenue produced by the Development prior to stabilization. The Department will consider a reasonable lease-up reserve account based on the documented requirements from a third-party lender, third-party syndicator, or the Department. During the underwriting at the point of the Cost Certification review, the lease-up reserve may be counted as a use of funds only to the extent that it represents operating shortfalls net of escrows for property taxes and property insurance. Funds from the lease-up reserve used to satisfy the funding requirements for other reserve accounts may not be included as a use of funds for the lease-up reserve. Funds from the lease-up reserve distributed or distributable as cash flow to the Development Owner will be considered and restricted as developer fee.

(c) Operating Reserve Account. At various stages during the application, award process, and during the operating life of a Development, the Department will conduct a financial analysis of the Development's total development costs and operating budgets, including the estimated operating reserve account deposit required. For example, this analysis typically occurs at application and cost certification review. The Department will consider a reasonable operating reserve account deposit in this analysis based on the needs of the Development and requirements of third-party lenders or investors. The amount used in the analysis will be the amount described in the project cost schedule or balance sheet, if it is within the range of two to six months of stabilized operating expenses plus debt service. The Department may consider a greater amount proposed or required by the Department, any superior lien lender, or syndicator, if the detail for such greater amount is reasonable and well documented. Reasonable operating reserves in this chapter do not include capitalized asset management fees, guaranty reserves, or other similar costs. In no instance will operating reserves exceed 12 months of stabilized operating expenses plus debt service (exclusive of transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Operating reserves are generally for the term of the permanent loan. In no instance will operating reserves released within five years be included as a cost.

(d) Special Reserve Account. If the funding program requires or allows for the establishment and maintenance of a Special Reserve Account for the purpose of assisting residents at the Development with expenses associated with their tenancy, this will be established in accordance with a written agreement with the Development Owner.

(1) The Special Reserve Account is funded through a one-time payment or annually through an agreed upon percentage of net cash flow generated by the Development, excess development funds at completion as determined by the Department, or as otherwise set forth in the written agreement. For the purpose of this account, net cash flow is defined as funds available from operations after all expenses and debt service required to be paid have been considered. This does not include a deduction for depreciation and amortization expense, deferred developer fee payment, or other payments made to Related Parties or Affiliates, except as allowed by the Department for property management. Proceeds from any refinancing or other fund raising from the Development will be considered net cash flow for purposes of funding the Special Reserve Account unless otherwise approved by the Department. Deposits to a Special Reserve at cost certification will be limited in accordance with §11.302(e)(12) of this title (relating to Underwriting Rules and Guidelines). The account will be structured to require Department concurrence for withdrawals.

(2) All disbursements from the account must be approved by the Department.

(3) The Development Owner will be responsible for setting up a separate and distinct account with a financial institution acceptable to the Department. A Special Reserve Account Agreement will be drafted by the Department and executed by the Department and the Development Owner.

(4) The Development Owner must make reasonable efforts to notify tenants of the existence of the Special Reserve Account and how to submit an application to access funds from the Special Reserve. Documentation of such efforts must be kept onsite and made available to the Department upon request.

(e) Other Reserve Accounts. Additional reserve accounts may be recognized by the Department as necessary and required by the Department, superior lien lender, or syndicator.

§10.405. Amendments and Extensions.

(a) Amendments to Housing Tax Credit (HTC) Application or Award Prior to Land Use Restriction Agreement (LURA) recording or amendments that do not result in a change to the LURA (§2306.6712). The Department expects the Development Owner to construct or rehabilitate, operate, and own the Development consistent with the representations in the Application. The Department must receive notification of any amendments to the Application. Regardless of development stage, the Board shall re-evaluate a Development that undergoes a material change, as identified in paragraph (3) of this subsection at any time after the initial Board approval of the Development (§2306.6731(b)). The Board may deny an amendment request and subsequently may rescind any Commitment or Determination Notice issued for an Application, and may reallocate the credits to other Applicants on the waiting list.

(1) Requesting an amendment. The Department shall require the Applicant to file a formal, written request for an amendment to the Application. Such request must include a detailed explanation of the amendment request and other information as determined to be necessary by the Department, and the applicable fee as identified in Chapter 11, Subchapter E of this title (relating to Fee Schedule, Appeals, and other Provisions) in order to be received and processed by the Department. Department staff will evaluate the amendment request to determine if the change would affect an allocation of Housing Tax Credits by changing any item that received points, by significantly affecting the most recent underwriting analysis, or by materially altering the Development as further described in this subsection.

(2) Notification Items. The Department must be notified of the changes described in subparagraphs (A) - (F) of this paragraph. The changes identified are subject to staff agreement based on a review of the amendment request and any additional information or documentation requested. Notification items will be considered satisfied when an acknowledgment of the specific change(s) is received from the Department and include:

(A) Changes to Development Site acreage required by the City or other local governmental authority, or changes resulting from survey discrepancies, as long as such change does not also result in a modification to the residential density of more than 5%;

(B) Minor modifications to the site plan that will not significantly impact development costs, including, but not limited to, relocation or rearrangement of buildings on the site (as long as the number of residential and non-residential buildings remains the same), and movement, addition, or deletion of ingress/egress to the site;

(C) Increases or decreases in net rentable square footage or common areas that do not result in a material amendment under paragraph (4) of this subsection;

(D) Changes in amenities that do not require a change to the recorded LURA and do not negatively impact scoring, including changes to outdated amenities that could be replaced by an amenity with equal benefit to the resident community;

(E) Changes in Developers or Guarantors (notifications for changes in Guarantors that are also the General Contractor or are only providing guaranties during the construction period are not required) with no new Principals (who were not previously checked by Previous Participation review that retain the natural person(s) used to meet the experience requirement in Chapter 11 of this title (relating to Qualified Allocation Plan)); and

(F) Any other amendment not identified in paragraphs (3) and (4) of this subsection.

(3) Non-material amendments. The Executive Director or designee may administratively approve all non-material amendments, including, but not limited to:

(A) Any amendment that is determined by staff to exceed the scope of notification acknowledgement, as identified in paragraph (2) of this subsection but not to rise to a material alteration, as identified in paragraph (4) of this subsection;

(B) Changes in the natural person(s) used to meet the experience requirement in Chapter 11, §11.204(6) of this title (relating to Required Documentation for Application Submission) provided that an appropriate substitute has been approved by the Multifamily Division prior to receipt of the amendment request (relating to Required Documentation for Application Submission);

(C) Changes in Developers or Guarantors (excluding changes in Guarantors that are also the General Contractor or are only providing guaranties during the construction period) not addressed in paragraph (2)(E) of this subsection. Changes in Developers or Guarantors will be subject to Previous Participation requirements as further described in Chapter 11 of this title and the credit limitation described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits); and

(D) For Exchange Developments only, requests to change elections made on line 8(b) of the IRS Form(s) 8609 to group buildings together into one or more multiple building projects. The request must include an attached statement identifying the buildings in the project. The change to the election may only be made once during the Compliance Period.

(4) Material amendments. Amendments considered material pursuant to this paragraph must be approved by the Board. When an amendment request requires Board approval, the Development Owner must submit the request and all required documentation necessary for staff's review of the request to the Department at least 45 calendar days prior to the Board meeting in which the amendment is anticipated to be considered. Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting (§2306.6717(a)(4)). Material Amendment requests may be denied if the Board determines that the modification proposed in the amendment would materially alter the Development in a negative manner or would have adversely affected the selection of the Application in the Application Round. Material alteration of a Development includes, but is not limited to:

(A) A significant modification of the site plan;

(B) A modification of the number of Units or bedroom mix of Units;

(C) A substantive modification of the scope of tenant services;

(D) A reduction of 3% or more in the square footage of the Units or common areas;

(E) A significant modification of the architectural design of the Development;

(F) A modification of the residential density of at least 5%;

(G) A request to implement a revised election under §42(g) of the Code prior to filing of IRS Form(s) 8609;

(H) Exclusion of any requirements as identified in Chapter 11, Subchapter B of this title (relating to Site and Development Requirements and Restrictions) and Chapter 11, Subchapter C of this title (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules); or

(I) Any other modification considered material by the staff and therefore required to be presented to the Board as such.

(5) Amendment requests will be denied if the Department finds that the request would have changed the scoring of an Application in the competitive process such that the Application would not have received a funding award or if the need for the proposed modification was reasonably foreseeable or preventable by the Applicant at the time the Application was submitted, unless good cause is found for the approval of the amendment.

(6) This section shall be administered in a manner that is consistent with §42 of the Code. If a Development has any uncorrected issues of noncompliance outside of the corrective action period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department before a request for amendment will be acted upon.

(7) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants identified in the Application and Credit Underwriting Analysis Report at the time of award and as approved by the Board, the procedure described in subparagraphs (A) and (B) of this paragraph will apply to the extent such request is not prohibited based on statutory and/or regulatory provisions:

(A) For amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence noted in either clause (i) or (ii) of this subparagraph must be presented to the Department to support the amendment:

(i) In the event of a request to implement (rent to a household at an income or rent level that exceeds the approved AMI limits established by the minimum election within the Development's Application or LURA) a revised election under §42(g) of the Code prior to an Owner's submission of IRS Form(s) 8609 to the IRS, Owners must submit updated information and exhibits to the Application as required by the Department and all lenders and the syndicator must submit written acknowledgement that they are aware of the changes being requested and confirm any changes in terms as a result of the new election; or

(ii) For all other requests for reductions in the total number of Low-Income Units or reductions in the number of Low-Income Units at any rent or income level, prior to issuance of IRS Form(s) 8609 by the Department, the lender and syndicator must submit written confirmation that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request; however, any affirmative recommendation to the Board is contingent upon concurrence from Department staff that the Unit adjustment is necessary for the continued financial feasibility of the Development; and

(B) If it is determined by the Department that the loss of low-income targeting points would have resulted in the Application not receiving an award in the year of allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for 24 months from the time that the amendment is approved.

(b) Amendments to the LURA. Department approval shall be required for any amendment to a LURA in accordance with this section. An amendment request shall be submitted in writing, containing a detailed explanation of the request, the reason the change is necessary, the good cause for the change, financial information related to any financial impact on the Development, information related to whether the necessity of the amendment was reasonably foreseeable at the time of application, and other information as determined to be necessary by the Department, along with any applicable fee as identified in Chapter 11, Subchapter E of this title (relating to Fee Schedule, Appeals, and other Provisions). The Department may order or require the Development Owner to order a Market Study or appraisal at the Development Owner's expense. If a Development has any uncorrected issues of non-compliance outside of the corrective action period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department, before a request for amendment will be acted upon. The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), 24 CFR Part 93 (NHTF Interim Rule), Chapter 1 of this title (relating to Administrative Requirements), Chapter 11 of this title (relating to Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), Chapter 13 of this title (relating to Multifamily Direct Loan Rule), Tex. Gov't Code, Chapter 2306, and the Fair Housing Act. For Tax-Exempt Bond Developments, compliance with their Regulatory Agreement and corresponding bond financing documents. Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraph (3) of this subsection must be followed.

(1) Non-Material LURA Amendments. The Executive Director or designee may administratively approve all LURA amendments not defined as Material LURA Amendments pursuant to paragraph (2) of this subsection. A non-material LURA amendment may include but is not limited to:

(A) HUB participation removal. Removal of a HUB participation requirement will only be processed as a non-material LURA amendment after the issuance of IRS Form(s) 8609 and requires that the Department find that:

(i) the HUB is requesting removal of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(ii) the participation by the HUB has been substantive and meaningful, or would have been substantive or meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operating of affordable housing; and

(iii) where the HUB will be replaced as a general partner or special limited partner that is not a HUB and will sell its ownership interest, an ownership transfer request must be submitted as described in §10.406 of this subchapter (relating to Ownership Transfers (§2306.6713));

(B) A change resulting from a Department work out arrangement as recommended by the Department's Asset Management Division;

(C) A change in the Right of First Refusal period as described in amended §2306.6726 of the Tex. Gov't Code;

(D) Where the Board has approved a de minimis modification of the Unit Mix or bedroom mix of Units to increase the Development's accessibility; or

(E) A correction of error.

(2) Material LURA Amendments. Development Owners seeking LURA amendment requests that require Board approval must submit the request and all required documentation necessary for staff's review of the request to the Department at least 45 calendar days prior to the Board meeting at which the amendment is anticipated to be considered. Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. (§2306.6717(a)(4)). The Board must consider the following material LURA amendments:

(A) Reductions to the number of Low-Income Units;

(B) Changes to the income or rent restrictions;

(C) Changes to the Target Population;

(D) The removal of material participation by a Nonprofit Organization as further described in §10.406 of this subchapter;

(E) The removal of material participation by a HUB prior to filing of IRS Form(s) 8609;

(F) Any amendment that affects a right enforceable by a tenant or other third party under the LURA; or

(G) Any LURA amendment deemed material by the Executive Director.

(3) Prior to staff taking a recommendation to the Board for consideration, the Development Owner must provide notice and hold a public hearing regarding the requested amendment(s) at least 20 business days prior to the scheduled Board meeting where the request will be considered. Development Owners will be required to submit a copy of the notification with the amendment request. If a LURA amendment is requested prior to issuance of IRS Form(s) 8609 by the Department, notification must be provided to the recipients described in subparagraphs (A) - (E) of this paragraph. If an amendment is requested after issuance of IRS Form(s) 8609 by the Department, notification must be provided to the recipients described in subparagraph (A) - (B) of this paragraph. Notifications include:

(A) Each tenant of the Development;

(B) The current lender(s) and investor(s);

(C) The State Senator and State Representative of the districts whose boundaries include the Development Site;

(D) The chief elected official for the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction); and

(E) The county commissioners of the county in which the Development Site is located (if the Development Site is located outside of a municipality).

(4) Contents of Notification. The notification must include, at a minimum, all of the information described in subparagraphs (A) - (D) of this paragraph:

(A) The Development Owner's name, address and an individual contact name and phone number;

(B) The Development's name, address, and city;

(C) The change(s) requested; and

(D) The date, time and location of the public hearing where the change(s) will be discussed.

(5) Verification of public hearing. Minutes of the public hearing and attendance sheet must be submitted to the Department within three business days after the date of the public hearing.

(6) Approval. Once the LURA Amendment has been approved administratively or by the Board, as applicable, Department staff will provide the Development Owner with a LURA amendment for execution and recording in the county where the Development is located.

(c) HTC Extensions. Extensions must be requested if the original deadline associated with Carryover, the 10% Test (including submission and expenditure deadlines), construction status reports, or cost certification requirements will not be met. Extension requests submitted at least 30 calendar days in advance of the applicable deadline will not be required to submit an extension fee as described in §11.901 of this title. Any extension request submitted fewer than 30 days in advance of the applicable deadline or after the applicable deadline will not be processed unless accompanied by the applicable fee. Extension requests will be approved by the Executive Director or designee, unless, at staff's discretion it warrants Board approval due to extenuating circumstances stated in the request. The extension request must specify a requested extension date and the reason why such an extension is required. If the Development Owner is requesting an extension to the Carryover submission or 10% Test deadline(s), a point deduction evaluation will be completed in accordance with Tex. Gov't Code, §2306.6710(b)(2), and §11.9(f) of this title (relating to Factors Affecting Scoring and Eligibility in current and future Application Rounds). Therefore, the Development Owner must clearly describe in their request for an extension how the need for the extension was beyond the reasonable control of the Applicant/Development Owner and could not have been reasonably anticipated. Carryover extension requests will not be granted an extended deadline later than December 1st of the year the Commitment was issued.

§10.406. Ownership Transfers (§2306.6713).

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice and a completed Ownership Transfer packet, if applicable, to the Department at least 45 calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Except as otherwise provided herein, the Executive Director's prior written approval of any such transfer is required. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section.

(b) Exceptions. The exceptions to the ownership transfer process in paragraphs (1) - (4) of this subsection are applicable.

(1) A Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new Principals or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval but must be reported to the Department as soon as possible due to the sensitive timing and nature of this decision. In the event the investment limited partner has proposed a new general partner or will permanently replace the general partner, a full Ownership Transfer packet must be submitted.

(3) Changes to the investment limited partner, non-Controlling limited partner, or other non-Controlling partners affiliated with the investment limited partner do not require Executive Director approval. A General Partner's acquisition of the interest of the investment limited partner does not require Executive Director approval, unless some other change in ownership is occurring as part of the same overall transaction.

(4) Changes resulting from foreclosure do not require advance approval but acquiring parties must notify the Department as soon as possible of the revised ownership structure and ownership contact information.

(c) General Requirements.

(1) Any new Principal in the ownership of a Development must be eligible under §11.202 of Subchapter C (relating to Ineligible Applicants and Applications). In addition, Persons and Principals will be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(2) Changes in Developers or Guarantors must be addressed as non-material amendments to the application under §10.405 of this subchapter (relating to Amendments and Extensions).

(3) To the extent an investment limited partner or its Affiliate assumes a Controlling interest in a Development Owner, such acquisition shall be subject to the Ownership Transfer requirements set forth herein. Principals of the investment limited partner or Affiliate will be considered new Principals and will be reviewed as stated under paragraph (1) of this subsection.

(4) Simultaneous transfer or concurrent offering for sale of the General Partner's and Limited Partner's control and interest will be

subject to the Ownership Transfer requirements set forth herein and will trigger a Right of First Refusal, if applicable.

(d) Transfer Actions Warranting Debarment. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure or the Department at risk for financial exposure as a result of non-compliance, staff will refer the matter to the Enforcement Committee for debarment consideration pursuant to §2.401 of this title (relating to Enforcement, Debarment from Participation in Programs Administered by the Department). In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), prior to recommending any new financing or allocation of credits.

(e) Transfers Prior to 8609 Issuance or Construction Completion. Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs), an Applicant may request an amendment to its ownership structure to add Principals. The party(ies) reflected in the Application as having Control must remain in the ownership structure and retain Control, unless approved otherwise by the Executive Director. A development sponsor, General Partner or Development Owner may not sell the Development in whole or voluntarily end their Control prior to the issuance of 8609s.

(f) Nonprofit Organizations. If the ownership transfer request is to replace a nonprofit organization within the Development ownership entity, the replacement nonprofit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Nonprofit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Nonprofit Organization that meets the requirements of §42(h)(5) of the Code and Tex. Gov't Code §2306.6706, if applicable, and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) If the LURA requires ownership or material participation in ownership by a nonprofit organization or CHDO, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA. If the transferee has been certified as a CHDO by TDHCA prior to 2016 or has not previously been certified as a CHDO by TDHCA, a new CHDO certification package must be submitted for review. If the transferee was certified as a CHDO by TDHCA after 2016, provided no new federal guidance or rules concerning CHDO have been released and the proposed ownership structure at the time of review meets the requirements in 24 CFR Part 92, the CHDO may instead submit a CHDO Self-Certification form with the Ownership Transfer package.

(3) Exceptions to paragraphs (1) and (2) of this subsection may be made on a case by case basis if the Development (for MFDL) is past its Federal Affordability Period or (for HTC Developments) is past its Compliance Period, was not reported to the IRS as part of the Department's Nonprofit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1) - (5) of this subchapter. The Board must find that:

(A) The selling nonprofit is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(B) The participation by the nonprofit was substantive and meaningful during the full term of the Compliance Period but is no longer substantive or meaningful to the operations of the Development; and

(C) The proposed purchaser is an affiliate of the current Owner or otherwise meets the Department's standards for ownership transfers.

(g) Historically Underutilized Business (HUB) Organizations. If a HUB is the general partner or special limited partner of a Development Owner and it determines to sell its ownership interest, after the issuance of IRS Form(s) 8609, the purchaser of that partnership interest or the general or special limited partner is not required to be a HUB as long as the LURA does not require it or the procedure described in §10.405(b)(1) of this subchapter has been followed and approved. The removal of a HUB requirement prior to filing of IRS Form(s) 8609 is subject to the procedure described in §10.405(b)(2) of this subchapter.

(h) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances pertaining to the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

(1) A written explanation outlining the reason for the request;

(2) Ownership transfer information, including but not limited to the type of sale, terms of any new financing introduced as a result of the transfer, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

(3) Pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §11.204(13)(B) of Subchapter C of this title (relating to Required Documentation for Application Submission);

(4) A list of the names and contact information for transferees and Related Parties;

(5) Previous Participation information for any new Principal as described in §11.204(13)(C) of this title (relating to Required Documentation for Application Submission);

(6) Agreements among parties associated with the transfer;

(7) Owners Certifications with regard to materials submitted as further described in the Post Award Activities Manual;

(8) Detailed information describing the organizational structure, experience, and financial capacity of any party holding a controlling interest in any Principal or Controlling entity of the prospective Development Owner;

(9) Evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least 30 calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30-day period has expired; and

(10) Any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.

(i) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee),

to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §11.202 of this title (relating to Ineligible Applicants and Applications).

(j) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) In cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) In cases where the general partner is being replaced if the award of credits was made at least five years prior to the transfer request date.

(k) Penalties, Past Due Fees and Underfunded Reserves. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring) and Subchapter G of this chapter (relating to Affirmative Marketing Requirements and Written Policies and Procedures). The Development Owner on record with the Department will be liable for any penalties or fees imposed by the Department (even if such penalty can be attributable to the new Development Owner) unless an ownership transfer has been approved by the Department. In the event a transferring Development has a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PNA or SCR, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer. A PNA or SCR may be requested if one has not already been received under §10.404 of this subchapter (relating to Reserve Accounts).

(l) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by the corresponding ownership transfer fee as outlined in §11.901 of this title (relating to Fee Schedule).

§10.407. Right of First Refusal.

(a) General. This section applies to Development Owners that agreed to offer a Right of First Refusal (ROFR) to a Qualified Entity or as applicable a Qualified Nonprofit Organization, as memorialized in the applicable LURA. For the purposes of this section, a Qualified Nonprofit Organization also includes an entity 100% owned by a Qualified Nonprofit Organization pursuant to §42(h)(5)(C) of the Code and operated in a similar manner. The purpose of this section is to provide administrative procedures and guidance on the process and valuation of properties under the LURA. All requests for ROFR submitted to the Department, regardless of existing regulations, must adhere to this process.

(1) The Development Owner may market the Property for sale and enter into an agreement to sell the Property to a Qualified Entity, or as applicable a Qualified Nonprofit Organization without going through the ROFR process outlined in this section, unless otherwise restricted or prohibited and only in the following circumstances:

(A) The LURA includes a 90-day ROFR and the Development Owner is selling to a Qualified Nonprofit Organization;

(B) The LURA includes a two-year ROFR and the Development Owner is selling to a Qualified Nonprofit Organization that meets the definition of a Community Housing Development Organization (CHDO) under 24 CFR Part 92, as approved by the Department; or

(C) The LURA includes a 180-day ROFR, and the Development Owner is selling to a Qualified Entity that meets the definition of a CHDO under 24 CFR Part 92, or that is controlled by a CHDO, as approved by the Department.

(2) A ROFR request must be made in accordance with the LURA for the Development. If there is a conflict between the Development's LURA and this subchapter, every effort will be made to harmonize the provisions. If the conflict cannot be resolved, requirements in the LURA will supersede this subchapter. If there is a conflict between the Development's LURA and Tex. Gov't Code Chapter 2306, every effort will be made to harmonize the provisions. A Development Owner may request a LURA amendment to make the ROFR provisions in the LURA consistent with Tex. Gov't Code Chapter 2306 at any time.

(3) If a LURA includes the ROFR provision, the Development Owner may not request a Preliminary Qualified Contract (if such opportunity is available under the applicable LURA and §10.408 of this subchapter (relating to Qualified Contract Requirements)) until the requirements outlined in this section have been satisfied.

(4) The Department reviews and approves all ownership transfers pursuant to §10.406 of this subchapter (relating to Ownership Transfers (§2306.6713)). Thus, if a proposed purchaser is identified by the Owner in accordance with paragraph (1) of this subsection or in the ROFR process, the Development Owner and proposed purchaser must complete the ownership transfer process. A Development Owner may not transfer a Development to a Qualified Nonprofit Organization or Qualified Entity that is considered an ineligible entity under the Department's rules. In addition, ownership transfers to a Qualified Entity or as applicable a Qualified Nonprofit Organization pursuant to the ROFR process are subject to Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(5) Satisfying the ROFR requirement does not terminate the LURA or the ongoing application of the ROFR requirement to any subsequent Development Owner.

(6) If there are multiple buildings in the Development, the end of the 15th year of the Compliance Period will be based upon the date the last building(s) began their credit period(s). For example, if five buildings in the Development began their credit periods in 2007 and one in 2008, the 15th year would be 2022. The ROFR process is triggered upon:

(A) The Development Owner's determination to sell the Development to an entity other than as permitted in paragraph (1) of this subsection; or

(B) The simultaneous transfer or concurrent offering for sale of a General Partner's and limited partner's interest in the Development Owner's ownership structure.

(7) The ROFR process is not triggered if a Development Owner seeks to transfer the Development to a newly formed entity:

(A) That is under common control with the Development Owner; and

(B) The primary purpose of the formation of which is to facilitate the financing of the rehabilitation of the Development using assistance administered through a state financing program.

(8) This section applies only to a Right of First Refusal memorialized in the Department's LURA. This section does not authorize a modification of any other agreement between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity. The enforceability of a contractual agreement between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity may be impacted by the Development Owner's commitments at Application and recorded LURA.

(b) Right of First Refusal Offer Price. There are two general expectations of the ROFR offer price identified in the outstanding LURAs. The descriptions in paragraphs (1) and (2) of this subsection do not alter the requirements or definitions included in the LURA but provide further clarification as applicable:

(1) Fair Market Value is established using either a current appraisal (completed within three months prior to the ROFR request and in accordance with §11.304 of this title (relating to Appraisal Rules and Guidelines)) of the Property or an executed purchase offer that the Development Owner would like to accept. In either case the documentation used to establish Fair Market Value will be part of the ROFR property listing on the Department's website. The purchase offer must contain specific language that the offer is conditioned upon satisfaction of the ROFR requirement. If a subsequent ROFR request is made within six months of the previously approved ROFR posting, the lesser of the prior ROFR posted value or new appraisal/purchase contract amount must be used in establishing Fair Market Value;

(2) Minimum Purchase Price, pursuant to §42(i)(7)(B) of the Code, is the sum of the categories listed in subparagraphs (A) and (B) of this paragraph:

(A) The principal amount of outstanding indebtedness secured by the project (other than indebtedness incurred within the five year period immediately preceding the date of said notice); and

(B) All federal, state, and local taxes incurred or payable by the Development Owner as a consequence of such sale. If the Property has a minimum Applicable Fraction of less than one, the offer must take this into account by multiplying the purchase price by the applicable fraction and the fair market value of the non-Low-Income Units. Documentation submitted to verify the Minimum Purchase Price calculation will be part of the ROFR property listing on the Department's website.

(c) Required Documentation. Upon establishing the ROFR offer price, the ROFR process is the same for all types of LURAs. To proceed with the ROFR request, documentation must be submitted as directed in the Post Award Activities Manual, which includes:

(1) ROFR fee as identified in §11.901 of this title (relating to Fee Schedule);

(2) A notice of intent to the Department;

(3) Certification that the Development Owner has provided, to the best of their knowledge and ability, a notice of intent to all additional required persons and entities in subparagraph (A) of this paragraph and that such notice includes, at a minimum the information in subparagraph (B) of this paragraph;

(A) Copies of the letters or emailed notices provided to all persons and entities listed in clauses (i) to (vi) of this subparagraph as required by this paragraph and applicable to the Development at the time of the submission of the ROFR documentation must be attached to the Certification:

(i) All tenants and tenant organizations, if any, of the Development;

(ii) Mayor of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);

(iii) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(iv) Presiding officer of the Governing Body of the county in which the Development is located;

(v) The local housing authority, if any; and

(vi) All prospective buyers maintained on the Department's list of prospective buyers.

(B) Letters must include, at a minimum, all of the information required in clauses (i) to (vii) of this subparagraph and must not contain any statement that violates Department rules, statute, Code, or federal requirements:

(i) The Development's name, address, city, and county;

(ii) The Development Owner's name, address, individual contact name, phone number, and email address;

(iii) Information about tenants' rights to purchase the Development through the ROFR;

(iv) The length of the ROFR posting period;

(v) The ROFR offer price;

(vi) A physical description of the Development, including the total number of Units and total number of Low-Income Units; and

(vii) Contact information for the Department staff overseeing the Development's ROFR application.

(4) Documentation evidencing any contractual ROFR between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity, along with evidence that such Qualified Nonprofit Organization or Qualified Entity is in good standing in the state of its organization;

(5) Documentation verifying the ROFR offer price of the Property:

(A) If the Development Owner receives an offer to purchase the Property from any buyer other than a Qualified Entity or Qualified Nonprofit Organization that the Development Owner would like to accept, the Development Owner may execute a sales contract, conditioned upon satisfaction of the ROFR requirement, and submit the executed sales contract to establish fair market value;

(B) If the Development Owner chooses to establish fair market value using an appraisal, the Development Owner must submit an appraisal of the Property completed during the last three months prior to the date of submission of the ROFR request, establishing a value for the Property in compliance with Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) in effect at the time of the request. The appraisal should take into account the existing and continuing requirements to operate the Property under the LURA and any other restrictions that may exist. Department staff will review all materials within 30 calendar days of receipt. If, after the review, the Department does not agree with the fair market value proposed in the Development Owner's appraisal, the Department may order another appraisal at the Development Owner's expense; or

(C) If the LURA requires valuation through the Minimum Purchase Price calculation, submit documentation verifying the

calculation of the Minimum Purchase Price as described in subsection (b)(2) of this section regardless of any existing offer or appraised value;

(6) Description of the Property, including all amenities;

(7) Copies of all documents imposing income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Property;

(8) A current title commitment or policy not older than six months prior to the date of submission of the ROFR request or the most recent title policy along with a title endorsement or nothing further certificate not older than six months prior to the date of submission of the ROFR request;

(9) The most recent Physical Needs Assessment, pursuant to Tex. Gov't Code §2306.186(e) conducted by a Third-Party. If the PNA/SCR identifies the need for critical repairs that significantly impact habitability and tenant safety, the identified repairs and replacements must be resolved to the satisfaction of the Department before the Development will be considered eligible to proceed with a Right of First Refusal Request;

(10) Copy of the monthly operating statements, including income statements and balance sheets for the Property for the most recent 12 consecutive months (financial statements should identify amounts held in reserves);

(11) The three most recent consecutive annual operating statements (audited would be preferred);

(12) Detailed set of photographs of the Property, including interior and exterior of representative units and buildings, and the Property's grounds;

(13) Current and complete rent roll for the Property; and

(14) If any portion of the land or improvements is leased for other than residential purposes, copies of the commercial leases.

(d) Posting and offers. Within 30 business days of receipt of all required documentation, the Department will review the submitted documents and notify the Development Owner of any deficiencies. During that time, the Department will notify any Qualified Entity or as applicable any Qualified Nonprofit Organization identified by the Development Owner as having a contractual ROFR of the Development Owner's intent to sell. Once any deficiencies are resolved and the Development Owner and Department come to an agreement on the ROFR offer price of the Property, the Department will list the Property for sale on the Department's website and notify entities registered to the email list maintained by the Department of the availability of the Property at a price as determined under this section. The Department will notify the Development Owner when the Property has been listed. The ROFR posting period commences on the date the Property is posted for sale on the Department's website. During the ROFR posting period, a Qualified Nonprofit Organization or Qualified Entity can submit an offer to purchase as follows:

(1) if the LURA requires a 90 day ROFR posting period with no priority for any particular kind of Qualified Nonprofit Organization or tenant organization, any Qualified Nonprofit Organization or tenant organization may submit an offer to purchase the property; or

(2) If the LURA requires a two year ROFR posting period, a Qualified Nonprofit Organization may submit an offer to purchase the Property as follows:

(A) During the first six months of the ROFR posting period, only a Qualified Nonprofit Organization that is a Community Housing Development Organization (CHDO) under 24 CFR Part 92, or that is 100% owned by a CHDO, as approved by the Department, may submit an offer;

(B) During the next six months of the ROFR posting period, only a Qualified Nonprofit Organization as described by Tex. Gov't Code §2306.6706, or that is 100% owned by Qualified Nonprofit Organization as described by Tex. Gov't Code §2306.6706, or a tenant organization may submit an offer; and

(C) During the final 12 months of the ROFR posting period, any Qualified Nonprofit Organization may submit an offer; or

(3) If the LURA requires a 180-day ROFR posting period, a Qualified Entity may submit an offer to purchase the Property consistent with subparagraphs (A) - (C) of this paragraph.

(A) During the first 60 days of the ROFR posting period, only a Qualified Entity that is:

(i) a CHDO under 24 CFR Part 92, or that is controlled by CHDO, as approved by the Department, may submit an offer;

(ii) if the public housing authority or public facility corporation owns the fee title to the Development Owner's leasehold estate:

(I) a public housing authority; or

(II) a public facility corporation created by a public housing authority under Chapter 303, Local Government Code; or

(iii) controlled by an entity described by either clause (i) or (ii) of this subparagraph.

(B) During the second 60 days of the ROFR posting period, only a Qualified Entity as described by Tex. Gov't Code §2306.6706, or that is controlled by Qualified Entity as described by Tex. Gov't Code §2306.6706, or a tenant organization such may submit an offer.

(C) During the final 60 days of the ROFR posting period, any Qualified Entity may submit an offer.

(4) If the LURA does not specify a required ROFR posting timeframe or is unclear on the required ROFR posting timeframe and the required ROFR value is determined by the Minimum Purchase Price method, any Development that received a tax credit allocation prior to September 1, 1997, is required to post for a 90-day ROFR period, and any Development that received a tax credit allocation on or after September 1, 1997, and until September 1, 2015, is required to post for a two year ROFR, unless the LURA is amended under §10.405(b) of this subchapter (relating to Amendments and Extensions), or after September 1, 2015, is required to post for a 180-day ROFR period as described in Tex. Gov't Code, §2306.6726.

(e) Acceptance of offers. A Development Owner may accept or reject any offer received during the ROFR posting period; provided however, that to the extent the LURA gives priority to certain classifications of Qualified Nonprofit Organizations or Qualified Entities to make offers during certain portions of the ROFR posting period, the Development Owner can only negotiate a purchase contract with such classifications of entities during their respective periods. For example, during the CHDO priority period, the Development Owner may only accept an offer from and enter into negotiations with a Qualified Nonprofit Organization or Qualified Entity in that classification. A property may not be transferred under the ROFR process for less than the Minimum Purchase Price, but if the sequential negotiation created by statute yields a higher price, the higher price is permitted.

(f) Satisfaction of ROFR.

(1) A Development Owner that has posted a Property under the ROFR process is deemed to have satisfied the ROFR requirements in the following circumstances:

(A) The Development Owner does not receive any bona fide offers at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation) from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(B) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, the failure is determined to not be the fault of the Development Owner, and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(C) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Qualified Nonprofit Organization or Qualified Entity is not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation Review process pursuant to Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), and the Development Owner received no other bona fide offers at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation) from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period; or

(D) An offer from a Qualified Nonprofit Organization or Qualified Entity is received at a price below the posted ROFR offer price, and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period at or above the posted ROFR offer price.

(2) A Development Owner with a LURA that identifies a specific Qualified Nonprofit Organization or Qualified Entity to be the beneficiary of the ROFR will satisfy the ROFR if:

(A) The identified beneficiary is in existence and conducting business;

(B) The Development Owner offers the Development to the identified beneficiary pursuant to the terms of the ROFR;

(C) If the ROFR includes a priority for a certain type of Qualified Entity (such as a CHDO) to have the first opportunity make an offer to acquire the Development, the identified beneficiary meets such classification; and

(D) The identified entity declines to purchase the Development in writing, and such evidence is submitted to and approved by the Department.

(g) Non-Satisfaction of ROFR. A Development Owner that has posted a Property under the ROFR process does not satisfy the ROFR requirements in the following circumstances:

(1) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), and the Development Owner does not accept the offer;

(2) The LURA identifies a specific Qualified Nonprofit Organization or Qualified Entity to be the beneficiary of the ROFR, and such entity no longer exists or is no longer conducting business and the Development Owner received other bona fide offers at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation) from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and fails to accept any of such other offers;

(3) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, the failure is determined to not be the fault of the Development Owner, the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and then fails to accept any of such other offers;

(4) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, and such failure is determined to be the fault of the Development Owner;

(5) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Qualified Nonprofit Organization or Qualified Entity is not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation Review process pursuant to Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and fails to accept any of such other offers; or

(6) An offer from a Qualified Nonprofit Organization or Qualified Entity is received at a price below the posted ROFR offer price, the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), and the Development Owner fails to accept any of such offers.

(h) Activities Following ROFR.

(1) If a Development Owner satisfies the ROFR requirement pursuant to subsection (f)(1) - (2) of this section, it may request a Preliminary Qualified Contract (if such opportunity is available under §10.408 of this subchapter (relating to Qualified Contract Requirements)) or proceed with the sale to an entity that is not a Qualified Nonprofit Organization or Qualified Entity at or above the ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation).

(2) Following notice that the ROFR requirement has been met, if the Development Owner does not post the Property for Qualified Contract in accordance with §10.408 of this subchapter or sell the Property to an entity that is not a Qualified Nonprofit Organization or

Qualified Entity within 24 months of the Department's written indication that the ROFR has been satisfied, the Development Owner must follow the ROFR process for any subsequent transfer.

(3) If the Department determines that the ROFR requirement has not been met during the ROFR posting period, the Owner may not re-post under this provision at a ROFR offer price that is higher than the originally posted ROFR offer price until 24 months has expired from the Department's written indication that the ROFR has not been satisfied. The Development Owner may market the Property for sale and sell the Property to a Qualified Nonprofit Organization or Qualified Entity during this 24 month period in accordance with subsection (a)(1) of this section.

(i) Sale and closing.

(1) Prior to closing a sale of the Property, the Development Owner must obtain Department approval of the transfer through the ownership transfer process in accordance with §10.406 of this subchapter (relating to Ownership Transfers (§2306.6713)). The request should include, among other required transfer documents outlined in the Post Award Activities Manual, the final sales contract with all amendments.

(2) If the closing price is materially less than the ROFR offering price or the terms and conditions of the sale change materially from what was submitted in the ROFR posting, in the Department's sole determination, the Development Owner must go through the ROFR process again with a revised ROFR offering price equal to the reduced closing price or adjusted terms and conditions based upon the revised terms, before disposing of the Property.

(j) Appeals. A Development Owner may appeal a staff decision in accordance with §11.902 of this title (relating to Appeals Process).

§10.408. Qualified Contract Requirements.

(a) General. Pursuant to §42(h)(6) of the Code, after the end of the 14th year of the Compliance Period, the Development Owner of a Development utilizing Housing Tax Credits can request that the allocating agency find a buyer at the Qualified Contract Price. If a buyer cannot be located within one year, the Extended Use Period will expire. This section provides the procedures for the submittal and review of a Qualified Contract Request.

(b) Eligibility. Development Owners who received an award of credits on or after January 1, 2002, are not eligible to request a Qualified Contract prior to the 30 year anniversary of the date the property was placed in service (§2306.185); if the property's LURA indicates a commitment to an Extended Use Period beyond 30 years, the Development Owner is not eligible to request a Qualified Contract until the expiration of the Extended Use Period. Development Owners awarded credits prior to 2002 may submit a Qualified Contract Request at any time after the end of the year preceding the last year of the Initial Affordability Period, provided it is not precluded by the terms of the LURA, following the Department's determination that the Development Owner is eligible. The Initial Affordability Period starts concurrently with the credit period, which begins at placement-in-service or is deferred until the beginning of the next tax year, if there is an election. Unless the Development Owner has elected an Initial Affordability Period longer than the Compliance Period, as described in the LURA, this can commence at any time after the end of the 14th year of the Compliance Period. References in this section to actions which can occur after the 14th year of the Compliance Period shall refer, as applicable, to the year preceding the last year of the Initial Affordability Period, if the Development Owner elected an Initial Affordability Period longer than the Compliance Period.

(1) If there are multiple buildings placed in service in different years, the end of the Initial Affordability Period will be based upon the date the last building placed in service. For example, if five buildings in the Development began their credit periods in 2005 and one began in 2006, the 15th year would be 2020.

(2) If a Development received an allocation in multiple years, the end of the Initial Affordability Period will be based upon the last year of a multiple allocation. For example, if a Development received its first allocation in 2004 and a subsequent allocation and began the credit period in 2006, the 15th year would be 2020.

(c) Preliminary Qualified Contract Request. All eligible Development Owners must file a Preliminary Qualified Contract Request.

(1) In addition to determining the basic eligibility described in subsection (b) of this section, the pre-request will be used to determine that:

(A) The Development does not have any uncorrected issues of noncompliance outside the corrective action period;

(B) There is a Right of First Refusal (ROFR) connected to the Development that has been satisfied; and

(C) The Compliance Period under the LURA has expired.

(2) In order to assess the validity of the pre-request, the Development Owner must submit:

(A) Preliminary Request Form;

(B) Qualified Contract Pre-Request fee as outlined in §11.901 of this title (relating to Fee Schedule);

(C) Copy of all regulatory agreements or LURAs associated with the Property (non-TDHCA); and

(D) Copy of a Physical Needs Assessment (PNA), conducted by a Third Party, that is no more than 12 months older than the request date. If the PNA identifies the need for critical repairs that significantly impact habitability and tenant safety, the identified repairs and replacements must be resolved to the satisfaction of the Department before the Development will be considered eligible to submit a Qualified Contract Request.

(3) The pre-request will not bind the Development Owner to submit a Qualified Contract Request and does not start the One Year Period (1YP). A review of the pre-request will be conducted by the Department within 90 days of receipt of all documents and fees described in paragraph (2) of this subsection. If the Department determines that this stage is satisfied, a letter will be sent to the Development Owner stating that they are eligible to submit a Qualified Contract (QC) Request.

(d) Qualified Contract Request. A Development Owner may file a QC Request any time after written approval is received from the Department verifying that the Development Owner is eligible to submit the Request.

(1) Documentation that must be submitted with a Request is outlined in subparagraphs (A) - (P) of this paragraph:

(A) A completed application and certification;

(B) The Qualified Contract price calculation worksheets completed by a licensed Third-Party certified public accountant (CPA). The CPA shall certify that they have reviewed annual partnership tax returns for all years of operation, loan documents for all secured debt, and partnership agreements. They shall also certify

that they are not being compensated for the assignment based upon a predetermined outcome;

(C) A thorough description of the Development, including all amenities;

(D) A description of all income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Development;

(E) A current title report;

(F) A current appraisal with the effective date within six months of the date of the QC Request and consistent with Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy);

(G) A current Phase I Environmental Site Assessment (and Phase II, if necessary) with the effective date within six months of the date of the QC Request and consistent with Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy);

(H) A copy of the most recent Physical Needs Assessment of the property conducted by a Third Party, if different from the assessment submitted during the preliminary qualified contract request, consistent with Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy);

(I) A copy of the monthly operating statements for the Development for the most recent 12 consecutive months;

(J) The three most recent consecutive annual operating statements (audited would be preferred) for the Development;

(K) A detailed set of photographs of the Development, including interior and exterior of representative units and buildings, and the property's grounds;

(L) A current and complete rent roll for the Development;

(M) A certification that all tenants in the Development have been notified in writing of the request for a Qualified Contract. A copy of the letter used for the notification must also be included;

(N) If any portion of the land or improvements is leased, copies of the leases;

(O) The Qualified Contract Fee as identified in §11.901 of this title (relating to Fee Schedule); and

(P) Additional information deemed necessary by the Department.

(2) Unless otherwise directed by the Department pursuant to subsection (g) of this section, the Development Owner shall contract with a broker to market and sell the Property. The Department may, at its sole discretion, notify the Owner that the selected Broker is not approved by the Department. The fee for this service will be paid by the seller, not to exceed 6% of the QC Price.

(3) Within 90 days of the submission of a complete Request, the Department will notify the Development Owner in writing of the acceptance or rejection of the Development Owner's QC Price calculation. The Department will have one year from the date of the acceptance letter to find a Qualified Purchaser and present a QC. The Department's rejection of the Development Owner's QC Price calculation will be processed in accordance with subsection (e) of this section and the 1YP will commence as provided therein.

(e) Determination of Qualified Contract Price. The QC Price calculation is not the same as the Minimum Purchase Price calculation for the ROFR. The CPA contracted by the Development Owner will determine the QC Price in accordance with §42(h)(6)(F) of the Code taking the following into account:

(1) Outstanding indebtedness secured by, or with respect to, the building;

(2) Distributions to the Development Owner of any and all cash flow, including incentive management fees, capital contributions not reflected in outstanding indebtedness or adjusted investor equity, and reserve balance distributions or future anticipated distributions, but excluding payments of any eligible deferred developer fee. These distributions can only be confirmed by a review of all prior year tax returns for the Development;

(3) All equity contributions will be adjusted based upon the lesser of the consumer price index or 5% for each year, from the end of the year of the contribution to the end of year fourteen or the end of the year of the request for a QC Price if requested at the end of the year or the year prior if the request is made earlier than the last month of the year; and

(4) These guidelines are subject to change based upon future IRS Rulings and/or guidance on the determination of Development Owner distributions, equity contributions and/or any other element of the QC Price.

(f) Appeal of Qualified Contract Price. The Department reserves the right, at any time, to request additional information to document the QC Price calculation or other information submitted. If the documentation does not support the price indicated by the CPA hired by the Development Owner, the Department may engage its own CPA to perform a QC Price calculation and the cost of such service will be paid for by the Development Owner. If a Development Owner disagrees with the QC Price calculated by the Department, a Development Owner may appeal in writing in accordance with §11.902 of this title (relating to Appeals Process). A meeting will be arranged with representatives of the Development Owner, the Department and the CPA contracted by the Department to attempt to resolve the discrepancy. The 1YP will not begin until the Department and Development Owner have agreed to the QC Price in writing. Further appeals can be submitted in accordance with §11.902 of this title and Tex. Gov't Code §2306.0321 and §2306.6715.

(g) Marketing of Property. By submitting a Request, the Development Owner grants the Department the authority to market the Development and provide Development information to interested parties. Development information will consist of pictures of the Development, location, amenities, number of Units, age of building, etc. Development Owner or broker contact information will also be provided to interested parties. The Development Owner is responsible for providing staff any requested information to assist with site visits and inspections. Marketing of the Development will continue until such time that a Qualified Contract is presented or the 1YP has expired. Notwithstanding subsection (d)(2) of this section, the Department reserves the right to contract directly with a Third Party in marketing the Development. Cost of such service, including a broker's fee, will be paid for by the existing Development Owner. The Department must have continuous cooperation from the Development Owner. Lack of cooperation will cause the process to cease and the Development Owner will be required to comply with requirements of the LURA for the remainder of the Extended Use Period. Responsibilities of the Development Owner include but are not limited to the items described in paragraphs (1) - (3) of this subsection. The Development Owner must:

(1) Allow access to the Property and tenant files;

(2) Keep the Department informed of potential purchasers; and

(3) Notify the Department of any offers to purchase.

(h) Presentation of a Qualified Contract. If the Department finds a Qualified Purchaser willing to present an offer to purchase the property for an amount at or above the QC Price, the Development Owner may accept the offer and enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property and provide a reasonable time for necessary due diligence and closing of the purchase. If the Development Owner chooses not to accept the QC offer that the Department presents, the QC request will be closed and the possibility of terminating the Extended Use Period through the Qualified Contract process is eliminated; the Property remains bound by the provisions of the LURA for the remainder of the Extended Use Period. If the Development Owner decides to sell the development for the QC Price pursuant to a QC, the purchaser must complete all requirements of an ownership transfer request and be approved by the Department prior to closing on the purchase, but the consummation of such a sale is not required for the LURA to continue to bind the Development for the remainder of the Extended Use Period.

(1) The Department will attempt to procure a QC only once during the Extended Use Period. If the transaction closes under the contract, the new Development Owner will be required to fulfill the requirements of the LURA for the remainder of the Extended Use Period.

(2) If the Department fails to present a QC before the end of the 1YP, the Department will file a release of the LURA and the Development will no longer be restricted to low-income requirements and compliance. However, in accordance with §42(h)(6)(E)(ii) of the Code, for a three-year period commencing on the termination of the Extended Use Period, the Development Owner may not evict or displace tenants of Low-Income Units for reasons other than good cause and will not be permitted to increase rents beyond the maximum tax credit rents. Additionally, the Development Owner should submit to the Department a request to terminate the LURA and evidence, in the form of a signed certification and a copy of the letter, to be approved by the Department, that the tenants in the Development have been notified in writing that the LURA will be terminated and have been informed of their protections during the three-year time frame.

(3) Prior to the Department filing a release of the LURA, the Development Owner must correct all instances of noncompliance at the Development.

(i) Compliance Monitoring during Extended Use Period. For Developments that continue to be bound by the LURA and remain affordable after the end of the Compliance Period, the Department will monitor in accordance with the applicable requirements in Subchapter F of this chapter (relating to Compliance Monitoring) and Subchapter G of this chapter (relating to Affirmative Marketing Requirements and Written Policies and Procedures).

The 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 October 15, 2021.

TRD-202104086
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: November 28, 2021
For further information, please call: (512) 475-3959

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CHAPTER 13. MULTIFAMILY DIRECT LOAN RULE

10 TAC §§13.1 - 13.13

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 13, Multifamily Direct Loan Rule, §§13.1 - 13.13. The purpose of the proposed repeal is to provide for clarification of the existing rule through new rulemaking 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, Executive Director, 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 readoption making changes to an existing activity, administration of the Multifamily Direct Loan Program.

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 readoption making changes to an existing activity, administration of the Multifamily Direct Loan Program.

7. The proposed 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 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 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 proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would

be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed 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 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 October 18 to November 18, 2021, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Charlotte Flickinger, Multifamily Direct Loan Manager, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email charlotte.flickinger@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time November 18, 2021.

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.

§13.1. Purpose.

§13.2. Definitions.

§13.3. General Loan Requirements.

§13.4. Set-Asides, Regional Allocation, and NOFA Priorities.

§13.5. Application and Award Process.

§13.6. Scoring Criteria.

§13.7. Maximum Funding Requests and Minimum Number of MFDL Units.

§13.8. Loan Structure and Underwriting Requirements.

§13.9. Construction Standards.

§13.10. Development and Unit Requirements.

§13.11. Post-Award Requirements.

§13.12. Pre-Closing Amendments to Direct Loan Terms.

§13.13. Post-Closing Amendments to Direct Loan Terms.

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 October 15, 2021.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: November 28, 2021
For further information, please call: (512) 475-3959

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10 TAC §§13.1 - 13.13

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 13, Multifamily Direct Loan Rule, §§13.1 - 13.13. The purpose of the proposed new sections 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 proposed 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 rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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

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

Mr. Bobby Wilkinson, Executive Director, 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, but relates to the readoption of this rule which makes changes to an existing activity, administration of the Multifamily Direct Loan Program.

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 §2306.111.

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 proposed 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 proposed 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 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 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.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 18, 2021, to November 18, 2021, to receive input on the proposed new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Charlotte Flickinger, Multifamily Direct Loan Manager, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email htc.public-comment@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time November 18, 2021.

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.

§13.1. Purpose.

(a) Authority. The rules in this chapter apply to the funds provided to Multifamily Developments through the Multifamily Direct Loan Program (MFDL or Direct Loan Program) by the Texas Department of Housing and Community Affairs (the Department). Notwithstanding anything in this chapter to the contrary, loans and grants issued to finance the development of multifamily rental housing are subject to the requirements of the laws of the State of Texas, including but not limited to Tex. Gov't Code, Chapter 2306, and federal law pursuant to the requirements of Title II of the Cranston-Gonzalez National Affordable Housing Act, Division B, Title III of the Housing and Economic Recovery Act (HERA) of 2008 - Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes, Section 1497 of the Dodd-Frank Wall Street Reform and Consumer Protection Act: Additional Assistance for Neighborhood Stabilization Programs, Title I of

the Housing and Economic Recovery Act of 2008, Section 1131 (Public Law 110-289), and the implementing regulations 24 CFR Parts 91, 92, 93, and 570 as they may be applicable to a specific fund source. The Department is authorized to administer Direct Loan Program funds pursuant to Tex. Gov't Code, Chapter 2306.

(b) General. This chapter applies to Applications submitted for, and award of, MFDL funds by the Department and establishes the general requirements associated with the application and award process for such funds. Applicants pursuing MFDL assistance from the Department are required to certify, among other things, that they have familiarized themselves with all applicable rules that govern that specific program including, but not limited to this chapter, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 10 of this title (relating to Uniform Multifamily Rules), Chapter 11 of this title (relating to Qualified Allocation Plan (QAP)), and Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules) as applicable. The Applicant is also required to certify that it is familiar with the requirements of any other federal, state, or local financing sources that it identifies in its Application. Any conflict with rules, regulations, or statutes will be resolved on a case by case basis that allows for compliance with all requirements. Conflicts that cannot be resolved may result in Application ineligibility, with the right to an Appeal as provided in §1.7 of this title (relating to Appeals Process) or §11.902 of this title (relating to Appeals Process for the Housing Tax Credit program), as applicable.

(c) Waivers. Requests for waivers of any program rules or requirements must be made in accordance with §11.207 of this title (relating to Waiver of Rules), as limited by the rules in this chapter. In no instance will the Department consider a waiver request that would violate federal program requirements or state or federal statute. Waiver requirements are provided in paragraphs (1) through (3) of this subsection:

(1) Waivers for Layered Developments. For Direct Loan Developments layered with Competitive Housing Tax Credits, an Applicant may request, at the latest at Application submission, that the Department amend its NOFA, amend its Consolidated Plan or One Year Action Plan, or ask HUD to grant a waiver of its regulations, if such request will not impact the timing of the Application's review, nor alter the scoring or satisfaction of threshold requirements for the Competitive Housing Tax Credits. Such requests will be presented to the Department's Board. The Board may not waive rules that are federally required, or that have been incorporated as a required part of the Department's Consolidated Plan or One Year Action Plan (OYAP) to the U.S. Department of Housing and Urban Development (HUD), unless those Plans are so amended the earlier of a date the NOFA stops accepting Applications or by an earlier date that is identified by the Board;

(2) Waivers for Non-Layered Developments. For Direct Loan Developments not layered with Competitive Housing Tax Credits, an Applicant may request that the Department amend its NOFA, amend its Consolidated Plan or OYAP, or ask HUD to grant a waiver of its regulations. Such requests will be presented to the Department's Board; if the Applicant's request is approved by the Department's Governing Board (Board), the Application Acceptance Date will then be the date the Department completes the amendment process or receives a waiver from HUD. If this date occurs after the NOFA closes, the Applicant will be required to submit a new Application, and the Direct Loan awardee (pre-closing) may be required to reapply, under a new or otherwise open NOFA; and

(3) Waivers under Closed NOFAs. The Board may not waive any portion of a closed NOFA prior to Construction Completion. Thereafter, the Board may only waive any portion of a closed NOFA as part of an approved Asset Management Division work out. Allowable Post-Closing Amendments are described in §13.13 of this chapter (relating to Post-Closing Amendments to Direct Loan Terms).

(d) Eligibility and Threshold Requirements. Applications for Multifamily Direct Loan funds must meet all applicable eligibility and threshold requirements of Chapter 11 of this title (relating to the Qualified Allocation Plan (QAP)), unless otherwise excepted in this rule or NOFA.

§13.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Tex. Gov't Code, Chapter 2306; §§141, 142, and 145 of the Internal Revenue Code; 24 CFR Parts 91, 92, and 93;2 CFR Part 200; and Chapter 1 of this title (regarding Administration), Chapter 2 of this title (regarding Enforcement), Chapter 10 of this title (regarding Uniform Multifamily Rules), and Chapter 11 of this title (regarding the Qualified Allocation Plan).

(1) Application Acceptance Date--The date the MFDL Application is considered received by the Department as described in this chapter, chapter 11 of this title, or in the NOFA.

(2) Community Housing Development Organization (CHDO)--A private nonprofit organization with experience developing or owning affordable rental housing that meets the requirements in 24 CFR Part 92 for purposes of receiving HOME Investment Partnerships Program (HOME) funds under the CHDO Set-Aside. A member of a CHDO's board cannot be a Principal of the Development beyond their role as a board member of the CHDO or be an employee of the development team, and may not receive financial benefit other than reimbursement of expenses from the CHDO (e.g., a voting board member cannot also be a paid executive).

(3) Construction Completion or Development Period--The Development Period is the time allowed to complete construction, which includes, without limitation, that necessary title transfer requirements and construction work has been fully performed, the certificate(s) of occupancy (if New Construction or reconstruction), Certificate of Substantial Completion (AIA Form G704), Form HUD-92485 (for instances in which a federally insured HUD loan is utilized), or equivalent notice has been issued.

(4) Deobligated Funds--The funds released by the Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department and a Development Owner or Applicant.

(5) Federal Affordability Period--The period commencing on the later of the date after Construction Completion and after all Direct Loan funds have been disbursed for the project, or the date of Project Completion as defined in 24 CFR §92.2 or §93.3, as applicable, and ending on the date which is the required number of years as defined by the federal program.

(6) HOME--The HOME Investment Partnership Program, authorized by Title II of the Cranston-Gonzalez National Affordable Housing Act,

(7) HOME Match-Eligible Unit--A Unit in the Development that is not assisted with HOME Program funds, but would qualify as eligible for Match under 24 CFR Part 92. Unless otherwise identified by the provisions in the NOFA, TCAP RF and matching contribution on NSP and NHTF Developments must meet all criteria to be classified as HOME-Match Eligible Units.

(8) Housing Contract System (HCS)--The electronic information system established by the Department for tracking, funding,

and reporting Department Contracts and Developments. The HCS is primarily used by the Department for Direct Loan Programs administered by the Department.

(9) Land Use Restriction Agreement (LURA) Term--The period commencing on the effective date of the LURA and ending on the date which, at a minimum, is the greater of the loan term or 30 years. The LURA may include the Federal Affordability Period, in addition to the State Affordability Period requirements and State restrictive criteria.

(10) Matching Contribution (Match)--A contribution to a Development from nonfederal sources that may be in one or more of the forms provided in subparagraphs (A) - (E) of this paragraph:

(A) Cash contribution (grant), except for cash contributions made by investors in a limited partnership or other business entity subject to pass through tax benefits in a tax credit transaction or owner equity (including Deferred Developer Fee and General Partner advances);

(B) Reduced fees or donated labor from certain eligible contractors, subcontractors, architects, attorneys, engineers, excluding any contributions from a party related to the Developer or Owner;

(C) Net present value of yield foregone from a below market interest rate loan as described in HUD Community Planning and Development (CPD) Notice 97-03;

(D) Waived or reduced fees or taxes from cities or counties not related to the Applicant in connection with the proposed Development; or

(E) Donated land or land sold by an unrelated third party at a price below market value, as evidenced by a third party appraisal.

(11) NHTF--National Housing Trust Fund.

(12) NOFA--Notice of Funding Availability.

(13) NSP--Neighborhood Stabilization Program.

(14) Qualifying Unit--A Unit designated for Multifamily Direct Loan use and occupancy in compliance with State and federal regulations, as set forth in the Contract. Qualifying Units may not also have a Project-Based Voucher issued under 24 CFR Part 983.

(15) Relocation Plan--A residential anti-displacement and relocation assistance plan and budget in an Application that addresses residential and non-residential displacement and complies with the Uniform Relocation Assistance and Real Property Act as implemented at 49 CFR Part 24, HUD Handbook 1378, and the TDHCA Relocation Handbook. Additionally, some HOME and NSP funded Developments must comply with Section 104(d) of the Housing and Community Development Act of 1974 (as amended), and 24 CFR Part 42 (as modified for NSP and HOME American Rescue Plan (ARP) funds), which requires a one-for-one replacement of occupied and vacant, occupiable low- and moderate-income dwelling units demolished or converted. Guidance may be found on the Department's website at https://www.tdhca.state.tx.us/multifamily/home/index.htm. The Relocation Plan must be in form and substance consistent with requirements of the Department.

(16) Section 234 Condominium Housing Basic Mortgage Limits (Section 234 Condo Limits)--The per-unit subsidy limits for all MFDL funding. These limits take into account whether or not a Development is elevator served and any local conditions that may make development of multifamily housing more or less expensive in a given metropolitan statistical area. If the high cost percentage adjustment applicable to the Section 234 Condo Limits for HUD's Fort Worth Multifamily Hub is applicable for all Developments that TDHCA finances through the MFDL Program, then confirmation of that applicability will be included in the applicable NOFA.

(17) Site and Neighborhood Standards--HUD requirements for New Construction or reconstruction Developments funded by NHTF (24 CFR §93.150) or New Construction Developments funded by HOME (24 CFR §92.202). Proposed Developments must provide evidence that the Development will comply with these federal regulations in the Application. Guidance for successful submissions is provided on the Department website at https://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm. Applications that are unable to comply with requirements in 24 CFR §983.57(e)(2) and (3) will not be eligible for HOME or NHTF.

(18) State Affordability Period--The LURA Term as described in the MFDL contract and loan documents and as required by the Department in accordance with the Chapter 2306, Texas Gov't Code which may be an additional period after the Federal Affordability Period.

(19) Surplus Cash--Except when the first lien mortgage is a federally insured HUD mortgage that is subject to HUD's surplus cash definition, Surplus Cash is any cash remaining:

(A) After the payment of:

(i) All sums due or currently required to be paid under the terms of any superior lien;

(ii) All amounts required to be deposited in the reserve funds for replacement;

(iii) Operating expenses actually incurred by the borrower for the Development during the period with an appropriate adjustment for an allocable share of property taxes and insurance premiums;

(iv) Recurring maintenance expenses actually incurred by the borrower for the Development during the period; and

(v) All other obligations of the Development approved by the Department;

(B) After the segregation of an amount equal to the aggregate of all special funds required to be maintained for the Development; and

(C) Excluding payment of:

(i) All sums due or currently required to be paid under the terms of any subordinate liens against the property;

(ii) Any development fees that are deferred including those in eligible basis; and

(iii) Any payments or obligations to the borrower, ownership entities of the borrower, related party entities; any payment to the management company exceeding 5% of the effective gross income; incentive management fee; asset management fees; or any other expenses or payments that shall be negotiated between the Department and borrower.

(20) TCAP Repayment Funds (TCAP RF)--The Tax Credit Assistance Payment program funds.

§13.3. General Loan Requirements.

(a) Funding Availability. Direct Loan funds may be made available through a NOFA or other similar governing document that includes the method for applying for funds and funding requirements.

(b) Oversourced Developments. A Direct Loan request may be reduced or not recommended if the Department's Underwriting Re-

port concludes the Development does not need all or part of the MFDL funds requested in the Application because it is oversourced, and for which a timely appeal has been completed, as provided in §1.7 of this title (relating to Appeals Process) or §11.902 of this title (relating to Appeals Process for Competitive HTC Applications), as applicable.

(c) Funding Sources. Direct Loan funds are composed of annual HOME and National Housing Trust Fund (NHTF) allocations from HUD, repayment of TCAP or TCAP RF loans, HOME Program Income, NSP Program Income (NSP PI or NSP), and any other similarly encumbered funding that may become available by Board action, except as otherwise noted in this chapter. Similar funds include any funds that are identified by the Board to be loaned or granted for the development of multifamily property and are not governed by another chapter in this title, with the exception of State funds appropriated for a specific purpose.

(d) Eligible and Ineligible Activities.

(1) Eligible Activities. Direct Loan funds may be used for the predevelopment, acquisition, New Construction, reconstruction, Adaptive Reuse, rehabilitation, or preservation of affordable housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, or operating cost reserves, subject to applicable HUD guidance. Other expenses, such as financing costs, relocation expenses of any displaced persons, families, businesses, or organizations may be included. MFDL funds may be used to assist Developments previously awarded by the Department when approved by specific action of the Board. Eligible Activities may have fund source restrictions or may be restricted by a NOFA.

(2) Ineligible Activities. Direct Loan funds may not be used for:

(A) Adaptive Reuse Developments subject to the requirements of 36 CFR 67, implementing Section 47 of the Internal Revenue Code;

(B) Developments layered with Housing Tax Credits that have elected the income averaging election under Section 42(g)(1)(C) of the Internal Revenue Code that have more than 15% of the Units designated as Market Rate Units; or

(C) Except as specifically described in the NOFA, Developments in which the Applicant will not be directly leasing Units to residents.

(e) Ineligible Costs. All costs associated with the Development and known by the Applicant must be disclosed as part of the Application. Other federal funds will be included in the subsidy limit calculation. Costs ineligible for reimbursement with Direct Loan funds in accordance with 24 CFR Parts 91, 92, 93, and 570, and 2 CFR Part 200, as federally required or identified in the NOFA, include but are not limited to:

(1) Offsite costs;

(2) Stored Materials;

(3) Site Amenities, such as swimming pools and decking, landscaping, playgrounds, and athletic courts;

(4) Equipment required for construction;

(5) Furnishings and Furniture, Fixtures and Equipment (FF&E) required for the Development;

(6) Detached Community Buildings;

(7) Carports and/or parking garages, unless attached as a feature of the Unit;

(8) Commercial Space costs;

(9) Personal Property Taxes;

(10) TDHCA fees;

(11) Syndication and organizational costs;

(12) Reserve Accounts, except Initial Operating Deficit Reserve Accounts;

(13) Delinquent fees, taxes, or charges;

(14) Costs incurred more than 24 months prior to the effective date of the Direct Loan Contract, unless the Application is awarded TCAP RF, and if specifically allowed by the Board;

(15) Costs that have been allocated to or paid by another fund source, including but not limited to, contingency, including soft cost contingency, and general partner loans and advances;

(16) Deferred Developer Fee;

(17) Texas Bond Review Board (BRB) fees;

(18) Community Facility spaces that are not for the exclusive use of tenants and their guests;

(19) The portion of soft costs that are allocated to support ineligible hard costs; and

(20) Other costs limited by Award or NOFA, or as established by the Board.

§13.4. Set-Asides, Regional Allocation, and NOFA Priorities.

(a) Set-Asides. Specific types of Activities or Developments for which a portion of MFDL funds may be reserved in a NOFA will be grouped in categories called Set-Asides. The Soft Repayment Set-Aside, CHDO Set-Aside, and General Set-Aside, as described below, are fixed Set-Asides that will be included in the annual NOFA (except when CHDO requirements are waived or reduced by HUD). The remaining Set-Asides described below are flexible Set-Asides and are applicable only if identified in a NOFA; flexible Set-Asides are not required to be programmed on an annual basis. The Board may approve Set-Asides not described in this section. The amount of a single award may be credited to multiple Set-Asides, in which case the credited portion of funds may be repositioned into an oversubscribed Set-Aside prior to a defined collapse deadline. Applications under any and all Set-Asides may or may not be layered with other Department Multifamily programs except as provided in this section or as determined by the Board to address unique circumstances not addressed by these rules.

(1) Fixed Set-Asides:

(A) Soft Repayment Set-Aside. The Soft Repayment Set-Aside will be funded primarily with NHTF allocations received by the Department. The Soft Repayment Set-Aside is reserved for Developments providing Supportive Housing and/or extremely low-income and rent restrictions that would not exist otherwise. Applicants seeking to qualify under this set-aside must propose Developments in which all Units assisted with MFDL funds are available for households earning the greater of the poverty rate or 30% AMI, have rents no higher than the rent limits for extremely low-income tenants in 24 CFR §93.302(b), and meet either the requirements of clause (i) or (ii) of this subparagraph:

(i) The Supportive Housing requirements in §11.1(d)(124) of this title; or

(ii) The requirements in subclauses (I) - (III) of this clause, for which all Units assisted with MFDL funds:

(I) May not also be receiving any project-based subsidy;

(II) May not be receiving tenant-based voucher or tenant-based rental assistance, to the extent that there are other available Units within the Development that the voucher-holder may occupy; and

(III) May not be restricted to 30% AMI or less by Housing Tax Credits, Bonds, or any other fund source.

(B) CHDO Set-Aside. Unless waived or reduced by HUD, a portion of the Department's annual HOME allocation, will be set aside for eligible CHDOs meeting the requirements of the definition of Community Housing Development Organization in 24 CFR §92.2 and §13.2(2) of this chapter. Applicants under the CHDO Set-Aside must be proposing to develop housing on Development Sites located outside Participating Jurisdictions (PJ), unless the award is made within a Persons with Disabilities (PWD) Set-Aside, or the requirement under Tex. Gov't Code §2306.111(c)(1) has been waived by the Governor. A grant for CHDO operating expenses may be awarded in conjunction with an award of MFDL funds under this Set-Aside, if no other CHDO operating grants have been awarded to the Applicant in the same Calendar year, in accordance with 24 CFR §92.208. Applications under the CHDO Set-Aside may not have a for profit special limited partner within the ownership organization chart.

(C) General Set-Aside. The General Set-Aside is for all other applications that do not meet the requirements of the Soft Repayment, CHDO, or Flexible Set-Asides, if any. A portion of the General Set-Aside may be reallocated into the CHDO Set-Aside in order to fully fund a CHDO award that exceeds the remaining amount in the CHDO Set-Aside.

(2) Flexible Set-Asides:

(A) 4% HTC and Bond Layered Set-Aside. The 4% and Bond Layered Set-Aside is reserved for Applications layered with 4% Housing Tax Credits and Tax-Exempt Bond funds where the Development Owner does not meet the definition of a CHDO, but that the Application does meet all other MFDL requirements.

(B) Persons with Disabilities (PWD) Set-Aside. The PWD Set-Aside is reserved for Developments restricting Units for residents who meet the requirements of Tex. Gov't Code §2306.111(c)(2) while not exceeding the number of Units limited by §1.15 of this title (relating to the Integrated Housing Rule). MFDL funds will be awarded in a NOFA for the PWD Set-Aside only if sufficient funds are available to award at least one Application within a Participating Jurisdiction under Tex. Gov't Code §2306.111(c)(1).

(C) Competitive HTC Layered Set-Aside. The Competitive HTC Layered Set-Aside is reserved for Applications that are layered with Competitive Housing Tax Credits that do not meet the definition of CHDO, but that do meet all other MFDL requirements. Awards under this Set-aside are dependent on the concurrent award of a Competitive HTC allocation; however, an allocation of Competitive HTC does not ensure that a sufficient amount of MFDL funds will be available for award.

(D) Additional Set-Asides may be developed, subject to Board approval, to meet the requirements of specific funds sources, or address Department priorities. To the extent such Set-Asides are developed, they will be reflected in a NOFA or other similar governing document.

(b) Regional Allocation and Collapse. All funds subject to Tex. Gov't Code §2306.111 or as described to HUD in planning documents will be allocated to regions and potentially subregions based on a Regional Allocation Formula (RAF) within the applicable Set-Asides (unless the funds have already been through a RAF of the annual NOFA and/or Special Purpose NOFA). The RAF methodology may differ by fund source. HOME funds will be allocated in accordance with Tex. Gov't Code Chapter 2306. The end date and Application Acceptance Date for the regionally allocated funds will be identified in the NOFA, but in no instance shall it be less than 30 days from the date a link to the Board approved NOFA or NOFA Amendment is published on the Department's website.

(1) After funds have been made available regionally and the period for regional allocation has expired, remaining funds within each respective Set-Aside may collapse and be pooled together on a date identified in the NOFA. All Applications received prior to these collapse dates will continue to hold their priority unless they are withdrawn, terminated, suspended, or funded.

(2) Funds remaining after expiration of the Set-Asides on the end date identified in the NOFA, which have not been requested in the form of a complete Application, may be collapsed and pooled together to be made available statewide on a first-come first-served basis to Applications submitted after the collapse dates, as further described in the NOFA.

(3) In instances where the RAF would result in regional or subregional allocations insufficient to fund an Application, the Department may use an alternative method of distribution, including an early collapse, revised formula or other methods as approved by the Board, and reflected in the NOFA.

(c) Notice of Funding Availability (NOFA). MFDL funds will be distributed pursuant to the terms of a published NOFA that provides the specific collapse dates and deadlines as well as Set-Aside and RAF amounts applicable to each NOFA, along with scoring criteria, priorities, award limits, and other Application information. Set-asides, RAFs, and total funding amounts may increase or decrease in accordance with the provisions herein without further Board action as authorized by the Board.

(d) Priorities for the Annual NOFA. Complete Applications received during the period that funds are regionally made available (if a RAF is used in the Annual NOFA) will be prioritized for review and recommendation to the Board, if funds are available in the region or subregion (as applicable) and in the Set-Aside under which the Application is received. If insufficient funds are available in a region or subregion to fund all Applications then the scoring criteria in §13.6 of this chapter will be applied if necessary and the Applications whose requests are in excess of the available funds will be evaluated only after the regional and/or Set-Aside collapse and in accordance with the additional priority levels in this subsection, unless an Application received earlier is withdrawn or terminated. If insufficient funds are available within a region, subregion, or Set-Aside, the Applicant may request to be considered under another Set-Aside if they qualify, prior to the collapse. Applications will be reviewed and recommended to the Board if funds are available in accordance with the order of prioritization described in paragraphs (1) - (3) of this subsection.

(1) Priority 1. Applications not layered with current year Competitive Housing Tax Credits (HTC) that are received prior to the Market Analysis Delivery Date as described in §11.2 of this title (relating to Program Calendar for Housing Tax Credits). Priority 1 Applications may be prioritized based on score within their respective Set-Aside for a certain time period, for certain populations, or for certain geographical areas, as further described in the NOFA.

(2) Priority 2. Applications layered with current year Competitive HTC will be prioritized based on their recommendation status and score for their HTC allocation under the provisions of Chapter 11

of this title, the Qualified Allocation Plan (QAP). All Priority 2 applications will be deemed received on the Market Analysis Delivery Date identified in Chapter 11 of this title, relating to the QAP. Priority 2 applications, if recommended, will be recommended for approval of the MFDL award at the same meeting when the Board approves the Competitive HTC allocations. Applications for Competitive HTC allocations are not guaranteed the availability of MFDL funds, as further provided in §13.5(e) of this chapter (relating to Application and Award Process).

(3) Priority 3. Applications that are received after the Market Analysis Delivery Date identified in the QAP will be evaluated on a first come first served basis for any remaining funds, until the final deadline identified in the annual NOFA. However, the NOFA may describe additional prioritization periods for certain populations, or for certain geographical areas. Applications layered with Competitive HTC that are on the Competitive HTC waitlist after the Department's Board meeting at which final Competitive HTC awards are made will be considered Priority 3 Applications; if the Applicant receives an allocation of Competitive HTC later in the year, the MFDL Application Acceptance date will be the date the HTC Commitment Notice is issued, and MFDL funds are not guaranteed to be available.

(e) Other Priorities. The Board may set additional priorities for the annual NOFA, and for one time or special purpose NOFAs.

§13.5. Application and Award Process.

(a) Applications. MFDL Applicants must follow the applicable requirements in Chapter 11, Subchapter C of this title (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 Scoring Criteria) for MFDL or §11.7 (relating to Tie Breaker Factors) and §11.9 of this title (relating to Competitive HTC Selection Criteria,) for Applications layered with Competitive 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 §11.205(2) of this title (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 Competitive 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 Competitive HTC will be notified and may amend their Application to accommodate another fund source and make changes that still meet threshold requirements in Chapter 11 (relating to Qualified Allocation Plan (QAP) and this Chapter, if such changes do not impact scoring under §11.9 (relating to Competitive HTC Selection Criteria). The Department will provide notice to all impacted Applicants in the case of over-subscription, which will include a deadline by which the Applicant must respond to the Department. Multiple Applications from a single or affiliated Applicants do 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 date of the Department's Board meeting at which final Competitive HTC awards are made, the MFDL funds will not be reserved for Competitive HTC-layered Applications, unless the reservation is described in the NOFA.

(f) Availability of funds for Non-Competitive HTC-layered Applications. If an Application requesting layered Non-Competitive HTC and Direct Loan funds is terminated under §11.201(2)(E) of this title (relating to Withdrawal of Certificate of Reservation), the Application will receive a new Application Acceptance Date for purposes of Direct Loan funds upon submission to the Department 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 MFDL 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 be recommended 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 not being recommended for an award or 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 §11.204(6) of this title (relating to Experience Requirement); 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 for 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 in accordance with paragraph (2) of this subsection 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 §11.902 or §1.7 of this title (both relating to Appeals), as applicable. A finding of eligibility under this paragraph does not guarantee an award. Applications requiring eligibility determinations generally will not be funded with HOME or NSP funds.

(A) Requests under this paragraph 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 typical 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 underwritten the last time that the Department published an Underwriting Report. MFDL funds may not be used to fund increased Developer Fee, regardless of whether the increase is allowed under other Department rules.

(4) Proposed Developments must provide evidence that the Development will comply with Site and Neighborhood Standards, which can be in the form of narrative with supporting documentation, accompanied by required census data found in American Community Survey Table DP-05.

(i) Request for Preliminary Determination. Applicants considering a request for Direct Loan layered with a Competitive 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 §11.9(e)(1)(E) of this title. 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.

§13.6. Scoring Criteria.

The criteria identified in paragraphs (1) - (6) of this section will be used in the evaluation and ranking of Applications if other Applications have the same Application Acceptance Date, within the same Set-Aside, and having the same prioritization. There is no rounding of numbers in this section, unless rounding is explicitly indicated for that particular calculation or criteria. Changes to Applications where scoring is utilized under Chapter 13 will not be allowed between submission and award. The scoring items used to calculate the score for a Competitive HTC-Layered Application will be utilized for scoring for an MFDL Application, and evaluated in the same manner, except as specified below. Scoring criteria in Chapter 11 of this title (relating to the Qualified Allocation Plan) will always be superior to Scoring Criteria in this chapter if an MFDL Application is also concurrently requesting Competitive HTC.

(1) Opportunity Index. Applicants eligible for points under §11.9(c)(4) of this title (relating to the Opportunity Index) (up to 7 points).

(2) Resident Services. Applicants eligible for points under §11.9(c)(3)(A) of this title (relating to Resident Supportive Services) (10 points) and Applicants eligible for points under §11.9(c)(3)(B) of this title (relating to community space and outreach for Resident Supportive Services) (1 point).

(3) Underserved Area. Applicants eligible for points under §11.9(c)(5) of this title (relating to Underserved Area) (up to 5 points).

(4) Subsidy per Unit. An Application that caps the MFDL eligible cost per Unit subsidy limit below Section 234 Condo Limits or HUD 221(d)(4) statutory limits (as applicable) for all Direct Loan Units regardless of Unit size at:

(A) $100,000 per MFDL eligible cost per Unit (4 points).

(B) $80,000 per MFDL eligible cost per Unit (8 points).

(C) $60,000 per MFDL eligible cost per Unit (10 points).

(5) Rent Levels of Residents. Except for Applications submitted under the Soft Repayment Set-Aside, an Application may qualify to receive up to 13 points for placing the following rent and income restrictions on the proposed Development for the Federal and State Affordability Periods. These Units must not be restricted to 30% or less of AMI by another fund source; however, layering on other HTC Units may be considered for scoring purposes. Scoring options include:

(A) At least 20% of all low-income Units at 30% or less of AMI (13 points);

(B) At least 10% of all low-income Units at 30% or less of AMI or, for a Development located in a Rural Area, 7.5% of all low-income Units at 30% or less of AMI (12 points); or

(C) At least 5% of all low-income Units at 30% or less of AMI (7 points).

(6) Tiebreaker. In the event that two or more Applications receive the same number of points based on the scoring criteria above, staff will recommend for award the Application that proposes the greatest percentage of 30% AMI MFDL Units within the Development that would convert to households at 15% AMI in the event of a tie as represented in the Tiebreaker Certification submitted at the time of Application.

§13.7. Maximum Funding Requests and Minimum Number of MFDL Units.

(a) Maximum Funding Request. The maximum funding request for an Application will be identified in the NOFA, and may vary by development type, set-aside, or fund source.

(b) Maximum New Construction or Reconstruction Per-Unit Subsidy Limits. While more restrictive per-Unit subsidy caps are allowable and encouraged as point scoring items in §13.6 of this chapter (relating to Scoring Criteria), the per-Unit subsidy limit for a Development will be determined by the Department as the Section 234 Condo limits with the applicable high cost percentage adjustment in effect at the start date of the NOFA, which are the maximum MFDL eligible cost per-Unit subsidy limits that an Applicant may use to determine the amount of MFDL funds combined with other federal funds that may subsidize a Unit.

(c) Maximum Rehabilitation Per-Unit Subsidy Limits. The MFDL eligible cost per-Unit to rehabilitate a Development may not exceed the HUD 221(d)(4) statutory limits, subject to high cost factors as published in the NOFA.

(d) Minimum Number of MFDL Units. The minimum required number of MFDL Units will be determined by the MFDL per-Unit subsidy limits and the cost allocation analysis, which will ensure that the amount of MFDL Units as a percentage of total Units is equal to or greater than the percentage of MFDL funds requested as a percentage of total eligible MFDL Development costs. Applicants may be able to estimate the minimum number of MFDL Units by entering Application information into the Direct Loan Unit Calculator Tool available on the Department's website, but this tool may not cover the specific requirements of every Application. A larger number of MFDL Units may also be required if scoring is utilized.

§13.8. Loan Structure and Underwriting Requirements.

(a) Loan Structures. Loan structures must meet the criteria described in this section and as further described in a 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 §13.12 of this title (relating to Pre-Closing Amendments to Direct Loan Terms).

(b) Criteria for Construction-to-Permanent Loans. Direct Loans awarded through the Department must adhere to the criteria as identified in paragraphs (1) - (7) 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 is 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 and six months. 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) 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 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 federal loan funds from USDA Rural Development;

(5) 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;

(6) 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 §11.207 of this title (relating to Waiver of Rules). 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 with the Application must show the Direct Loan amount is not greater than 80% of the Total Housing Development Costs; and

(7) Up to 50% of the MFDL loan may be advanced at loan closing, should there be sufficient eligible costs to reimburse that amount.

(c) Criteria for Construction Only Loans. MFDL 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 MFDL 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.

(d) 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; 90% of the loan may be advanced at loan closing, unless the Board approves another date.

(e) 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 §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.

(f) Pass-Through Loans. Department funds may not be used as pass-through financing. The Department's Borrower must be the Development Owner.

§13.9. Construction Standards.

All Developments financed with Direct Loans will be required to meet at a minimum the applicable requirements in Chapter 11 of this title (relating to the Qualified Allocation Plan). In addition, Developments must meet all applicable state and local codes, ordinances, and standards; the 2021 International Existing Building Code (IEBC) or International Building Code (IBC), as applicable. Should IEBC be more restrictive than local codes, or should local codes not exist, then the Development must meet the requirements imposed by IEBC or IBC, as applicable. Developments must also meet the requirements in paragraphs (1) - (5) of this section:

(1) Third-Party Recommendations. Recommendations made in the Environmental Site Assessment (§11.305 of this title) and any Scope of Work and Cost Review (§11.306 of this title) with respect to health and safety issues, life expectancy of major systems (structural support; roofing; cladding and weatherproofing; plumbing; electrical; and heating, ventilation, and air conditioning) must be implemented;

(2) Lead and Asbestos Testing. For properties originally constructed prior to 1978, the Scope of Work and Cost Review must be provided to the party conducting the lead-based paint and/or asbestos testing, and the Development Owner must implement the mitigation recommendations of the testing report;

(3) Broadband Infrastructure. The broadband infrastructure requirements described in 24 CFR §92.251(a)(2)(vi) or (b)(1)(x) for HOME, NSP, or TCAP RF; or 24 CFR §93.301(a)(2)(vi) or 24 CFR §93.301(b)(2)(vi) for NHTF, as applicable;

(4) Properties in Catastrophe Areas. Developments located in the designated catastrophe areas specified in 28 TAC §5.4008 must comply with 28 TAC §5.4011 (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2008); and

(5) Minimum Construction Standards. Rehabilitation Developments funded with federal sources may also be required to meet Minimum Rehabilitation Standards, as required by HUD. Rehabilitation Developments funded by the national Housing Trust Fund are required to meet the Multifamily Minimum Rehabilitation Standards approved by HUD, as posted on the Department's website at https://www.tdhca.state.tx.us/multifamily/home/index.htm, in addition to the Department's rules and NOFA requirements.

§13.10. Development and Unit Requirements.

(a) Proportionality. The bedroom/bathroom/amenities and square footages for Direct Loan Units must be comparable to the bedroom/bathroom/amenities and square footages for the total number of Units in the Development based on the amount of Direct Loan funds requested as a percentage of total MFDL eligible costs. As a result of this requirement, the Department will use the Proration Method as the Cost Allocation Method in accordance with HUD CPD Notice 16-15, except as described in subsection (b) of this section. Additionally, the amount of Direct Loan funds requested cannot exceed the per-unit subsidy limit described in this chapter or in the applicable NOFA. Direct Loan Units must be provided as a percentage of each Unit Type, in proportion to the percentage of total costs included in the Direct Loan.

(b) Floating Units. Floating Direct Loan Units may only float among the Units as described in the Direct Loan Contract and Direct Loan LURA.

(1) For HOME, NSP, and TCAP RF, Direct Loan Units must float throughout the Development unless the Development also contains public housing Units that will receive Operating Fund or Capital Fund assistance under Section 9 of the 1937 Act as defined in 24 CFR §5.100.

(2) For NHTF, Direct Loan Units must float throughout the Development, except as prohibited by 24 CFR §93.203, concerning public housing units.

(c) Unit Match Requirements.

(1) For a Development funded with NSP and/or NHTF, a required matching contribution will result in at least one HOME Match-Eligible Unit, in addition to the NSP and/or NHTF Units.

(2) For a Development funded with HOME, a required matching contribution may or may not result in a HOME Match-Eligible Unit, beyond the Department's HOME assisted Units.

(3) For a Development funded with TCAP RF in the annual NOFA, a matching contribution in addition to the Match that the Department counts from the TCAP RF investment will result in some amount of TCAP RF assisted Units being considered HOME Match-Eligible Units.

(d) Minimum Affordability Period. The minimum affordability period for all Direct Loan Units awarded under a NOFA will match the greater of the term of the loan, or 30 years unless a lesser period is approved by the Board. The Department reserves the right to extend the Affordability Period for Developments that fail to meet Program requirements.

(e) Restricted Units. If the Department is the only source of permanent funding for the Development by virtue of equity from HTC and MFDL funding, all Units must be income and rent restricted under a combination of HTC and Direct Loan LURAs, regardless of the amount of deferred Developer Fee as a permanent source. If the MFDL funding is the only source of permanent funding for the Development, all Units must be income and rent restricted by the Direct Loan LURA, and all costs must be MFDL eligible, regardless of the amount of deferred Developer Fee as a permanent source.

(f) Income Levels Committed at Time of Application. If the Direct Loan funds are used in a Competitive or non-Competitive HTC-Layered Development that is electing Income Averaging to qualify under IRC §42, the Direct Loan Units required by the LURA must continue to be provided at the income levels committed at the time of Application. Direct Loan Unit designations may not change to meet Income Averaging requirements.

(g) Mandatory Development Features. Development features described under §11.101(b)(4) of this title (relating to Mandatory Development Amenities) may be selected to meet federal or state requirements, without a change to the number or description of features (e.g. selection of Broadband).

§13.11. Post-Award Requirements.

(a) Direct Loan awardees must satisfactorily complete the Post-Award Requirements identified in this section 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 §11.9(f) of this title (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) Benchmarks. Extensions to the benchmarks in paragraphs (1) - (8) of this subsection may only be approved by the Executive Director or authorized designee in accordance with §13.12 (relating to Pre-Closing) or §13.13 of this chapter (relating to Post-Closing Amendments), 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 required by the National Environmental Policy Act (NEPA) and other related Federal and state environmental laws (if applicable), Direct Loan Applicants, including those previously awarded HTC, must submit a fully completed environmental review, including any applicable reports to the Department, within 30 calendar days of the Board approval date. If the awardee was contemporaneously awarded 9% HTC and selected Readiness to Proceed points under §11.9(c)(8) of this title (relating to Competitive HTC Selection Criteria), 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 30 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 dates described in the Contract. If construction has not commenced within 12 months of the Contract Effective Date, the award may be terminated.

(5) 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;

(iv) Title Insurance Commitment or Policy showing the Department as Lender, with copies of all Schedule B documents; and

(v) 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.

(6) 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 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. Additional loan terms and conditions may be imposed by the loan closing 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.

(7) 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 §10.402(h) of this title (relating to Construction Status Report).

(8) 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.

(9) 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.

(10) 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 Closed 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.

(11) 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.

(12) 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.

(13) 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.

(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) 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 at least 30 calendar days prior to the anticipated closing date, 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;

(E) At least 50% of Direct Loan funds (except as otherwise allowed for Permanent Refinance Loans described in §13.8(e) of this chapter (relating to Loan Structure and Underwriting Requirements)) will be withheld from the initial disbursement of loan funds to allow for periodic disbursements;

(F) The initial draw request for the Development (excluding Table Funding) must be entered into the Department's Housing Contract System no later than180 days after loan closing, and may not be submitted prior to submission of all architectural drawings;

(G) 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;

(H) Developer Fee disbursement shall be limited by subparagraph (I) 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 necessary 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;

(I) 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;

(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) - (viii) 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 NHTF Developments layered with HTCs, a separate, additional cost certification form completed by an independent, licensed, certified public accountant of all Development costs (including project costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract, commonly known as a cost certification;

(v) For Developments subject to the Davis-Bacon Act, evidence from the Department's Senior Labor Standards Specialist that the Department's Notice to Proceed that serves to lock in the Department of Labor's worker prevailing wage mandates at the development and authorizes start of construction was sent and final wage compliance report was received and approved or confirmation that HUD or other entity maintains Davis-Bacon oversight;

(vi) Certificate(s) of Occupancy (for New Construction or Reconstruction Units);

(vii) 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

(viii) 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;

(L) The final draw request must be submitted within the construction term as determined in accordance with §13.8(c)(1) or (d)(1) of this chapter (relating to Loan Structure and Underwriting Requirements) as applicable, unless the construction term has been extended in accordance with §13.12 (relating to Pre-Closing Amendments to Direct Loan Terms) or §13.13 of this chapter (relating to Post-Closing Amendments to Direct Loan Terms), as applicable; and

(M) Annually, Borrowers must submit at least one draw, and may not submit more than four draws, unless previously approved by the Executive Director or designee.

(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) 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 §11.302 of this title (relating to Underwriting Rules and Guidelines), the award may be subject to termination. The Department may require the Closing Memo to be completed before providing a Contract to the Development Owner.

(b) 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 §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; or

(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 §13.11(c)(8) (relating to Post Award Requirements) 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 §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.

(c) 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 §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 §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 §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 prosed 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 §10.406 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 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 October 15, 2021.

TRD-202104088
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: November 28, 2021
For further information, please call: (512) 475-3959

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 745. LICENSING

SUBCHAPTER N. ADMINISTRATOR'S LICENSING

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §745.8913, concerning Can my licensure in another state qualify me for an administrator's license, §745.8933, concerning What must a complete application to become a licensed administrator include, §745.9025, concerning What terms must I know to understand this division, §745.9026, concerning What special considerations can Licensing give to a military member, military spouse, or military veteran that applies for an administrator's license, §745.9027, concerning What must a military member, military spouse, or military veteran submit to Licensing in order to receive special consideration during the application process, and §745.9030, concerning When may a military spouse who has a substantially equivalent license in another state act as an administrator without obtaining a license under this subchapter, in Title 26, Texas Administrative Code, Chapter 745, Licensing, Subchapter N, Administrator's Licensing.

BACKGROUND AND PURPOSE

The proposal is to implement House Bill 139, 87th Legislature, Regular Session, 2021, which amended §§55.001, 55.004, and 55.0041 of Texas Occupations Code. The proposed changes will update the current requirements for a military member, spouse, or veteran that applies for an administrator's license for a general residential operation, child-placing agency, or both, including a military spouse with an equivalent license in another state seeking to act as an administrator without obtaining an administrator's license. Specifically the changes (1) expand military members of armed forces to include members of the space force; (2) clarify that a military member, spouse, or veteran must receive credit for any training, education, or experience that meets a requirement for an administrator's license; and (3) require a military spouse with a license in another state seeking to act as an administrator without obtaining an administrator's license to submit a copy of the permanent change of station order for the military member to whom the spouse is married to establish residency. In addition, HHSC is proposing changes to the rules, including the addition of citations, to improve the readability and understanding of the rules.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §745.8913 adds a citation to clarify how Licensing will determine whether another state's license requirements are substantially equivalent to the requirements for an administrator's license under this subchapter.

The proposed amendment to §745.8933 clarifies that a military spouse with a license in another state seeking to act as an administrator without obtaining an administrator's license under this subchapter must complete the application as specified in §745.9030. There is also a change to improve readability and understanding.

The proposed amendment to §745.9025 clarifies that the armed forces include the space force.

The proposed amendment to §745.9026 clarifies (1) the title of the Associate Commissioner; (2) that a military member, spouse, or veteran must receive credit for any military service, training, education, or experience that meets a requirement for an administrator's license; (3) that Licensing will waive the application and examination fees for a military member, spouse, or veteran whose military service, training, education, or experience substantially meets the requirements for an administrator's license; and (4) how Licensing will determine whether another state's license requirements are substantially equivalent to the requirements for a license under this subchapter by adding a citation. There are also changes to improve readability and understanding.

The proposed amendment to §745.9027 clarifies that a military spouse with a license in another state seeking to act as an administrator without a license under this subchapter must comply with the requirements of §745.9030 to receive special consideration during the application process. There is also a change to improve readability and understanding.

The proposed amendment to §745.9030 (1) makes several changes to improve the readability and understanding and (2) requires a military spouse to submit a copy of the permanent change of station order for the military member to whom the spouse is married to establish residency.

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 do 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 not create a new rule;

(6) the proposed rules will expand an existing rule;

(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 no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules specifically relate to individual applicants for an administrator's license. None of these individuals are small businesses, micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules (1) are necessary to protect the health, safety, and welfare of the residents of Texas; (2) do not impose a cost on regulated persons; and (3) are necessary to implement legislation that does not specifically state that §2001.0045 applies to these 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 the possibility of having more licensed administrators and HHS Child Care Regulation will be following the statutory requirements.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons required to comply with the proposed rules because the proposal does not impose any additional costs or fees on persons required to comply with these rules.

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 by email to Gerry.Williams@hhs.texas.gov.

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 CCRRules@hhs.texas.gov.

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 21R161" in the subject line.

DIVISION 1. OVERVIEW OF ADMINISTRATOR'S LICENSING

26 TAC §745.8913

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 Texas Government Code §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 Texas Human Resources Code Chapter 42.

The amendment affects Texas Government Code §531.0055, Texas Human Resources Code §42.042, and Texas Occupations Code §§55.001, 55.004, and 55.0041.

§745.8913. Can my licensure in another state qualify me for an administrator's license?

(a) We may waive any prerequisite for you to get an administrator's license from us if you have a valid administrator's license from another state and:

(1) The other state's license requirements are substantially equivalent to the requirements for a license under this subchapter, as determined by Licensing under §745.8914 of this subchapter (relating to How does Licensing determine whether another state's licensing requirements are substantially equivalent to the requirements for an administrator's license under this subchapter?) [~~those in Texas~~]; or

(2) There is a reciprocity agreement between Texas and the other state.

(b) We may issue a provisional license to you once you apply for a child-care administrator's license from us and meet the requirements in Human Resources Code[~~,~~] §43.0081.

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 October 15, 2021.

TRD-202104062
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: November 28, 2021
For further information, please call: (512) 438-3269

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DIVISION 2. SUBMITTING YOUR APPLICATION MATERIALS

26 TAC §745.8933

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 Texas Government Code §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 Texas Human Resources Code Chapter 42.

The amendment affects Texas Government Code §531.0055, Texas Human Resources Code §42.042, and Texas Occupations Code §§55.001, 55.004, and 55.0041.

§745.8933. What must a complete application to become a licensed administrator include?

(a) A [~~For all applicants, a~~] complete application to become a licensed administrator must include:

(1) A completed application form;

(2) A transcript or letter of verification from the appropriate educational institution(s) to substantiate your educational qualifications;

(3) Two professional references that verify your professional skills, character, and if applicable, two years of full-time work experience;

(4) An employer reference that documents your one year of supervisory experience as described in [~~(see~~] §745.8919 of this subchapter [~~title~~] (relating to What qualifies as one year of experience in management or supervision of personnel and programs?)[~~)~~];

(5) An application fee of $100;

(6) A notarized affidavit documenting background information on a form provided by DFPS; and

(7) A completed background check request form and background check fee.

(b) A complete application submitted by any applicant who applies for an administrator's license under §745.8913(a) of this subchapter [~~title~~] (relating to Can my licensure in another state qualify me for an administrator's license?) must also include, as applicable:

(1) Documentation related to each administrator's license currently held outside of Texas; and

(2) A copy of the regulations pertaining to the current out-of-state administrator's license.

(c) A military spouse with a license in another state seeking to act as an administrator must complete the application as required by §745.9030 of this subchapter (relating to When may a military spouse with a license in another state act as an administrator without obtaining a license under this subchapter?).

(d) [~~(c)~~] Your application is incomplete if you fail to complete any requirement of this section, as applicable, including inadequate documentation of your qualifications.

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

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TRD-202104063
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: November 28, 2021
For further information, please call: (512) 438-3269

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DIVISION 5. MILITARY MEMBERS, MILITARY SPOUSES, AND MILITARY VETERANS

26 TAC §§745.9025 - 745.9027, 745.9030

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 Texas Government Code §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 Texas Human Resources Code Chapter 42.

The amendments affect Texas Government Code §531.0055, Texas Human Resources Code §42.042, and Texas Occupations Code §§55.001, 55.004, and 55.0041.

§745.9025. What terms must I know to understand this division?

These terms have the following meanings when used in this division:

(1) Military member--A person who is currently serving full-time in the armed forces (army, navy, air force, space force, coast guard, and marine corps) of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state (such as the Texas National Guard or the Texas State Guard).

(2) Military spouse--A person married to a military member.

(3) Military veteran--A person who has served as a military member and was discharged or released from service.

§745.9026. What special considerations can Licensing give to a military member, military spouse, or military veteran that applies for an administrator's license?

(a) The following special considerations are applicable to a military member, military spouse, or military veteran that applies for an administrator's license:

(1) In addition to Licensing's authority to waive prerequisites for an administrator's license in §745.8913 of this subchapter (relating to Can my licensure in another state qualify me for an administrator's license?), the Associate [~~Assistant~~] Commissioner for Licensing or a designee may waive any prerequisite to get an administrator's license if you held an administrator's license in Texas within five years preceding the application date and your credentials provide compelling justification that your experience and education qualifies you to act as an administrator;

(2) The Associate [~~In place of the experience or educational qualifications described in this subchapter, the Assistant~~] Commissioner for Licensing or a designee must [~~may~~]:

(A) Credit a military member, military spouse, or military veteran for verified military service, training, [~~or~~] education, [~~;~~] or clinical or professional experience that meets a requirement for a license under this subchapter; and

(B) Substitute any demonstrated competency a military member, military spouse, or military veteran has that [~~in the opinion of~~] the Associate [~~Assistant~~] Commissioner or a designee determines to meet [~~meets~~] the qualifications;

(3) Licensing will waive the application and examination fees for:

(A) A military member, military spouse, or military veteran whose military service, training, [~~or~~] education, or experience substantially meets [~~all of~~] the requirements for a license under this subchapter [~~qualifications for an administrator's license~~]; or

(B) A military member, military spouse, or military veteran who holds a current license issued by another state whose license requirements are substantially equivalent to the requirements for a license under this subchapter as determined by Licensing under §745.8914 of this subchapter (relating to How does Licensing determine whether another state's licensing requirements are substantially equivalent to the requirements for an administrator's license under this subchapter?) [~~those in Texas~~].

(b) If Licensing issues an administrator's license to you under subsection (a)(1) or (2) of this section, the license will be a full license and not a provisional license.

(c) To be eligible for any special consideration under subsection (a)(1) or (2) of this section, you must not be prohibited from receiving or continuing to maintain an administrator's license, as specified in §745.775(c) of this chapter (relating to How may a criminal conviction or a child abuse or neglect finding affect my ability to receive or maintain an administrator's license?).

§745.9027. What must a military member, military spouse, or military veteran submit to Licensing [~~in order~~] to receive special consideration during the application process?

(a) To receive special consideration as a military member, military spouse, or military veteran during the application process, you must submit:

(1) A complete application as required under §745.8933 of this title (relating to What must a complete application to become a licensed administrator include?); and

(2) The following information as it relates to the special consideration requested:

(A) Documentation demonstrating status as a military member, military spouse, or military veteran;

(B) Documentation related to an administrator's license or any other professional or occupational license issued by another state;

(C) A copy of the regulations pertaining to the current out-of-state administrator's license; or

(D) Any additional documentation that we request to determine whether you meet the experience or educational qualifications, or whether one or both of those qualifications should be waived.

(b) To receive special consideration during the application process, a military spouse with a license in another state seeking to act as an administrator must comply with the requirements of §745.9030 of this subchapter (relating to When may a military spouse with a license in another state act as an administrator without a license under this subchapter?)

§745.9030. When may a military spouse with a [~~who has a substantially equivalent~~] license in another state act as an administrator without [~~obtaining~~] a license under this subchapter?

(a) If you are a military spouse, you may act as an administrator for a general residential operation, child-placing agency, or both, without obtaining an administrator's license under this subchapter and Chapter 43 of the Texas Human Resources Code, for up to three years if we determine that you:

(1) Are currently licensed in good standing by another state that has licensing requirements that are substantially equivalent to the requirements for an administrator's license under this subchapter; and

(2) Meet the other requirements in this section.

(b) In order for us to evaluate whether you are currently licensed in another state with requirements that are substantially equivalent to the requirements for an administrator's license under this subchapter, you must submit:

(1) An Application for a Child-Care Administrator's [~~Administrator~~] License or a Child-Placing Agency Administrator's [~~Administrator~~] License and complete Sections I, VIII (and [~~, except you must~~] attach a copy of your valid military identification card to establish [~~demonstrate~~] your status as a military spouse), and X;

(2) A letter indicating your intent to act as an administrator for a general residential operation, child-placing agency, or both in this state;

(3) Documentation of your residency in this state, including a copy of the permanent change of station order for the military member to whom you are married;

(4) Proof of your administrator's license or any other professional or occupational license that you currently hold in the other state; and

(5) A copy of the regulations pertaining to the current license in the other state or a web address where the regulations can be found.

(c) Once we receive the application and the additional documentation, we will:

(1) Verify that the application is complete, and the documentation is accurate;

(2) Determine whether the requirements for the license in the other state are substantially equivalent to the requirements for an administrator's license according to §745.8914 of this subchapter (relating to How does Licensing determine whether another state's licensing requirements are substantially equivalent to the requirements for an administrator's license under this subchapter?); and

(3) Verify that you are licensed in the other state and are in good standing, including that:

(A) Your license in the other state is valid, active, and current (is not pending renewal and has not expired); and

(B) There is no current disciplinary action or corrective action pending or attached to the license.

(d) After completing the actions in subsection (c) of this section, we will notify you whether we approve or deny you to act as an administrator for a general residential operation, child-placing agency, or both without having an administrator's license under this subchapter.

(e) If we approve you to act as an administrator for a general residential operation, child-placing agency, or both:

(1) You must comply with all other applicable laws and regulations, including those relating to:

(A) Administrator's Licensing in this subchapter and Chapter 43 of the Texas Human Resources Code;

(B) Subchapter F of this chapter (relating to Background Checks) when employed by a general residential operation or a child-placing agency; and

(C) Minimum standards for general residential operations and child-placing agencies; and

(2) Our approval for you to act as an administrator expires on the earlier of:

(A) The date your spouse is no longer stationed at a military installation in this state; or

(B) The third anniversary of the date when we notified you that you may act as an administrator for a general residential operation, child-placing agency, or both.

(f) We may revoke our approval for you to act as an administrator for any reason noted in §745.9037 of this subchapter (relating to Under what circumstances may Licensing take remedial action against my administrator's license or administrator's license application?).

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 October 15, 2021.

TRD-202104064

Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: November 28, 2021
For further information, please call: (512) 438-3269

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER G. WORKERS' COMPENSATION INSURANCE

DIVISION 1. SALE OF SUBSTITUTES TO WORKERS' COMPENSATION INSURANCE

28 TAC §5.6302

The Texas Department of Insurance (TDI) proposes to repeal 28 TAC §5.6302, concerning the sale of substitutes to workers' compensation insurance.

EXPLANATION. The repeal is necessary because House Bill 3769, 87th Legislature, 2021, added Insurance Code Chapter 564, which requires disclosures similar to §5.6302, making the rule redundant and obsolete. Section 5.6302 is no longer needed because each provision in it is now superseded or addressed by statute. Insurance Code §541.051, which prohibits misrepresenting the terms, benefits, or advantages of a policy, addresses the requirements in §5.6302(a). New Insurance Code §564.005 supersedes the disclosures required by §5.6302(b) and (d). In addition, the disclosure required by §5.6302(c) is redundant because Labor Code §406.005 requires a similar notice to employees.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Marianne Baker, director, Property and Casualty Lines Office, has determined that during each year of the first five years the proposed repeal is in effect, there will be no measurable fiscal impact on state and local governments as a result of repealing this section. Ms. Baker made this determination because the proposed repeal does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed repeal.

Ms. Baker does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed repeal is in effect, Ms. Baker expects that the proposed repeal will have the public benefits of eliminating an obsolete and redundant regulation and ensuring that TDI's rules conform to Insurance Code Chapter 564.

Ms. Baker expects that the proposed repeal will not increase the cost of compliance for insurers because the repeal does not create or impose any requirements.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. TDI has determined that the proposed repeal will not have an adverse economic effect on small or micro businesses, or on rural communities. There are no additional costs as a result of this proposal because it only repeals an existing regulation made obsolete by statute. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that the proposed repeal does not impose a possible cost on regulated persons. No additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed rule repeal is in effect, the proposed repeal:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will repeal an existing regulation;

- will decrease the number of individuals subject to the rule's applicability; and

- will positively affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI 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. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on November 29, 2021. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and must be received by TDI no later than 5:00 p.m., central time, on November 29, 2021. If TDI holds a public hearing, TDI will consider written comments and those presented at the hearing.

STATUTORY AUTHORITY. TDI proposes the repeal of §5.6302 under Insurance Code §564.006 and §36.001.

Insurance Code Chapter 564.006, as added by HB 3769, provides that the Commissioner adopt rules necessary to implement Chapter 564.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the

powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The repeal of §5.6302 implements Insurance Code Chapter 564, added by HB 3769.

§5.6302. Sale of Substitutes to Workers' Compensation Insurance.

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 October 12, 2021.

TRD-202104044
Allison Eberhart
Deputy General Counsel
Texas Department of Insurance
Earliest possible date of adoption: November 28, 2021
For further information, please call: (512) 676-6584

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 13. UNCLAIMED PROPERTY REPORTING AND COMPLIANCE

34 TAC §§13.5, 13.9, 13.10

The Comptroller of Public Accounts proposes new §§13.5, concerning reportability of worthless and non-freely transferable securities; 13.9, concerning documentation requirements to establish heirship; and 13.10, concerning durable powers of attorney.

Section 13.5 provides definitions for the terms "non-freely transferable security" and "worthless security." Additionally, the proposal provides that non-freely transferable or worthless securities are not reportable to the comptroller as unclaimed property. It also provides that the comptroller may issue annual guidance to holders regarding non-freely transferable and worthless securities, which a holder may rely on in determining whether a security is reportable under Property Code, Chapter 74.

Section 13.9 provides for additional documentation requirements for a person making a claim for unclaimed property as an heir of the reported owner.

Section 13.10 provides that a person holding a durable power of attorney for a claimant who is medically incapacitated must provide additional documentation to the comptroller to demonstrate the claimant is presently disabled or medically incapacitated.

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

Mr. Currah also has determined that the proposals would have no significant fiscal impact on small businesses or rural communities. The new rules would have no fiscal impact on the state government, units of local government, or individuals. The new proposals would benefit the public by conforming the rules to current statute. There would be no anticipated significant economic cost to the public.

Comments on the proposals may be submitted to Bryant Clayton, Assistant Director, Unclaimed Property Division, Comptroller of Public Accounts, at bryant.clayton@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new rules are proposed under Property Code, §74.701, which authorizes the comptroller to adopt rules necessary to carry out Property Code, Title 6, regarding unclaimed property.

The new rules implement Property Code, Chapters 72 and 74.

§13.5. Reportability of Worthless and Non-freely Transferable Securities.

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

(1) Non-freely transferable security--A security that cannot be delivered to the comptroller by a custodian of securities providing post-trade clearing and settlement services to financial markets, a security that cannot be delivered to the comptroller because there is no agent to effect transfer, or a security that the comptroller may not purchase or hold as an investment under any applicable law. The term includes a worthless security.

(2) Worthless security--A security with a market value of zero or whose cost of liquidation and delivery to the comptroller would exceed the value of the security on the date a report is due under Property Code, Chapter 74. A worthless security includes a warrant, right or other option whose expiration dates have passed.

(b) A holder shall not report or deliver a worthless or non-freely transferable security to the comptroller as unclaimed property.

(c) The comptroller may provide annual guidance to holders of securities regarding the reportability of non-freely transferable or worthless securities under this section. For the purposes of this section, a holder may rely on the guidance of the comptroller in determining whether a security is reportable under Property Code, Chapter 74.

§13.9. Documentation Requirements to Establish Heirship.

(a) A person making a claim for unclaimed property reported to the comptroller as a legal heir of a reported owner or of the reported owner's heirs or devisees must submit the following documentation:

(1) for claims equal to or less than $5,000, a copy of an affidavit of heirship from two disinterested witnesses attesting to the family history of each deceased owner, heir, or devisee, through whom the claimant is claiming legal heirship;

(2) for claims greater than $5,000 but equal to or less than $10,000, a copy of an affidavit of heirship from two disinterested witnesses attesting to the family history of each deceased owner, heir, or devisee, through whom the claimant is claiming legal heirship that has been recorded in the county in which the decedent died or was residing at the time of the decedent's death;

(3) for claims greater than $10,000 but equal to or less than $75,000, a small estate affidavit that substantially complies with the requirements of Estates Code, Chapter 205; or

(4) for claims greater than $75,000, a judicial determination of heirship.

(b) The comptroller may waive the documentation requirements of subsection (a) of this section and may request other documentation as may be appropriate under the circumstances to demonstrate the claimant is a legal heir of the reported owner.

§13.10. Durable Powers of Attorney.

(a) A person holding a durable power of attorney who makes a claim on behalf of a reported owner or other person must, in addition to presenting a copy of the durable power of attorney, provide the comptroller with a statement from a physician attending the principal that states that the claimant is presently disabled or incapacitated.

(b) Before accepting a durable power of attorney the comptroller may require the agent presenting the power of attorney to provide an agent's certification that substantially complies with Estates Code, §751.203.

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 October 15, 2021.

TRD-202104061
Victoria North
General Counsel For Fiscal And Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: November 28, 2021
For further information, please call: (512) 475-0387

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PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

34 TAC §41.13

The Teacher Retirement System of Texas (TRS) proposes new §41.13, concerning One-Time Reenrollment Opportunity.

BACKGROUND AND PURPOSE

TRS originally proposed a One-Time Reenrollment Opportunity rule as new §41.16 in the August 13, 2021, issue of the *Texas Register* (46 TexReg 4988). TRS then published an adoption of the new section in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6944). However, due to a codification error, the Texas Register subsequently rejected and withdrew this adoption and proposal. A correction by the Texas Register describing this codification error is published elsewhere in this issue of the *Texas Register.*

Due to this error, TRS now proposes new §41.13. New §41.13 is identical to the previously proposed §41.16 but proposes to adopt the text under §41.13, which is currently not used in TRS rules. There are no other changes to this proposal from the originally proposed text in proposed new §41.16.

The purpose of the proposal is to implement House Bill (H.B.) 2022, 87th Legislature, Regular Session, 2021. H.B. 2022 amended Insurance Code, Chapter 1575 (TRS-Care) by amending Section 1575.161, concerning Enrollment Periods, to add new Subsections (b) and (c). The new subsections mandate the TRS Board of Trustees create rules to provide a one-time opportunity to reenroll in a health benefit plan offered under TRS-Care for an otherwise eligible retiree and provides that the new subsections expire September 1, 2024.

Proposed new §41.13, One-Time Reenrollment Opportunity, restates the eligibility requirements of new Section 1575.161(c); defines "eligible to enroll in Medicare"; addresses dependents; provides reenrollment will take effect on the first day of the month following the month in which TRS receives the written request; and provides that the new rule will expire September 1, 2024 unless extended by legislative action.

FISCAL NOTE

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

PUBLIC COST/BENEFIT

For each year of the first five years the proposed new rule will be in effect, Mr. Green also has determined that the public benefit anticipated as a result of the adopting the proposed new rule will be to remedy the adverse effects changes to the plans during the period of January 1, 2017 and December 31, 2019, may have had on member choice to leave the plan during that timeframe by giving the members a one-time opportunity to reenroll in the plan. Mr. Green has also determined that there is no economic cost to entities or persons required to comply with the proposed new rule.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

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

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed new rule. Therefore, no local employment impact statement is required under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed new rule is in effect, the proposed new rule will not create or eliminate any TRS programs; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not eliminate any fees currently paid to TRS; will not create a new regulation; will not expand, limit or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy.

TAKINGS IMPACT ASSESSMENT

TRS has determined that there are no private real property interests affected by the proposed new rule, therefore, a takings

impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed new rule because it does not impose a cost on regulated persons.

COMMENTS

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

STATUTORY AUTHORITY

The new rule is proposed under the authority of Chapter 1575, Insurance Code, which establishes the Texas Public School Employees Group Benefits Program (TRS-CARE), §1575.052, which allows the trustee to adopt rules, plans, procedures, and orders reasonably necessary to implement Chapter 1575; and Chapter 825, Texas Government Code, which governs the administration of TRS, §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

CROSS-REFERENCE TO STATUTE

The proposed new rule affects §1575.161, Insurance Code, concerning Enrollment Periods.

§41.13. One-Time Reenerollment Opportunity.

(a) A retiree who was enrolled in TRS-Care and voluntarily terminated the retiree's enrollment between January 1, 2017, and December 31, 2019, will have a one-time opportunity to reenroll in TRS-Care if the retiree is otherwise eligible and meets the following requirements:

(1) The retiree is eligible to enroll in Medicare at the time the retiree applies for reenrollment in TRS-Care; and

(2) The retiree applies for reenrollment into TRS-Care no later than December 31, 2023.

(b) A retiree will be considered eligible to enroll in Medicare for purposes of subsection (a)(1) of this section if at the time the retiree applies for reenrollment into TRS-Care, the retiree is eligible to enroll in the Medicare Advantage plan offered under TRS-Care, according to Section 1575.1582(b) of the Insurance Code.

(c) If the retiree's application to reenroll under this section is approved, the retiree will be able to enroll in TRS-Care any eligible dependents.

(d) If the retiree who was enrolled in TRS-Care and voluntarily terminated the retiree's enrollment between January 1, 2017 and December 31, 2019 has since passed away, the retiree's surviving spouse or the retiree's surviving dependent child will be eligible to enroll under this section, as long as:

(1) The surviving spouse or surviving dependent child qualifies as such under Section 1575.003 of the Insurance Code;

(2) The surviving spouse or surviving dependent child is eligible to enroll in Medicare at the time the person applies for enrollment, according to subsection (b) of this section; and

(3) The surviving spouse or surviving dependent child applies for enrollment into TRS-Care no later than December 31, 2023. If a surviving spouse's application for enrollment under this subsection is approved, the surviving spouse will be able to elect to enroll any eligible surviving dependent child as a dependent.

(e) The effective date of coverage in the TRS-Care plan under this section will be the first day of the month after TRS receives the written request from the eligible person to enroll.

(f) This section will expire on September 1, 2024, unless the one-time reenrollment opportunity is extended by legislative action, in which case this section will remain in place until such one-time reenrollment opportunity expires according to such legislative action.

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 October 15, 2021.

TRD-202104092
Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Earliest possible date of adoption: November 28, 2021
For further information, please call: (512) 542-6292

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PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 69. MEMBERSHIP, PENSION REVOCATION, AND REFUNDS

The Employees Retirement System of Texas (ERS) proposes to repeal the following rules in 34 Texas Administrative Code (TAC) Chapter 69, concerning Membership, Pension Revocation, and Refunds (f/k/a Membership and Refunds): §69.3 (Members of Governing Boards), §69.5 (Interest Payable at Time of Refund), and §69.7 (Reinstatement of Refunded Accounts within 15 days). ERS further proposes the following new rules concerning the same or similar subject matter: §69.2 (Definitions Related to Annuity Termination), §69.3 (Termination of Annuities), §69.4 (Pre-Existing Qualified Domestic Relations Orders), §69.5 (Awards to Spouses), §69.6 (Notice of Conviction), §69.7(Members of Governing Boards and Commissions), and §69.8 (Reinstatement of Refunded Accounts within 30 Days). Finally, ERS proposes amendments to existing rules by amending §69.1 (Employees Covered by Teacher Retirement System), and §69.9 (Trustee to Trustee Transfers). This proposal and the rules as repealed, amended, or added as new rules by this proposal are referred to collectively as the "proposed rules."

ERS is a constitutional trust fund established as set forth in Article XVI, §67, Texas Constitution, and further organized pursuant to Title 8, Tex. Gov't Code, as well as 34 Texas Administrative Code, §§61.1 *et seq.*

Section 69.3 is proposed to be repealed because the rule language will be added as a new rule in §69.7. Section 69.5 is proposed to be repealed because the rule language is obsolete. Section 69.7 is proposed to be repealed because the rule language will be added as a new rule in §69.8.

The amendments and additions to Chapter 69 are being proposed as part of ERS' ongoing statutory responsibility to review its rules and in order to implement Tex. Gov't Code §810.003,

enacted by the 85th Legislature, Regular Session (2017) in S.B. 500, and §810.004, enacted by the 86th Legislature, Regular Session (2019) in S.B. 1570, regarding the termination of annuities of certain elected officials and corrections employees convicted of a felony.

GOVERNMENT GROWTH IMPACT STATEMENT

ERS has determined that during the first five-year period the amended rule will be in effect:

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

(2) implementation of the proposed rules will not require the creation of new employee positions or eliminate existing employee positions;

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

(4) the proposed rules will not require an increase or decrease in fees paid to the agency;

(5) the proposed rules will create a new rule or regulation;

(6) the proposed rules will repeal an existing rule or regulation;

(7) the proposed rules will not increase or decrease the number of individuals subject to the rule's applicability; and

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

Ms. Robin Hardaway, Director of Customer Benefits, has determined that for the first five-year period the rule is in effect, there will be no fiscal implication for state or local government or local economies as a result of enforcing or administering the rule; and small businesses, micro-businesses, and rural communities will not be affected.

The proposed rules implement Texas Government Code §810.003 concerning Certain Elected Officials Ineligible for Retirement Annuity and §810.004 concerning Certain Corrections Employees Ineligible for Retirement Annuity. The proposed rules do not constitute a taking. Ms. Hardaway has also determined that, to her knowledge, there are no known anticipated economic effects to persons who are required to comply with the rule as proposed, and the proposed rules do not impose a cost on regulated persons.

Ms. Hardaway also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of adopting and complying with the rule is to terminate the annuities of elected officials and corrections officers who committed an applicable felony while employed.

Comments on the proposed rules may be submitted to Cynthia C. Hamilton, Acting General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Hamilton at *Cynthia.Hamilton@ers.texas.gov.* The deadline for receiving comments is Monday, November 29, 2021, at 10:00 a.m.

34 TAC §§69.1 - 69.9

The rules are proposed under Tex. Gov't Code §815.102, which provides authorization for the ERS Board of Trustees to adopt rules necessary for the administration of the funds of the retirement system and regarding the transaction of any other business of the Board, as well as §810.003(j) and §810.004(i) which instruct the governing body of a retirement system to adopt rules and procedures to implement these sections.

No other statutes are affected by the proposed rules.

§69.1. Employees Covered by Teacher Retirement System.

The [~~Although all other appointive state officers and employees of state agencies are members of the Employees Retirement System, the~~] following persons employed by [~~working for~~] state agencies and departments are members of the Teacher Retirement System of Texas (TRS): [~~.~~]

(1) a person who holds a [~~Those persons whose salaries are paid from foundation school funds that are holding~~] coaching, teaching, or administrative position [~~positions~~] with an independent school district, the salary for which is paid with foundation school funds; and [~~.~~]

(2) a person [~~Persons~~] who elected to retain membership in TRS [~~pursuant to law~~] when the agency or department that employs the person [~~in which they were employed was~~] transferred out of TRS. [~~that system. Teacher Retirement System membership will be in effect at any time these employees are working for that agency.~~]

§69.2 Definitions Related to Annuity Termination.

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

(1) "Qualifying felony" for the purposes of §69.3(a) of this chapter means a felony described by Tex. Gov't Code §810.003(a).

(2) "Qualifying felony" for the purposes of §69.3(b) of this chapter means a felony described by Tex. Gov't Code §810.004(a).

(3) "Elected official" means a person described by Tex. Gov't Code §810.003(b). The retirement of an elected official prior to the termination of an annuity under this chapter does not prevent annuity forfeiture under this chapter.

(4) "Corrections officer" means a person described by Tex. Gov't Code §810.004(b). The retirement of a corrections officer prior to the termination of an annuity under this chapter does not prevent annuity forfeiture under this chapter.

(5) "Alternate payee" means a spouse, former spouse, child, or other dependent of an elected official or corrections officer who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by a public retirement system with respect to the elected official or corrections officer.

(6) "Suspension period" means the period of time between the date an annuity is terminated under this chapter and the date the system determines the annuity should be reinstated because the conviction was overturned on appeal or the person meets the requirements for innocence under Tex. Civ. Prac. & Rem. Code §103.001(a)(2).

§69.3. Termination of Annuities.

(a) The annuity of an elected official shall be terminated if:

(1) the elected official is convicted of a qualifying felony committed while in office; and

(2) the conduct underlying the qualifying felony arose directly from the official duties of the elected official's office.

(b) The annuity of a corrections officer shall be terminated if:

(1) the corrections officer is convicted of a qualifying felony; and

(2) the conduct underlying the qualifying felony arose directly from the person's service as a corrections officer.

(c) If the elected official or corrections officer is receiving an annuity at the time that the system receives notice of the conviction, the final annuity payment shall be paid on the last day of the month following the month in which the system receives the notice of conviction.

(d) If the annuity of an elected official or corrections officer is terminated pursuant to subsection (a) or (b) of this section, the system shall issue a refund of the person's remaining service retirement annuity contributions, including service purchase funds, with interest, unless the annuity is subject to an order of a court awarding any part of the annuity to a spouse, former spouse, or other alternate payee. A refund under this section is subject to an order of a court awarding all or part of the person's service retirement annuity contributions to a former spouse as provided by Tex. Gov't Code §810.003(f), except as otherwise provided by §69.4 and §69.5 of this chapter.

(e) The system shall reinstate the annuity and refund payments withheld during the suspension period, with interest, if:

(1) the conviction is overturned on appeal or the elected official or corrections officer meets all requirements for innocence under Tex. Civ. Prac. and Rem. Code §103.001(a)(2); and

(2) the system receives a completed application to reinstate the annuity and a payment equal to the refund provided under subsection (d) of this section, not later than the 120th day after the conviction is overturned or the person meets all requirements for innocence.

(f) Interest under this chapter shall be calculated at the rate provided by Tex. Gov't Code §815.311 in effect at the time the system reinstates the annuity.

(g) Subject to applicable federal law, an elected official or a corrections officer whose annuity is terminated under this chapter is no longer an annuitant for purposes of Tex. Ins. Code Chapter 1551. Coverage shall terminate on the first day of the month following the final annuity payment.

(h) Service credit previously earned in any class by an elected official or corrections officer whose annuity is terminated under this chapter is no longer creditable service and may not be used, transferred, or repurchased under Tex. Gov't Code Chapter 803, 805, or 813 or under §833.102 or §838.102 unless the system reinstates the annuity because the conviction has been overturned or the person has met all requirements for innocence. If the conviction has been overturned or the person has met all requirements for innocence, interest shall be calculated as if there was no suspension period.

(i) A decision by the system under this chapter constitutes final agency action and no administrative appeal from the decision is available.

§69.4. Pre-existing Qualified Domestic Relations Orders.

(a) If an elected official is subject to a qualified domestic relations order established prior to June 6, 2017, and the retirement of the elected official has caused benefits to be payable to the alternate payee prior to annuity termination, the system shall retain an actuarially determined portion of the person's remaining service retirement annuity contributions, including service purchase funds, with interest, in order to continue to satisfy the obligation to the alternate payee.

(b) If a corrections officer is subject to a qualified domestic relations order established prior to June 10, 2019, and the retirement of the corrections officer has caused benefits to be payable to the alternate payee prior to annuity termination, the system shall retain an actuarially determined portion of the person's remaining service retirement annuity contributions, including service purchase funds, with interest, in order to continue to satisfy the obligation to the alternate payee.

(c) An alternate payee described by subsection (a) or (b) of this section shall continue to receive the alternate payee's portion of the annuity. Annuity payments shall stop at the death of the elected official/corrections officer or the alternate payee, whichever is earlier. Any remaining portion of the elected official's or corrections officer's service retirement annuity contributions, including service purchase funds, shall be refunded with interest.

(d) If an elected official or corrections officer does not retire prior to annuity termination, the system shall satisfy any obligation to an alternate payee under a qualified domestic relations order by paying the alternate payee a portion of a refund of the elected official's or corrections officer's service retirement annuity contributions, including service purchase funds, with interest.

§69.5. Awards to Spouses.

(a) If a court awards a portion of an elected official's or corrections officer's forfeited annuity under Tex. Gov't Code §810.003(h) or §810.004(g), the awarded portion is payable only for the lifetime of the elected official/corrections officer or the spouse, whichever ends earlier.

(b) The maximum portion of a forfeited annuity payable to a spouse under Tex. Gov't Code §810.003(h) or §810.004(g) is fifty percent.

(c) The system may not pay any portion of a forfeited annuity to a common law or informal spouse or to a spouse who fails to provide written notice of an award as required by this section. An award of a portion of a forfeited annuity under Tex. Gov't Code §810.003(h) or §810.004(g) is payable only if:

(1) the award is made to a spouse that the elected official or corrections officer married as evidenced by a properly issued and completed marriage license; and

(2) the spouse provides written notice of the award to the system not later than the 30th day after the conviction of the elected official or corrections officer.

(d) If the spouse of an elected official or corrections officer is convicted of the qualifying felony as a party to the offense or convicted of another related offense arising out of the same criminal episode, the spouse forfeits any interest in the elected official's or corrections officer's annuity or service retirement contributions to the same extent as the elected official or corrections officer. The divorce of an elected official or corrections officer prior to the termination of an annuity under this chapter shall not prevent the forfeiture of the spouse's interest in the annuity and service retirement contributions, including service purchase funds.

§69.6. Notice of Conviction.

(a) The system shall terminate the annuity of an elected official or corrections officer convicted of a qualifying felony pursuant to §69.3 of this chapter upon receipt of notice of the conviction as specified in Tex. Gov't Code §810.003 or §810.004 or other proper notice of the conviction.

(b) Proper notice of the conviction must include:

(1) a copy of the court's judgment and sentence or documentation equivalent to a judgment and sentence; and

(2) identifying information establishing that the person named in the judgment and sentence is an elected official or corrections officer who is a contributing member or annuitant of the system, including, but not limited to, the person's date of birth or social security number.

(c) The person convicted of a qualifying felony must provide proper notice of the conviction to the system not later than the 30th day after the judgment and sentence are entered by the court. If the person fails to provide such notice on or before the 30-day deadline, the person must repay to the system all annuity payments that would have been forfeited if timely notice had been provided. The system shall recoup the annuity payments prior to making any payment to an alternate payee, except as provided by Tex. Gov't Code §810.003(g) or §810.004(f), and shall offset such payments against a refund of the person's remaining service retirement annuity contributions, including service purchase funds, if any.

(d) For an elected official, the governmental entity to which the person was elected or appointed must provide proper notice of the conviction to the system not later than the 30th day after the judgment and sentence are entered by the court.

(e) For elected officials and corrections officers, the court entering the judgment and sentence must provide proper notice of the conviction to the system as soon as practicable but not later than the 30th day after the judgment and sentence are entered by the court.

(f) For elected officials and corrections officers, the lead prosecuting attorney must provide proper notice of the conviction to the system as soon as practicable but not later than the 30th day after the judgment and sentence are entered by the court. The lead prosecuting attorney also shall provide a copy of the indictment to the system.

(g) A court's, governmental entity's, or lead prosecuting attorney's failure to comply with the notice requirements under subsection (d), (e), or (f) of this section shall not prevent the system from terminating an annuity.

§69.7. Members of Governing Boards and Commissions.

(a) Payment of contributions by a person who is a member of the system by virtue of service on a governing board or commission shall be made to the corresponding department or agency. Contributions are due on the last day of the month for which retirement service credit is to be established.

(b) If payment has not been received by the system when the department's or agency's retirement report is received, notice that payment has not been made and of the pending loss of eligibility to establish retirement service credit shall be sent to the member and to the chief fiscal officer and the head of the department or agency.

(c) If a board or commission member's contributions are not paid to the system within 60 days after they are due, the member shall lose all rights to establish retirement service credit as a member of the board or commission.

§69.8. Reinstatement of Refunded Accounts within 30 Days.

(a) If a former employee with 10 or more years of retirement service credit requests a refund, the former employee may withdraw the refund request by returning the refund warrant within 30 days of the date the warrant was mailed by the system.

(b) This section does not apply to any of the provisions in §69.2 through §69.6 of this chapter.

§69.9 Trustee to Trustee Transfers.

(a) Effective for distributions made after December 31, 1992, the system [~~Employees Retirement System of Texas~~] shall permit the distributee of an eligible rollover distribution to elect to have such distribution paid directly to an eligible retirement plan specified by the distributee in the form of a direct trustee to trustee transfer.

(b) The system [~~Employees Retirement System of Texas~~] shall develop procedures to implement this section in accordance with the Internal Revenue Code of 1986, §401(a)(31), as amended, and related regulations. Terms used in this section shall have the meanings assigned in the Internal Revenue Code of 1986 as amended.

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 October 18, 2021.

TRD-202104123
Cynthia C. Hamilton
Acting General Counsel
Employees Retirement System of Texas
Earliest possible date of adoption: November 28, 2021
For further information, please call: (877) 275-4377

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34 TAC §§69.3, 69.5, 69.7

The rule repeals are proposed under Tex. Gov't Code §815.102, which provides authorization for the ERS Board of Trustees to adopt rules necessary for the administration of the funds of the retirement system and regarding the transaction of any other business of the Board, as well as §810.003(j) and §810.004(i) which instruct the governing body of a retirement system to adopt rules and procedures to implement these sections.

No other statutes are affected by the proposed repeals.

§69.3. Members of Governing Boards.
§69.5. Interest Payable at Time of Refund.
§69.7. Reinstatement of Refunded Accounts within 15 days.

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

Filed with the Office of the Secretary of State on October 19, 2021.

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For further information, please call: (877) 275-4377

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 8. CAPITOL COMPLEX

SUBCHAPTER A. PROTECTION OF STATE BUILDINGS AND GROUNDS

37 TAC §8.7

The Texas Department of Public Safety (the department) proposes amendments to §8.7, concerning Prohibited Weapons. The Eighty-seventh Texas Legislature enacted House Bill 1927, which expanded the ability of individuals who are 21 years of age

or older to carry a firearm unless otherwise prohibited by state or federal law from possessing the firearm. The amendments make §8.7(a) consistent with the expanded right to carry available under House Bill 1927.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be clearer understanding of the right to carry firearms in state buildings and state grounds.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

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

Comments on the proposal may be submitted to Susan Estringel, Office of General Counsel, Texas Department of Public Safety, P.O. Box 4087 (MSC 0140), Austin, Texas 78773. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and §411.062(d), which authorizes the department to adopt rules relating to the security of persons and property of the state within the Capitol Complex.

Texas Government Code, §411.004(3) and §411.062(d) are affected by this proposal.

§8.7. Prohibited Weapons.

(a) Firearms, explosive weapons, illegal knives, clubs, and knuckles, as defined in the Texas Penal Code, §46.01, and prohibited weapons as defined in the Texas Penal Code, §46.06, are not permitted in state buildings or on state grounds covered under this subchapter, except in the possession of:

(1) a licensed peace officer;

(2) as to a handgun or nightstick, a properly licensed private security officer while working under an approved department contract and the contract authorizes the use of an armed guard; or

(3) a person who is licensed to carry a handgun, under Texas Government Code, Chapter 411, Subchapter H, or those who are 21 years of age or older and not otherwise prohibited by state or federal law from possessing a firearm provided that such a person may only carry a handgun in a place and under circumstances where not otherwise prohibited by law.

(b) Violations of laws relating to weapons will be prosecuted under the applicable statute. Violations of this section which are not otherwise a violation of a particular statute, will be prosecuted under Texas Government Code, §411.065.

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 October 15, 2021.

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

CHAPTER 23. VEHICLE INSPECTION
SUBCHAPTER D. VEHICLE INSPECTION ITEMS, PROCEDURES, AND REQUIREMENTS

37 TAC §23.41

The Texas Department of Public Safety (the department) proposes amendments to §23.41, concerning Passenger (Non-Commercial) Vehicle Inspection Items. This rule change requires the vehicle inspector to input the vehicle's odometer reading to the department's inspection database at the time of inspection. The amendment also exempts fully autonomous vehicles from certain inspection requirements, as required to implement House Bill 3026, 87th Legislative Session. Finally, the amendment exempts fully electric vehicles from certain inspection requirements.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who

are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be enhanced administrative efficiency relating to administrative actions against vehicle inspectors and inspection station owners.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email to *RSD.Rule.Comments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548.

Texas Government Code, §411.004(3), and Texas Transportation Code §548.002 and §548.253(2), are affected by this proposal.

§23.41. Passenger (Non-Commercial) Vehicle Inspection Items.

(a) All items of inspection enumerated in this section shall be required to be inspected in accordance with the Texas Transportation Code, Chapter 547, any other applicable state or federal law, and department or federal regulation as provided in the DPS Training and Operations Manual prior to the issuance of a vehicle inspection report.

(b) All items must be inspected in accordance with the attached inspection procedures. (The figure in this section reflects excerpts from the DPS Training and Operations Manual, Chapter 4.)

Figure: 37 TAC §23.41(b) (No change.)

(c) A vehicle inspection report may not be issued for a vehicle equipped with a compressed natural gas (CNG) fuel system unless the vehicle inspector can confirm in a manner provided by subsection (d) of this section that:

(1) the CNG fuel container meets the requirements of Code of Federal Regulations, Title 49, §571.304; and

(2) the CNG fuel container has not exceeded the expiration date provided on the container's label.

(d) The requirements of subsection (c) of this section may be confirmed by any appropriate combination of the items detailed in paragraphs (1) - (3) of this subsection:

(1) Observation of Container Label. The vehicle inspector may confirm the requirement of subsection (c)(2) of this section through direct observation of the expiration date on the container;

(2) Observation of Label at Fueling Connection Receptacle. The vehicle inspector may confirm through direct observation of a label affixed to the vehicle by the original equipment manufacturer or by a certified installer or inspector of CNG systems (as defined in subsection (g) of this section) reflecting that the requirements of subsection (c)(1) or (c)(2) of this section are satisfied; or

(3) Documentation. The vehicle owner may furnish to the vehicle inspector documentation provided by the original vehicle equipment manufacturer or by a certified installer or inspector of CNG systems (as defined in subsection (g) of this section) reflecting that either or both requirements of subsection (c)(1) and (c)(2) of this section are satisfied.

(e) The owner or operator of a fleet vehicle may, as an alternative to the requirements of subsection (c) of this section, provide proof in the form of a written statement or report issued by the owner or operator that the vehicle is a fleet vehicle for which the fleet operator employs a certified installer or inspector of CNG systems (as defined in subsection (g) of this section).

(f) A copy of the written statement or report provided to the vehicle inspector under subsections (d)(3) or (e) of this section must be maintained in the vehicle inspection station's files for a period of one year from the date of the inspection and made available to the department on request.

(g) Certified installer or inspector of CNG systems: For purposes of this section, a certified installer or inspector of CNG systems is a person licensed by the Railroad Commission of Texas under 16 TAC §13.61.

(h) An inspection station or inspector, on completion of an inspection, shall electronically submit to the department's inspection database the vehicle identification number of the inspected vehicle, an indication of whether the vehicle passed the inspections required by the Act and this Chapter, and the odometer reading of the vehicle.

(i) An automated motor vehicle, as defined by Transportation Code, §545.451, that is incapable of operation by a human operator present in the vehicle is exempt from the inspection requirements relating to the steering system, including power steering; high beam indicator; mirrors; windshield wipers; sun screening devices; or front seatbelts unless seat belt anchorages were part of the manufacturer's original equipment.

(j) A motor vehicle that uses electricity as its only source of motor power and that is not equipped with an internal combustion engine is exempt from the inspection requirements relating to the exhaust system, fuel tank cap, and emissions control equipment.

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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D. Phillip Adkins
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Texas Department of Public Safety
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SUBCHAPTER F. VIOLATIONS AND ADMINISTRATIVE PENALTIES

37 TAC §23.62

The Texas Department of Public Safety (the department) proposes amendments to §23.62, concerning Violations and Penalty Schedule. The rule change authorizes the department to take administrative action against a licensee for disclosing or selling the private information of a vehicle inspection customer, reflecting the elements of the offense created by Senate Bill 15, 87th Legislative Session, amending Transportation Code, §548.601(a). In addition, the rule amendment authorizes the department to suspend the license following the licensee's refusal to pay a finally adjudicated administrative penalty.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be the implementation of legislation and enhanced administrative efficiency relating to administrative actions against vehicle inspectors and inspection station owners.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email to *RSD.Rule.Comments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548.

Texas Government Code, §411.004(3), Texas Transportation Code, §548.002, §548.405, and §548.601(a)(9), are affected by this proposal.

§23.62. Violations and Penalty Schedule.

(a) In accordance with this section, the department may deny an application for a certificate, revoke or suspend the certificate of a person, vehicle inspection station, or inspector, place on probation, or reprimand a person who holds a certificate.

(b) The department will administer penalties by the category of the violation. The violations listed in this section are not an exclusive list of violations. The department may assess penalties for any violations of Texas Transportation Code, Chapter 548 (the Act), or rules adopted by the department. The attached graphic summarizes the violation categories and illustrates the method by which penalties are enhanced for multiple violations.
Figure: 37 TAC §23.62(b) (No change.)

(c) Violation categories are as follows:

(1) Category A.

(A) Issuing a vehicle inspection report without inspecting one or more items of inspection.

(B) Issuing a vehicle inspection report without requiring the owner or operator to furnish proof of financial responsibility for the vehicle at the time of inspection.

(C) Issuing the wrong series or type of inspection report for the vehicle presented for inspection.

(D) Refusing to inspect a vehicle without an objective justifiable cause related to safety.

(E) Failure to properly safeguard inspection reports, department issued forms, the electronic station interface device, emissions analyzer access/identification card, and/or any personal identification number (PIN).

(F) Failure to maintain required records.

(G) Failure to have at least one certified inspector on duty during the posted hours of operations for the vehicle inspection station.

(H) Failure to display the official department issued vehicle inspection station sign, certificate of appointment, procedure chart and other notices in a manner prescribed by the department.

(I) Failure to post hours of operation.

(J) Failure to maintain the required facility standards.

(K) Issuing a vehicle inspection report to a vehicle with one failing item of inspection.

(L) Failing to enter information or entering incorrect vehicle information into the electronic station interface device or emissions analyzer resulting in the reporting of erroneous information concerning the vehicle.

(M) Failure to conduct an inspection within the inspection area approved by the department for each vehicle type.

(N) Failure of inspector of record to ensure complete and proper inspection.

(O) Failure to enter an inspection into the approved interface device at the time of the inspection.

(P) Conducting an inspection without the appropriate and operational testing equipment.

(Q) Failure to perform a complete inspection and/or issue a vehicle inspection report.

(R) Requiring repair or adjustment not required by the Act, this chapter, or department regulation.

(2) Category B.

(A) Issuing a passing vehicle inspection report without inspecting the vehicle.

(B) Issuing a passing vehicle inspection report to a vehicle with multiple failing items of inspection.

(C) Refusing to allow owner to have repairs or adjustments made at location of owner's choice.

(D) Allowing an uncertified person to perform, in whole or in part, the inspection or rejection of a required item during the inspection of a vehicle.

(E) Charging more than the statutory fee.

(F) Acting in a manner that could reasonably be expected to cause confusion or misunderstanding on the part of an owner or operator presenting a vehicle regarding the relationship between the statutorily mandated inspection fee and a fee for any other service or product offered by the vehicle inspection station.

(G) Failing to list and charge for any additional services separately from the statutorily mandated inspection fee.

(H) Charging a fee, convenience fee or service charge in affiliation or connection with the inspection, in a manner that is false, misleading, deceptive or unauthorized.

(I) Inspector performing inspection while under the influence of alcohol or drugs.

(J) Inspecting a vehicle at a location other than the department approved inspection area.

(K) Altering a previously issued inspection report.

(L) Issuing a vehicle inspection report, while employed as a fleet or government inspection station inspector, to an unauthorized vehicle. Unauthorized vehicles include those not owned, leased or under service contract to that entity, or personal vehicles of officers and employees of the fleet or government inspection station or the general public.

(M) Preparing or submitting to the department a false, incorrect, incomplete or misleading form or report, or failing to enter required data into the emissions testing analyzer or electronic station interface device and transmitting that data as required by the department.

(N) Issuing a passing vehicle inspection report without inspecting multiple inspection items on the vehicle.

(O) Issuing a passing vehicle inspection report by using the emissions analyzer access/identification card, the electronic station interface device unique identifier, or the associated PIN of another.

(P) Giving, sharing, lending or displaying an emissions analyzer access/identification card, the electronic station interface device unique identifier, or divulging the associated PIN to another.

(Q) Failure of inspector to enter all required data pertaining to the inspection, including, but not limited to data entry into the emissions testing analyzer, electronic station interface device, vehicle inspection report or any other department required form.

(R) Conducting multiple inspections outside the inspection area approved by the department for each vehicle type.

(S) Issuing a passing vehicle inspection report in violation of Texas Transportation Code, §548.104(d).

(T) Vehicle inspection station owner, operator or manager directing a state certified inspector under his employ or supervision to issue a vehicle inspection report when in violation of this chapter, department regulations, or the Act.

(U) Vehicle inspection station owner, operator, or manager having knowledge of a state certified inspector under the owner's employ or supervision issuing a passing vehicle inspection report in violation of this chapter, department regulations, or the Act.

(V) Issuing a safety only inspection report to a vehicle required to undergo a safety and emissions inspection without requiring a signed and legible affidavit, approved by the department, from the owner or operator of the vehicle, in a non emissions county.

(W) Disclosing or selling information collected in relation to a vehicle inspection about a unique customer or a unique vehicle owner, to a person other than the department or the person who is the subject of the information, including a customer or vehicle owner's name, address, or phone number.

(3) Category C.

(A) Issuing more than one vehicle inspection report without inspecting the vehicles.

(B) Issuing a passing vehicle inspection report to multiple vehicles with multiple failing items of inspection.

(C) Multiple instances of issuing a passing vehicle inspection report to vehicles with multiple defects.

(D) Emissions testing the exhaust or electronic connector of one vehicle for the purpose of enabling another vehicle to pass the emissions test (clean piping or clean scanning).

(E) Issuing a passing vehicle inspection report to a vehicle with multiple emissions related violations or violations on more than one vehicle.

(F) Allowing a person whose certificate has been suspended or revoked to participate in a vehicle inspection, issue a vehicle inspection report or participate in the regulated operations of the vehicle inspection station.

(G) Charging more than the statutory fee in addition to not inspecting the vehicle.

(H) Misrepresenting a material fact in any application to the department or any other information filed pursuant to the Act or this chapter.

(I) Conducting or participating in the inspection of a vehicle during a period of suspension, revocation, denial, after expiration of suspension but before reinstatement, or after expiration of inspector certification.

(J) Altering or damaging an item of inspection with the intent that the item fail the inspection.

(K) Multiple instances of preparing or submitting to the department false, incorrect, incomplete, or misleading forms or reports.

(L) Multiple instances of failing to enter complete and accurate data into the emissions testing analyzer or electronic station interface device, or failing to transmit complete and accurate data in the manner required by the department.

(4) Category D. These violations are grounds for indefinite suspension based on the temporary failure to possess or maintain an item or condition necessary for certification. The suspension of inspection activities is lifted upon receipt by the department of proof the obstacle has been removed or remedied.

(A) Failing to possess a valid driver license.

(B) Failing to possess a required item of inspection equipment.

(5) Category E. These violations apply to inspectors and vehicle inspection stations in which emission testing is required.

(A) Failing to perform applicable emissions test as required.

(B) Issuing a passing emissions inspection report without performing the emissions test on the vehicle as required.

(C) Failing to perform the gas cap test, or the use of unauthorized bypass for gas cap test.

(D) Issuing a passing emissions inspection report when the required emissions adjustments, corrections or repairs have not been made after an inspection disclosed the necessity for such adjustments, corrections or repairs.

(E) Falsely representing to an owner or operator of a vehicle that an emissions related component must be repaired, adjusted or replaced in order to pass emissions inspection.

(F) Requiring an emissions repair or adjustment not required by this chapter, department regulation, or the Act.

(G) Tampering with the emissions system or an emission related component in order to cause vehicle to fail emissions test.

(H) Refusing to allow the owner to have emissions repairs or adjustments made at a location of the owner's choice.

(I) Allowing an uncertified person to conduct an emissions inspection.

(J) Charging more than the authorized emissions inspection fee.

(K) Entering false information into an emission analyzer in order to issue an inspection report.

(L) Violating a prohibition described in §23.57 of the title (relating to Prohibitions).

(d) When assessing administrative penalties, the procedures detailed in this subsection will be observed:

(1) Multiple vehicle inspection station violations may result in action being taken against all station licenses held by the owner.

(2) The department may require multiple suspension periods be served consecutively.

(3) Enhanced penalties assessed will be based on previously adjudicated violations in the same category. Any violation of the same category committed after final adjudication of the prior violation will be treated as a subsequent violation for purposes of penalty enhancement.

(A) Category A violations are subject to a two year period of limitations preceding the date of the current violation.

(B) Under Category B, C, and E, subsequent violations are based on the number of previously adjudicated or otherwise finalized violations in the same category within the five year period preceding the date of the current violation.

(e) Certification for a vehicle inspection station may not be issued if the person's immediate family member's certification as a vehicle inspection station owner at that same location is currently suspended or revoked, or is subject to a pending administrative adverse action, unless the person submits an affidavit stating the certificate holder who is the subject of the suspension, revocation or pending action, has no, nor will have any, further involvement in the business of state inspections.

(f) A new certification for a vehicle inspection station may be issued at the same location where the previous certificate holder as an owner or operator is pending or currently serving a suspension or revocation, if the person submits an affidavit stating the certificate holder who is the subject of the suspension or revocation, has no, nor will have any, further involvement in the business of state inspections. The affidavit must contain the statement that the affiant understands and agrees that in the event the department discovers the previous certificate holder is involved in the inspection business at that location, the certificate will be revoked under Texas Transportation Code, §548.405. In addition to the affidavit, when the change of ownership of the vehicle inspection station is by lease of the building or the inspection area, the person seeking certification must provide a copy of the lease agreement included with the application for certification as an official vehicle inspection station.

(g) Reinstatement. Expiration of the suspension period does not result in automatic reinstatement of the certificate. Reinstatement must be requested by contacting the department, and this may be initiated prior to expiration of the suspension. In addition, to meet all qualifications for the certificate, the certificate holder must:

(1) pass the complete written and demonstration test when required;

(2) submit the certification fee if certification has expired during suspension; and

(3) pay all charges assessed related to the administrative hearing process, if applicable.

(h) The failure to pay an administrative penalty that has become final, whether by the passage of the deadline to appeal or by final court disposition, whichever is later, will result in suspension of the license with no further notice or right to appeal. The suspension will take effect upon the passage of the deadline to appeal and will remain in effect until the penalty is paid in full.

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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D. Phillip Adkins
General Counsel
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CHAPTER 35. PRIVATE SECURITY
SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §§35.5, 35.8, 35.10

The Texas Department of Public Safety (the department) proposes amendments to §35.5 and §35.8 and new §35.10, concerning General Provisions. The changes to §35.5 are required by Senate Bill 968, 87th Legislative Session, and prohibit licensees from refusing entry by or service to a customer who does not certify as having received a COVID-19 vaccination or as being in post-transmission recovery. The amendments to §35.8 clarify that the rule applies only to company license holders and not individuals, and establishes an express rule of conduct regarding misrepresentation and causing confusion among clients. New §35.10 establishes guidelines for private investigators and commissioned security officers executing capiases or arrest warrants.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the sections as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be greater clarity and consistency in the regulation of the private security industry.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, by email at *RSD.Rule.Comments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §411.506, which authorizes the commission to adopt rules establishing procedures for the informal resolution of complaints filed against private security licensees; and Texas Occupations Code, §1702.061(a), which authorizes the Public Safety Commission to adopt rules to guide the department in its administration of Texas Occupations Code, Chapter 1702.

Texas Government Code, §411.004(3) and §411.506, and Texas Occupations Code, §1702.061(a), are affected by this proposal.

§35.5. Standards of Conduct.

(a) The State Seal of Texas may not be displayed as part of a uniform or identification card, or markings on a motor vehicle, other than such items prepared or issued by the department.

(b) All licensees and company representatives shall cooperate fully with any investigation conducted by the department, including but not limited to the provision of employee records upon request by the department and compliance with any subpoena issued by the department. Commissioned security officers and personal protection officers shall cooperate fully with any request of the Medical Advisory Board made pursuant to Health and Safety Code, §12.095 relating to its determination of the officer's ability to exercise sound judgment with respect to the proper use and storage of a handgun. Violation of this subsection may result in the suspension of the license or commission for the duration of the noncompliance.

(c) An individual licensee issued a pocket card shall carry the pocket card on or about their person while on duty and shall present same to a peace officer or to a representative of the department upon request.

(d) A company license holder may not require a customer provide any documentation certifying that the customer has received a

COVID-19 vaccination, or is in post-transmission recovery, to gain entry to the licensee's premises or to receive regulated services from the license holder.

§35.8. Consumer Information and Signage.

(a) A company license holder [~~licensee~~] shall, either orally or in writing, notify all clients or recipients of services of the license number and the mailing address, telephone number, and email address of the department's Regulatory Services Division for the purpose of directing complaints.

(b) If a company license holder [~~licensee~~] chooses to provide the notice required by subsection (a) of this section in written form, the notice shall contain the company's license number, and mailing address, telephone number, and email address of the department, in a type face of the same size as that which appears in the document as a whole but in no case less than ten (10) point font.

(c) All company license holders [~~licensees~~] must display conspicuously in the principal place of business and in any branch office a sign containing the name, mailing address, telephone number, and email address of the department's Regulatory Services Division, and a statement informing consumers or recipients of services that complaints against licensees may be directed to the department.

(d) The company's license number must be displayed on any vehicle on which the company name is displayed, and must be in letters and numbers at least one (1) inch high and permanently affixed or magnetically attached to each side of the vehicle in a color contrasting with the background color.

(e) A company license holder may not act in a manner to cause reasonable confusion or misunderstanding on the part of a consumer or the public regarding the services provided or to be provided, or the charges for those services.

§35.10. Execution of Capias or Arrest Warrant.

(a) A private investigator or commissioned security officer executing a capias or an arrest warrant on behalf of a bail bond surety may not:

(1) enter a residence without the consent of the occupants;

(2) fail to clearly identify themselves, both orally and by displaying their pocket card, as a private security officer or private investigator, as applicable, working on behalf of a bail bond surety;

(3) wear, carry, or display any apparel, uniform, badge, shield, or other insignia or emblem that gives the impression that the private investigator or commissioned security officer is a peace officer;

(4) brandish, point, exhibit, or otherwise display a firearm at any time, except as otherwise authorized by law or this chapter;

(5) execute the capias or warrant without written authorization from the surety; or

(6) notwithstanding Penal Code, §9.51, use deadly force.

(b) A commissioned security officer executing a capias or arrest warrant shall:

(1) wear the security officer uniform issued by the employing company; and

(2) if armed, carry the handgun openly, in a holster.

(c) A private investigator executing a capias or arrest warrant may not:

(1) wear a uniform or other apparel with the intention of creating the impression of being a security officer or peace officer; or

(2) openly carry a handgun, notwithstanding being licensed under Subchapter H, Chapter 411, Government Code or otherwise authorized under state law to possess a firearm.

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

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SUBCHAPTER D. DISCIPLINARY ACTIONS

37 TAC §35.52

The Texas Department of Public Safety (the department) proposes amendments to §35.52, concerning Administrative Penalties. These rule changes will authorize the department to suspend the license following the licensee's refusal to pay a finally adjudicated administrative penalty, clarify the consequences of revocation for purposes of reapplication, clarify that the actions of the company representative are to be construed as the actions of the company, and clarify the distinction between the violations of operating with an expired license and of operating without a license. Changes to the penalty schedule (attached graphic) are proposed to simplify and clarify the specific violations and the related penalties.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be greater clarity and consistency in the regulation of the private security industry.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly,

the department is not required to complete a takings impact assessment regarding this proposal.

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, by email at *RSD.Rule.Comments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §411.506, which authorizes the commission to adopt rules establishing procedures for the informal resolution of complaints filed against private security licensees; and Texas Occupations Code, §1702.061(a), which authorizes the Public Safety Commission to adopt rules to guide the department in its administration of Texas Occupations Code, Chapter 1702.

Texas Government Code, §411.004(3) and §411.506, and Texas Occupations Code, §1702.061(a), are affected by this proposal.

§35.52. Administrative Penalties.

(a) The administrative penalties in this section are guidelines to be used in enforcement proceedings under the Act. The fines are to be construed as maximum penalties only, and are subject to application of the factors provided in Texas Government Code, §411.524.
Figure: 37 TAC §35.52(a)
[~~Figure: 37 TAC §35.52~~]

(b) The failure to pay an administrative penalty that has become final, whether by the passage of the deadline to appeal or by final court disposition, whichever is later, will result in suspension of the license with no further notice or right to appeal. The suspension will take effect upon the passage of the deadline to appeal and will remain in effect until the penalty is paid in full.

(c) A license holder whose license is revoked for an administrative violation may reapply as a new applicant after the second anniversary of the date of the revocation. An application submitted prior to the second anniversary of the date of the revocation will be denied.

(d) A violation of this Chapter or the Act by a company representative as defined in §35.1 of this title (relating to Definitions) acting on behalf of a licensed company will be construed as a violation by the company.

(e) The violation of operating with an expired license applies to operation within the one year grace period to renew. The violation of operating without a license will apply to those operating after the one year grace period.

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 E. ADMINISTRATIVE HEARINGS

37 TAC §35.62

The Texas Department of Public Safety (the department) proposes amendments to §35.62, concerning Preliminary Hearing; Settlement Conference. These rule changes remove a reference to a previously repealed rule and simplify the language.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be greater clarity and consistency in the regulation of the private security industry.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The

proposed rulemaking does not expand, limit or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, by email at *RSD.Rule.Comments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §411.506, which authorizes the commission to adopt rules establishing procedures for the informal resolution of complaints filed against private security licensees; and Texas Occupations Code, §1702.061(a), which authorizes the Public Safety Commission to adopt rules to guide the department in its administration of Texas Occupations Code, Chapter 1702.

Texas Government Code, §411.004(3) and §411.506, and Texas Occupations Code, §1702.061(a), are affected by this proposal.

§35.62. Preliminary Hearing; Settlement Conference.

(a) A person who receives notice of the department's intention to deny an application for a license, to reprimand, suspend or revoke a license, or to impose an administrative penalty under §35.52 of this title (relating to Administrative Penalties), may appeal the decision by submitting a request to appeal by mail, facsimile, or electronic mail, to the department in the manner provided on the department's Private Security Program website within thirty (30) calendar days after receipt of notice of the department's proposed action. If a written request to appeal is not submitted within thirty (30) calendar days of the date notice was received, the right to appeal [~~an informal hearing or settlement conference, as applicable, under this section or §35.66 of this title (relating to Hearings Before The State Office Of Administrative Hearings)~~] is waived, and the action becomes final.

(b) If the action is based on the person's criminal history, a preliminary, telephonic hearing will be scheduled. Following the hearing, the department will either dismiss the proceedings and withdraw the proposed action, or issue a written statement of findings to the respondent either upholding or modifying the original proposed action.

(c) If the proposed action is based on an administrative violation, a settlement conference will be scheduled. The settlement conference may be conducted in person or by telephone, by agreement of the parties. Following the settlement conference, the parties will execute an agreed order, or, if no agreement is reached, the department will issue a written determination either upholding or modifying the originally proposed action.

(d) The department's findings following an preliminary hearing, or its determination following a settlement conference, may be appealed to the State Office of Administrative Hearings by submitting a request by mail, facsimile, or electronic mail, to the department in the manner provided on the department's Private Security Program website, within thirty (30) calendar days after receipt of the findings or determination. If a written request is not submitted within thirty (30) calendar days of the date notice was received, the findings or determination shall become final.

(e) Requests for continuance must be submitted in writing at least three (3) business days prior to the scheduled hearing or conference. Requests must be based on good cause. Multiple requests may be presumed to lack good cause and may be denied on that basis.

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. COMPANY RECORDS

37 TAC §35.111, §35.112

The Texas Department of Public Safety (the department) proposes amendments to §35.111 and §35.112, concerning Company Records. These rule changes clarify the application of the rule to security departments of private businesses and political subdivisions, and authorize electronic storage and transmission of out of state company records. In addition, changes to §35.111 are intended to consolidate the requirements of §35.111 and §35.113, enabling the repeal of the latter.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the sections as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be greater clarity and consistency in the regulation of the private security industry.

The department has determined this proposal is not a "major environmental rule " as defined by Texas Government Code, §2001.0225. "Major environmental rule " is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program;

will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, by email at *RSD.Rule.Comments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §411.506, which authorizes the commission to adopt rules establishing procedures for the informal resolution of complaints filed against private security licensees; and Texas Occupations Code, §1702.061(a), which authorizes the Public Safety Commission to adopt rules to guide the department in its administration of Texas Occupations Code, Chapter 1702.

Texas Government Code, §411.004(3) and §411.506, and Texas Occupations Code, §1702.061(a), are affected by this proposal.

§35.111. Employee Records.

Licensees and security departments of private businesses or political subdivisions registered with the department shall keep records of all employees licensed or commissioned under the Act. Any record required to be maintained under this chapter may be maintained in electronic form, so long as it is readily retrievable and presented to department personnel upon request. The employee records[,] detailed in this section[,] shall be maintained for a period of two (2) years from the last date of employment:

(1) Full name, date of employment, position, and most recent residential address of the employee[~~address~~];

(2) Social security number;

(3) Last date of employment;

(4) Date and place of birth;

(5) One photograph;

(6) The results of any drug tests;

(7) Documentation of a pre-employment check if required under §35.3 of this title (relating to Individual License Applicant Pre-employment Check); [~~and~~]

(8) All continuing education certificates or other proof of continuing education credits [~~training certificates~~] earned by the employee while employed by the private business or political subdivision, excluding commissioned security officer or personal protection officer training or proficiency certificates; and[.]

(9) The current duty assignments and duty stations of any security officers.

§35.112. Business Records.

[~~(a)~~] Licensees and security departments of private businesses or political subdivisions registered with the department shall maintain copies of the applicable records detailed in this section, or otherwise required under this chapter, for two (2) years from the later of the date the related service was provided or the date the contract was completed:

(1) All contracts for regulated service and related documentation reflecting the actual provision of the regulated service; and

(2) Copies of any timesheets, invoices, or scheduling records reflecting the employment dates of any licensed or commissioned employees.

[~~(b) If the company has no physical place of business within the State of Texas, the records shall be maintained:~~]

[~~(1) At the office of the registered agent within the State of Texas; or~~]

[~~(2) At any physical location within the State of Texas of an agent or employee of the company.~~]

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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37 TAC §35.113

The Texas Department of Public Safety (the department) proposes the repeal of §35.113, concerning Records Required on Commissioned Security Officers. This rule is being repealed in conjunction with amendments to §35.111 of this title (concerning Employee Records). The rule is being consolidated by moving the content of §35.113 to §35.111.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this repeal is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the rulemaking as proposed. There is no anticipated economic cost to individuals who are required to comply with the rulemaking as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the repeal is in effect the public benefit anticipated as a result of implementing the repeal will be greater clarity and simplicity in the regulation of the private security industry.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to

protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, by email at *RSD.Rule.Comments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §411.506, which authorizes the commission to adopt rules establishing procedures for the informal resolution of complaints filed against private security licensees; and Texas Occupations Code, §1702.061(a), which authorizes the Public Safety Commission to adopt rules to guide the department in its administration of Texas Occupations Code, Chapter 1702.

Texas Government Code, §411.004(3) and §411.506, and Texas Occupations Code, §1702.061(a), are affected by this proposal.

§35.113. Records Required on Commissioned Security Officers.

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 October 15, 2021.

TRD-202104072
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 28, 2021
For further information, please call: (512) 424-5848

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SUBCHAPTER L. TRAINING

37 TAC §35.143, §35.145

The Texas Department of Public Safety (the department) proposes amendments to §35.143 and §35.145, concerning Training. These rule changes simplify the manner in which certain instructors may establish the necessary experience and provide a simplified process by which retired law enforcement officers who are licensed as commissioned security or personal protection officers may establish firearm proficiency.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the sections as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be greater simplicity and efficiency in the regulation of the private security industry.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand an existing regulation. However, it does limit an existing regulation by recognizing an alternative method by which retired law enforcement, licensed as commissioned security or personal protection officers, may establish firearm proficiency. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rules are in effect, the proposed rules should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety by email at *RSD.Rule.Comments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(a) and §1702.1675(f), which authorizes the Public Safety Commission to adopt rules to guide the department in its administration of Texas Occupations Code, Chapter 1702.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(a) and §1702.1675(f), are affected by this proposal.

§35.143. Training Instructor Approval.

(a) An application for approval as a training instructor shall contain evidence of qualification as required by the department. Instructors may be approved for classroom or firearm training, or both. An individual may apply for approval for one or both of these categories. To qualify for classroom or firearm instructor approval, the applicant must submit acceptable certificates of training for each category. The classroom instructor and firearm certificates shall represent a combined minimum of forty (40) hours of department approved instruction.

(b) The items detailed in this subsection may constitute proof of qualification as a classroom instructor for security officers:

(1) An instructor's certificate issued by Texas Commission on Law Enforcement (TCOLE);

(2) An instructor's certificate issued by federal, state, or political subdivision law enforcement agency approved by the department;

(3) An instructor's certificate issued by the Texas Education Agency (TEA);

(4) An instructor's certificate relating to law enforcement, private security, or industrial security issued by a junior college, college, or university; or

(5) A license to carry handgun instructor certificate issued by the department.

(c) The items listed in this subsection may constitute proof of qualification as a firearm training instructor, if reflecting training completed within two (2) years of the date of the application:

(1) A handgun instructor's certificate issued by the National Rifle Association;

(2) A firearm instructor's certificate issued by TCOLE; or

(3) A firearm instructor's certificate issued by a federal, state, or political subdivision law enforcement agency approved by the department.

(d) Proof of qualification as an alarm systems training instructor shall include proof of completion of an approved training course on alarm installation.

(e) Proof of qualification as a personal protection officer instructor shall include, but not be limited to:

(1) A firearm instructor's certificate issued by TCOLE along with proof that the individual has instructed nonlethal self-defense or nonlethal defense of a third party for three (3) or more years. Evidence of instruction experience must include a one page detailed description of the training provided and the schedule or specific date of classes taught. [~~may include:~~]

[~~(A) Affidavit from employer; or~~]

[~~(B) A copy of curriculum taught.~~]

(2) An instructor's certificate issued by federal, state, or political subdivision law enforcement academy along with proof that the individual has instructed nonlethal self-defense or nonlethal defense of a third party for three (3) or more years. Evidence of instruction experience must include a one page detailed description of the training provided and the schedule or specific dates of classes taught. [~~may include:~~]

[~~(A) Affidavit from employer; or~~]

[~~(B) A copy of curriculum taught.~~]

(3) An instructor's certificate issued by TEA along with proof that the individual has instructed nonlethal self-defense or nonlethal defense of a third party for three (3) or more years. Evidence of instruction experience must include a one page detailed description of the training provided and the schedule or specific dates of classes taught. [~~may include:~~]

[~~(A) Affidavit from employer; or~~]

[~~(B) A copy of curriculum taught.~~]

(4) An instructor's certificate relating to law enforcement, private security or industrial security issued by a junior college, college or university along with proof that the individual has instructed nonlethal self-defense or nonlethal defense of a third party for three (3) or more years. Evidence of instruction experience must include a one page detailed description of the training provided and the schedule or specific dates of classes taught. [~~may include:~~]

[~~(A) An affidavit from an employer; or~~]

[~~(B) A copy of curriculum taught.~~]

(5) Evidence of successful completion of a department approved training course for personal protection officer instructors.

(f) Notice shall be given in writing to the department within fourteen (14) days after a change in address of the approved instructor.

(g) In addition to summary actions under the Act, based on criminal history disqualifiers, the department may revoke or suspend an instructor's approval or deny the application or renewal thereof upon evidence that:

(1) The instructor or applicant has violated any provisions of the Act or this chapter;

(2) The qualifying instructor's certificate has been revoked or suspended by the issuing agency;

(3) A material false statement was made in the application; or

(4) The instructor does not meet the qualifications set forth in the provisions of the Act and this chapter.

§35.145. Handgun Course.

(a) In addition to the firearm qualification requirements as set forth in the Act, a department approved firearm training instructor may qualify a student by using:

(1) The Texas Department of Public Safety Primary Issued Handgun Qualification Course; or

(2) The Texas Department of Public Safety Approved License to Carry Handgun License Course.

(b) All individuals qualifying with a firearm to satisfy the requirements of the Act shall qualify with an actual demonstration by the individual of the ability to safely and proficiently use the category of firearm for which the individual seeks qualification.

(c) The categories of handguns are:

(1) SA--Semi-automatic; and

(2) NSA--Non semi-automatic.

(d) The SA qualification authorizes the carrying of either semi-automatic or non semi-automatic handguns.

(e) For purposes of this chapter and compliance with §1702.1685 of the Act, a firearms instructor who holds a firearms instructor proficiency certificate issued by the Texas Commission on Law Enforcement is a department approved instructor for the limited purpose of the firearm qualification of retired law enforcement officers licensed under the Act as commissioned security officers or personal protection officers. A certificate issued under this subsection need not comply with §35.147(b)(3)(A), (B) (with respect to the approval number only), or (C), of this chapter.

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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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

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SUBCHAPTER M. CONTINUING EDUCATION

37 TAC §35.161, §35.162

The Texas Department of Public Safety (the department) proposes amendments to §35.161 and §35.162, concerning Continuing Education. The changes to §35.161, concerning Continuing Education Requirements, clarify that the renewal portion of Level III and IV training courses (the specifically required of commissioned security officers and personal protection officers) are required in order to comply with the continuing education requirements of those officers and that continuing education credits are only valid if completed within the two year period preceding the license's current expiration date. In addition, an outdated reference to alarm salespersons is to be removed, as such individuals are no longer regulated pursuant to Senate Bill 616, 86th Legislative Session. The changes to §35.162, concerning Continuing Education Schools, create limited exceptions to the requirement that continuing education credits be earned through department approved schools.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the sections as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be the effective implementation of legislation, and greater clarity and consistency in the regulation of the private security industry.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed changes to Rule 35.161 do not create, expand, or limit an existing regulation. The proposed changes to Rule 35.161 do not increase or decrease the number of individuals subject to its applicability. However, the proposed changes to Rule 35.162 do limit an existing regulation and do decrease the number of individuals subject to its applicability, as it creates new exemptions from the rule's requirement that all continuing education credits be earned through department approved continuing education schools. During the first five years the proposed rules are in effect, the proposed rules should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety by email at *RSD.Rule.Comments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(a), §1702.308 and §1702.309(a), which authorizes the Public Safety Commission to adopt rules to guide the department in its administration of Texas Occupations Code, Chapter 1702.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(a), §1702.308 and §1702.309(a), are affected by this proposal.

§35.161. Continuing Education Requirements.

(a) An application to renew an individual license may not be submitted until the required minimum hours of department approved continuing education credits have been earned in accordance with the Act and this chapter. Proof of the required continuing education must be maintained by the employer and contained in the employee's personnel file. All individual licensees shall indicate they have completed the required minimum hours of department approved continuing education credits on their application for renewal.

(b) Owners, partners, and shareholders who hold individual licenses as owners only, shall complete a total of eight (8) hours of continuing education, including seven (7) hours in the subject matter that relates to the type of regulated service provided by their company, and one (1) hour of ethics. Noncommissioned security officers, and all individuals not required to obtain a commission or license under the Act are specifically exempted from the continuing education requirements.

(c) All individual license holders not otherwise addressed in this section shall complete a total of eight (8) hours of continuing education, seven (7) hours of which must be in subject matter that relates to the type of individual license held, and one (1) hour of which must cover ethics.

(d) Private investigators with more than fifteen (15) years of continued licensure as a private investigator shall complete a total of twelve (12) hours of continuing education, eight (8) hours of which must relate to investigations, two (2) hours of which must cover ethics, and two (2) hours of which must involve the review of the Act and the rules of this chapter.

(e) Private investigators with less than fifteen (15) years of continued licensure as a private investigator shall complete a total of eighteen (18) hours of continuing education, fourteen (14) of which must relate to investigations, two (2) hours of which must cover ethics, and two (2) hours of which must involve the review of the Act and the rules of this chapter.

(f) Any individual licensed as a private investigator who fails to complete the required continuing education during the twenty-four (24) months of initial licensure is not eligible to make a new or renewal application until such time as the training requirement for the previous licensure period has been satisfied.

(g) Commissioned security officers and personal protection officers shall complete six (6) hours of continuing education by completing the renewal portions of the Level III or IV training course, as applicable. All continuing [~~Continuing~~] education for commissioned security officers and personal protection officers must be taught by department approved training schools and instructors. Commissioned security officers shall submit a firearms proficiency certificate along with the renewal application.

(h) During the first twelve (12) months of initial licensure, alarm system installers must complete the Alarm Level I training. This training consists of sixteen (16) hours of classroom instruction or equivalent online course as approved by the department, with two (2) hours covering the National Electrical Code (NEC) as it applies to low voltage. Alarm systems installer [~~or alarm systems salesperson~~] must earn eight (8) hours of continuing education credits in an alarm related field, with one (1) hour covering the National Electrical Code (NEC) as it applies to low voltage, during each subsequent twenty-four (24) month period. This requirement must be satisfied prior to the expiration date of the license and before renewal.

(i) For the protection of the installer and the general public, the work of an alarm system installer who has not completed the required sixteen (16) hours of instruction must be overseen by an installer who has completed the required sixteen (16) hours of instruction. The oversight required under this section need not involve direct physical supervision, but the overseeing installer is responsible for ensuring the installation complies with all applicable requirements and regulations.

(j) Any licensed alarm systems installer who fails to complete sixteen (16) hours of training during the twenty-four (24) months of initial licensure, or who fails to complete eight (8) hours of continuing education during any subsequent licensing period is not eligible to renew until all training requirements for the previous license period have been satisfied.

(k) Alarm monitors shall complete four (4) hours of continuing education relating to the duties and responsibilities of an alarm monitor.

(l) All individuals licensed as locksmiths must complete sixteen (16) hours of continuing education every two (2) years.

(m) Attendees of continuing education courses shall maintain certificates of completion furnished by the school director in their files for a period of two (2) years. Attendees shall furnish the department with copies of all certificates of completion upon request.

(n) Continuing education courses are only valid if completed within the two year period preceding the license's current expiration date.

§35.162. Continuing Education Schools.

(a) Except as otherwise provided by this subchapter, all continuing education credits must be earned through department approved continuing education schools.

(b) All department approved continuing education schools shall comply with paragraphs (1) - (7) of this subsection: [~~subsection (b)(1) - subsection (b)(7):~~]

(1) Each school must identify to the department a school director as its agent responsible for ensuring the school's compliance with this subchapter, including the maintenance of attendance records, the provision of such records to department personnel upon request, and the verification of curricula and instructors' qualifications. The failure of this individual to perform these duties or to otherwise comply with this subchapter may result in the cancellation of the school's certificate of approval and the rejection of claims for continuing education credit obtained from that school.

(2) School attendance records shall include:

(A) Subjects taught in each course of instruction;

(B) Total hours of each course of instruction and the hours instructed on each subject;

(C) Date of instruction;

(D) Name, license number, and date(s) of attendance for each individual that attended a course of instruction; and

(E) Name and qualifications of instructor.

(3) Schools shall issue certificates of attendance to licensees attending a course of instruction. The certificates of attendance shall contain the name and license number of the attendee, the date of attendance, the number of hours of attendance, and the course(s) of instruction attended. Each certificate shall be signed and dated by the school director.

(4) Schools shall maintain all records required by this section for a period of two (2) years.

(5) The school shall provide copies of all records required under this subchapter to the department upon request.

(6) The school director shall verify that the curriculum of each continuing education course offered is in compliance with this chapter.

(7) The school director shall verify the qualifications of each instructor.

(c) Attendees of courses of continuing education shall maintain certificates of completion furnished by the school director in their files for a period of two (2) years. Attendees shall furnish the department with copies of all certificates of completion upon request.

(d) Licensed companies with ten (10) or more licensed employees may make a written request for a letter of exemption allowing them to provide continuing education to those employees registered under the requesting company's license. Such requests shall be addressed to the department. A letter of exemption granted under this section shall be valid for two (2) years. To qualify for a letter of exemption,

the company must appoint a training director, assure that all training is in compliance with all related administrative rules, maintain proof of all training, and provide each licensed employee with a certificate of training as required by this section. There is no annual fee associated with a letter of exemption issued under this subsection. The exemption provided in this subsection does not apply to commissioned security officers or personal protection officers.

(e) The department may recognize as valid those continuing education credits that relate to the regulated services for which the individual is licensed and are earned through courses offered by:

(1) a local, state, or federal agency;

(2) an institution of higher education;

(3) a local, state, or national non-profit professional or trade association; or

(4) a continuing education school or program recognized by, or licensed with, another state's private security licensing agency.

(f) The course completion certificate or other proof of completion must include the title and date of the course, the name of the entity providing the course, a description of the course sufficient to establish a relationship to the license held, and the number and category of credit hours being claimed. Credits claimed under this subsection may not be used to satisfy the continuing education requirements for commissioned security officers or personal protection officers.

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 October 15, 2021.

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 28, 2021
For further information, please call: (512) 424-5848

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 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 7. TEXAS FINANCIAL EDUCATION ENDOWMENT FUND

7 TAC §7.102

The Finance Commission of Texas (commission) adopts amendments to §7.102 (relating to TFEE Responsibilities), in 7 TAC, Chapter 7, concerning Texas Financial Education Endowment Fund.

The commission adopts the amendments to §7.102 without changes to the proposed text as published in the September 3, 2021, issue of the *Texas Register* (46 TexReg 5493). The rule will not be republished.

The commission received no written comments relating to the proposed amendments to 7 TAC §7.102.

The rules in 7 TAC Chapter 7 govern the Texas Financial Education Endowment (TFEE). The Texas Legislature established TFEE under Texas Finance Code, §393.628(c), in order to "support statewide financial education and consumer credit building activities and programs."

In general, the purpose of the rule changes to 7 TAC Chapter 7 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 7 was published in the *Texas Register* on May 28, 2021 (46 TexReg 3425). The commission received no comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received no informal precomments on the rule text draft.

The amendments to §7.102 relate to the consumer credit commissioner's authority to designate other persons to perform functions related to TFEE. New text in subsection (a) explains that the investment officer's responsibilities include maintaining compliance. Subsection (a) will also be amended to move text on executing grant agreements into a new sentence. The updated text will provide some flexibility and clarify the commissioner's authority to designate another person (not necessarily the investment officer) to execute grant agreements.

The rule changes are adopted under Texas Finance Code, §393.622, which authorizes the commission to adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G (governing credit access businesses). In addition, Texas Finance Code, §393.628 authorizes the commission to adopt rules regarding TFEE.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 393.

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 October 15, 2021.

TRD-202104093
Matthew Nance
Deputy General Counsel, Office of Consumer Credit Commissioner
Finance Commission of Texas
Effective date: November 4, 2021
Proposal publication date: September 3, 2021
For further information, please call: (512) 936-7660

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PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 52. DEPARTMENT ADMINISTRATION

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts new rules in 7 TAC Chapter 52, Department Administration: §§52.100 - 52.104, 52.200 - 52.205, and 52.300 - 52.306. The commission's proposal was published in the September 3, 2021, issue of the *Texas Register* (46 TexReg 5494). The following rules are adopted with changes to the published text and are republished to reflect such changes: §§52.102, 52.103, 52.202, 52.205, 52.302, 52.303, 52.305, and 52.306. The changes regulate no new parties and affect no new subjects of regulation. As a result, the rules will not be republished as proposed rules for comment. The remaining rules in the proposal are adopted without changes to the proposed text as published in the *Texas Register* and will not be republished.

Explanation of and Justification for the Rules

The rules under 7 TAC Chapter 52 generally govern the department's internal processes and procedures including existing rules concerning consumer complaints filed with the department, the resolution of contested cases by informal settlement conference, and the use of advisory committees as provided by Finance Code §13.018. The adopted rules establish new rules governing certain other internal processes and procedures related to: (i) the recovery fund administered by the department's

commissioner (commissioner) under Finance Code Chapter 156, Subchapter F (recovery fund); (ii) the mortgage grant fund administered by the commissioner under Finance Code Chapter 156, Subchapter G (mortgage grant fund); and (iii) claims made against the mortgage grant fund as provided by Finance Code §156.555.

New Rules Concerning the Recovery Fund

Pursuant to Finance Code §13.016 and Chapter 156, Subchapter F, the commissioner is required to administer and maintain a fund against which persons may make a claim to recover actual out-of-pocket damages incurred because of acts committed by an individual licensed by the department as a residential mortgage loan originator under Finance Code Chapter 157. The adopted rules: (i) create definitions necessary to administer the recovery fund, derived from similar definitions contained in existing 7 TAC §81.2 (relating to Definitions); (ii) clarify that a person seeking to make a claim against the recovery fund must file a sworn written application using the current form prescribed by the commissioner and posted on the department's website; (iii) clarify when the commissioner disburses funds on an approved claim (after the opportunity to appeal the commissioner's decision has lapsed); (iv) clarify that, in order to get paid from the recovery fund, a claimant must provide the necessary information and documentation necessary to be a valid payee for the purposes of the Texas Comptroller of Public Accounts; (v) clarify that a licensed residential mortgage loan originator against whom a claim was made and approved may have an administrative penalty imposed on him or her; and (vi) establish a process and procedure for paying approved claims in the event funds in the recovery fund are unavailable at the time the claim is approved.

New Rules Concerning the Mortgage Grant Fund

During the 87th Legislature (Regular Session), House Bill 3617 (HB3617) was enacted into law (eff. September 1, 2021) which, among other things, amended Finance Code Chapter 156 to create a new Subchapter G, creating a new mortgage grant fund for the commissioner to administer, funded primarily by excess contributions made to the recovery fund. The primary purpose of the mortgage grant fund is to promote financial education relating to mortgage loans and to support other statewide financial education, activities, and programs. The adopted rules: (i) create definitions necessary to administer the mortgage grant fund; (ii) clarify the commissioner's role as manager of the mortgage grant fund, including providing periodic reports to the commission; (iii) provide for the creation of a manual reflecting the commissioner's policies and procedures governing administration of the mortgage grant fund; (iv) provide for the appointment of an employee of the department to serve as a grant coordinator to assist the commissioner in managing the mortgage grant fund; (v) provide for the creation of an advisory committee to make recommendations to the commissioner and the grant coordinator concerning management of the mortgage grant fund; and (vi) establish various processes and procedures for grantees to apply for, receive disbursements, and return misused funds, from the mortgage grant fund.

New Rules Concerning Recovery Claims Made Against the Mortgage Grant Fund

HB3617 further amended Finance Code Chapter 156 by creating a new Section 156.555, allowing for claims to be made against the mortgage grant fund to compensate persons for actual out-of-pocket damages incurred because of fraud committed by an individual who acted in the capacity of a residential mortgage loan originator but did not hold the license required under Finance Code Chapter 157. The adopted rules: (i) create definitions necessary to administer claims made against the mortgage grant fund; (ii) clarify that a person seeking to make a claim against the mortgage grant fund must file a sworn written application using the current form prescribed by the commissioner and posted on the department's website; (iii) clarify when the commissioner disburses funds on an approved claim (after the opportunity to appeal the commissioner's decision has lapsed); (iv) clarify that, in order to get paid from the mortgage grant fund, a claimant must provide the necessary information and documentation to be a valid payee for the purposes of the Texas Comptroller of Public Accounts; (v) clarify that an unlicensed individual against whom a claim was made and approved may have an administrative penalty imposed on him or her, and that failure to pay such penalty constitutes grounds for denial of licensure under Finance Code Chapter 157; (vi) establish a process and procedure for paying approved claims in the event funds in the mortgage grant fund are unavailable at the time the claim is approved; (vii) clarify certain eligibility requirements for making a claim against the mortgage grant fund required by application of the requirements for making a claim against the mortgage grant fund as provided by Finance Code §156.555(b); and (viii) clarify how the statute of limitations period for making claims on the recovery fund applies to claims made on the mortgage grant fund, thereby expressly allowing for claims prior to the effective date of Finance Code §156.555 and inception of the mortgage grant fund.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments, or October 3, 2021. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

SUBCHAPTER D. RECOVERY FUND

7 TAC §§52.100 - 52.104

Statutory Authority

The rules are adopted under the authority of Finance Code §156.102(a) which authorizes the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156. The rules are also adopted under the authority of Finance Code §156.102(b-1) which authorizes the commission to adopt rules to promote the fair and orderly administration of the recovery fund consistent with the purposes of Finance Code Chapter 156, Subchapter F.

The adopted rules affect the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§52.102. Claims.

(a) Application Required. As provided by Tex. Fin. Code §156.504, a claimant seeking to recover from the recovery fund must file a sworn written application with the Department which must be made on the current form prescribed by the Commissioner and posted on the Department's website (sml.texas.gov).

(b) Payment of Approved Claims. Upon approval of a claim made on the recovery fund, the Commissioner will issue an order disbursing funds from the recovery fund. The Commissioner will direct Department staff to cause disbursement of the funds after the date upon which such order becomes final and unappealable for purposes of Finance Code §156.504(d), or if the Department's preliminary determi-

nation under Finance Code §156.504(c)(2) was disputed and an adjudicative hearing required, for purposes of Government Code Chapter 2001.

(c) Cooperation by Claimant Required. The claimant must cooperate with Department staff's instructions for effectuating disbursement of an approved claim from the recovery fund. Among other things, the claimant must provide such information and complete such documentation required in order to cause the claimant to be a valid payee for purposes of the Texas Comptroller of Public Accounts.

§52.103. Administrative Penalty Against Originator.

If the Commissioner approves a claim made under Tex. Fin. Code §156.504, the Commissioner may impose an administrative penalty on the originator whose acts or omissions caused the claim.

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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Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1535

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SUBCHAPTER E. MORTGAGE GRANT FUND

7 TAC §§52.200 - 52.205

Statutory Authority

The rules are adopted under the authority of Finance Code §156.102(a) which authorizes the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156. The rules are also adopted under the authority of Finance Code §156.556 which authorizes the commission to adopt rules to administer Finance Code Chapter 156, Subchapter G including rules to: (i) ensure that a grant awarded from the mortgage grant fund is used for a public purpose; and (ii) provide a means of recovering money awarded from the mortgage grant fund that is not used for a public purpose.

The adopted rules affect the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§52.202. Commissioner as Manager.

(a) Manager. As provided by Tex. Fin. Code §156.553, the Commissioner serves as manager of the fund and administers all aspects of the fund.

(b) Periodic Reports to the Finance Commission. Unless the Finance Commission directs otherwise, the Commissioner or his or her designee (including but not limited to the Grant Coordinator) will report to the Finance Commission audit committee concerning the status and activities of the fund at each regularly called meeting of the Finance Commission audit committee, or otherwise at the request of the Finance Commission or its audit committee.

(c) Mortgage Grant Administration Manual. The Commissioner will develop and create a manual reflecting the Commissioner's policies and procedures governing administration of the fund and the Mortgage Grant Fund grant program to be known and referred to as the Mortgage Grant Administration Manual (MGAM). The MGAM, and any amendments to the MGAM, must be approved by the Finance Commission audit committee.

§52.205. Grant Program.

(a) Scope. This section governs the administration of and disbursements from the fund (each of which is considered a grant disbursement) for purposes of:

(1) Tex. Fin. Code §156.554(b)(1), concerning grants to an auxiliary mortgage loan activity company or another nonprofit organization to promote financial education relating to mortgage loans; and

(2) Tex. Fin. Code §156.554(b)(3), concerning disbursements to provide support for statewide financial education, activities, and programs specifically related to mortgage loans for consumers, or for the purposes provided by Tex. Fin. Code §393.628(c).

(b) Grant Cycle. The fund may have one competitive grant cycle every two years.

(1) Funding determination. The grant funding determination is made by the Commissioner by December 31 of each odd-numbered year. The Commissioner will determine the separate funding available and allocated to each of the purposes of Tex. Fin. Code §156.554(b)(1) and (3).

(2) Programming cycle. A new fund grant programming cycle may open on January 1 of every even-numbered year. An applicant may choose to apply for a one-year grant programming cycle, or a two-year grant programming cycle. The grant programming cycle for a one-year grantee begins on January 1 and ends on December 31 of the even-numbered year for the applicable cycle. The grant programming cycle for a two-year grantee begins on January 1 of the even-numbered year and ends on December 31 of the following odd-numbered year for the applicable cycle.

(c) Eligibility. A grant made under Tex. Fin. Code §156.554(b)(1) and subsection (a)(1) of this section may only be given to a company licensed by the Department as an auxiliary mortgage loan activity company, or a nonprofit organization. A grant made under Tex. Fin. Code §156.554(b)(3) and subsection (a)(2) of this section may be given to a nonprofit organization, school, or for-profit entity. Grant funding is not available to entities licensed or registered by the Department other than auxiliary mortgage loan activity companies in accordance with Tex. Fin. Code §156.554(b)(1) and subsection (a)(1) of this section.

(d) Grant Application. To be considered for the grant program, an applicant must complete and submit the grant application by the deadline and in accordance with the instructions for the applicable grant cycle. Late or incomplete grant applications will not be accepted. Meeting eligibility criteria and timely submission of a grant application does not guarantee award of a grant in any amount.

(e) Review and Approval. The Commissioner, upon receipt of advice from MGAC and the Grant Coordinator, will review timely and complete applications and determine the grants to be awarded.

(f) Grant Agreement. To participate in the grant program, a grantee approved by the Commissioner to receive a grant must execute the grant agreement approved by the Commissioner for the applicable grant cycle (grant agreement).

(g) Grantee Compliance. A grantee must comply with applicable financial, administrative, and programmatic terms and conditions, and exercise proper stewardship over grant program funds. A grantee must use awarded funds in compliance with the following in effect for the applicable grant cycle:

(1) all applicable state laws and regulations;

(2) all applicable federal laws and regulations;

(3) the Mortgage Grant Administration Manual;

(4) the grant application, including all application guidelines and instructions at the time of application;

(5) the grant agreement signed by the Commissioner or the Commissioner's designee and the grantee;

(6) all reporting and monitoring requirements, as outlined in the grant agreement; and

(7) any other guidance documents posted on the Mortgage Grant Fund website for the applicable grant cycle.

(h) Reporting and Monitoring.

(1) General reporting requirements. To receive reimbursement of grant expenses a grantee must:

(A) submit periodic grant reports as provided by the grant agreement;

(B) maintain satisfactory compliance with the grant agreement and the grant activities as proposed by the grantee in its grant application;

(C) identify, track and report performance measures; and

(D) track and report participant demographic information.

(2) Progress reports. A grantee must submit progress reports that demonstrate performance outcomes and financial information over the term of the grant in accordance with and by the deadlines set forth in the grant agreement.

(3) Six-month longitudinal report. A grantee must submit a six-month longitudinal report after program completion to demonstrate program objectives.

(4) Monitoring. The Grant Coordinator or MGAC may use the following methods to monitor a grantee's performance and expenditures:

(A) Desk review. The Grant Coordinator or MGAC may conduct a desk review of a grantee to review and compare individual source documentation and materials to summary data provided during the reporting process; or

(B) Site visits and inspection reviews. The Grant Coordinator or MGAC may conduct a scheduled site visit to a grantee's place of business to review compliance and performance issues. Site visits may be comprehensive or limited in scope.

(i) Reimbursement.

(1) Eligibility. To be eligible for reimbursement, a grantee must comply with all terms of the grant agreement, as well as all other items provided in subsection (g) of this section. To ensure that grant funds are used for a public purpose as provided by Tex. Fin. Code §156.556(1), grant funds will only be awarded on a cost reimbursement basis for all actual, allowable, and allocable costs incurred by a grantee pursuant to the grant agreement. Expenses that were incurred before the beginning or after termination of the grant agreement are not eligible for reimbursement.

(2) Procedure. To request reimbursement for work performed on grant activities, a grantee must submit a grant reimbursement report in accordance with and by the deadlines set forth in the grant agreement. A grantee must submit a detailed expense report with supporting documentation to justify the reimbursement request. The Department will review and approve requests for reimbursement that satisfy the requirements and promptly disburse funds in response to approved requests.

(j) Misuse of Grant Funds. The Commissioner may require a refund of grant funds already disbursed to the grantee and may cancel the grant agreement or disqualify the grantee from receiving future grants from the fund if:

(1) grant funds are not used for a public purpose allowable under Tex. Fin. Code §156.554;

(2) grant funds are used in an illegal manner;

(3) the grantee violates the terms or conditions of the grant agreement or otherwise violates the requirements of subsection (g) of this section; or

(4) the Commissioner discovers the grantee made any material misrepresentations in obtaining the grant or in seeking reimbursement of grant funds.

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. MORTGAGE GRANT FUND: RECOVERY CLAIMS FOR UNLICENSED ACTIVITY

7 TAC §§52.300 - 52.306

Statutory Authority

The rules are adopted under the authority of Finance Code §156.102(a) which authorizes the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156. The rules are also adopted under the authority of Finance Code §156.556 which authorizes the commission to adopt rules to administer Finance Code Chapter 156, Subchapter G.

The adopted rules affect the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§52.302. Claims.

(a) Application Required. As provided by Tex. Fin. Code §156.555, adopting by reference the procedural requirements for making a claim on the Commissioner's recovery fund in accordance with Finance Code Chapter 156, Subchapter F, a claimant must file a sworn written application with the Department and must be made on the current form prescribed by the Commissioner and posted on the Department's website (sml.texas.gov).

(b) Payment of Approved Claims. Upon approval of a claim on the Mortgage Grant Fund for purposes of Tex. Fin. Code §156.555, the Commissioner will issue an order disbursing funds from the Mortgage Grant Fund. The Commissioner will direct Department staff to cause disbursement of the funds after the date upon which such order becomes final and unappealable for purposes of Finance Code §156.504(d) (by application of Finance Code §156.555), or if the Department's preliminary determination letter under §156.504(c)(2) was disputed and an adjudicative hearing required, for purposes of Government Code Chapter 2001.

(c) Cooperation by Claimant Required. The claimant must cooperate with Department staff's instructions for effectuating disbursement of an approved claim from the Mortgage Grant Fund for purposes of Tex. Fin. Code §156.555. Among other things, the claimant must provide such information and complete such documentation required in order to cause the claimant to be a valid payee for purposes of the Texas Comptroller of Public Accounts.

§52.303. Consequences for Unlicensed Individual.

(a) Administrative Penalty. If the Commissioner approves a claim made under Tex. Fin. Code §156.555, the Commissioner may impose an administrative penalty on the unlicensed individual whose fraudulent acts caused the claim.

(b) Grounds for Denial. As provided by Tex. Fin. Code §180.201(1), failure by the unlicensed individual to pay the administrative penalty imposed by this section is a violation of an order of the Commissioner and therefore constitutes grounds for denial of an application from such individual for a residential mortgage loan originator license under Finance Code Chapter 157.

§52.305. Eligibility.

(a) Application of Finance Code Chapter 156, Subchapter F. Tex. Fin. Code §156.555(b), adopts by reference the eligibility and procedural requirements for making a claim on the Commissioner's recovery fund in accordance with Finance Code Chapter 156, Subchapter F. This section clarifies how certain of such requirements apply to a claim made on the Mortgage Grant Fund in accordance with Tex. Fin. Code §156.555.

(b) Actions by an Unlicensed Individual Acting as an Originator. To be eligible to recover from the Mortgage Grant Fund, the individual alleged to have caused harm to the claimant must have been acting or attempting to act in the capacity of an originator - actions for which a license under Finance Code Chapter 157 was required as provided by Tex. Fin. Code §157.012 and §81.100 of this title (relating to Licensing - General).

(c) Fraudulent Acts. Recovery under Tex. Fin. Code §156.555 is limited to acts of fraud committed by an individual who acted as a residential mortgage loan originator but who did not hold the license required by Finance Code Chapter 157. Tex. Fin. §156.501(b), applicable to claims made on the recovery fund, provides that recovery is limited to acts by a licensed originator that constitute a violation of specific, enumerated provisions of Tex. Fin. Code §§157.024(a) and 156.304(b). As a result, in order to recover under Tex. Fin. Code §156.555, a claimant must establish that the acts of the unlicensed individual, had he or she been licensed as a residential mortgage loan originator at the time of such acts, would have constituted fraudulent dealings for purposes of Tex. Fin. Code §157.024(a)(3).

§52.306. Statute of Limitations at Inception.

Tex. Fin. Code §156.555(b) adopts by reference the statute of limitations period for making claims on the recovery fund under Finance Code Chapter 156, Subchapter F and applies it to claims made against the Mortgage Grant Fund in accordance with Tex. Fin. Code §156.555. Specifically, pursuant to Tex. Fin. Code §156.503, a claim made on the recovery fund may not be filed after the fourth anniversary of the date the acts causing the actual damages occurred or should reasonably have been discovered. Tex. Fin. Code §156.555 and the Mortgage Grant Fund came into existence effective September 1, 2021. As a result, the earliest possible date for a claim to have accrued for purposes of the limitations period applicable to claims made under Tex. Fin. Code §156.555 is September 1, 2017, and any claim accruing prior to that date is barred.

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 76. MISCELLANEOUS
SUBCHAPTER F. FEES AND CHARGES

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of and a new rule at 7 TAC §76.95 without changes to the proposed text as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5679). The rules will not be republished.

Explanation of and Justification for the Rule

The existing rules under 7 TAC Chapter 76 partially implement Finance Code Subtitle C, the Texas Savings Bank Act.

Changes Concerning Special Examination Fees

Existing §76.95 (relating to Fee for Special Examination or Audit), establishes a fee for examination of a savings bank occurring outside of a savings bank's regular periodic examination (special examination). During the 87th Legislature (Regular Session), Senate Bill 1900 (SB 1900) was enacted into law (eff. September 1, 2021) which, among other things, amended Finance Code Chapter 96 to provide to the department's commissioner (commissioner) examination authority over savings bank affiliates and third-party service providers. The Finance Code, as amended by SB 1900 (Tex. Fin. Code §96.0551(c)), authorizes the commissioner to collect a fee for conducting examinations on savings bank affiliates and third-party service providers. New §76.95: (i) clarifies the commissioner's existing authority to

perform examinations of savings bank holding companies, affiliates, and third-party service providers; (ii) classifies the examination of a savings bank holding company, affiliate, or third-party service provider as a special examination subject to the rule; and (iii) changes the calculation for the fee assessed for a special examination from a daily fee ($325) to an hourly fee ($75). The department asserts an hourly fee more accurately reflects the actual work performed by the department's examiners and will result in fees that are more equitable and will better reflect the true cost of regulation. The existing daily fee of $325 has been in place since the rule was originally adopted on January 5, 2012. Existing §76.95 is also patterned after a previous rule adopted by the Department (at that time, the Texas Savings and Loan Department) effective September 23, 1993 (18 TexReg 4808; 1993 rule) which was repealed and replaced by existing §76.95. The 1993 rule similarly imposed a daily fee of $325 to conduct a special examination. Assuming a standard workday of eight hours, this $325 daily figure amounts to an hourly fee of approximately $42.63. According to an inflation calculator provided by the United States Bureau of Labor Statistics on its website, based on the consumer price inflation index, an hourly fee of $42.63 in September of 1993 would equate to a fee of $76.44 in July of 2021 (more than the $75 in the adopted rule). As a result, the increased rate in the adopted rule is likely in keeping with the requirements of the original rule in 1993.

Other Modernization and Update Changes

New §76.95 makes changes to modernize and update existing §76.95 including: (i) adding and replacing language to improve clarity and readability; (ii) removing unnecessary or duplicative provisions; and (iii) updating terminology.

Summary of Public Comments

Publication of the commission's proposal to repeal and adopt a new rule at 7 TAC §76.95 recited a deadline of 30 days to receive public comments, or October 10, 2021. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received in response to the proposal.

7 TAC §76.95

Statutory Authority

The rule repeal is adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The rule repeal is also adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

The adopted rule repeal affects the statutes contained in Finance Code Title 3, Subtitle C, the Texas State Savings Bank 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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7 TAC §76.95

Statutory Authority

The rule is adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The rule is also adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

The adopted rule affects the statutes contained in Finance Code Title 3, Subtitle C, the Texas State Savings Bank 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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CHAPTER 80. RESIDENTIAL MORTGAGE LOAN COMPANIES

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts amendments, new rules, and rule repeals in 7 TAC Chapter 80, Texas Residential Mortgage Loan Companies. The commission's proposal was published in the September 3, 2021 issue of the *Texas Register* (46 TexReg 5501). 7 TAC §80.206 is adopted with changes to the published text and is republished to reflect such changes. The changes regulate no new parties and affect no new subjects of regulation. As a result, the rule will not be republished as a proposed rule for comment. The remaining rules sections in the proposal are adopted without changes to the text as published in the *Texas Register,* and will not be republished.

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 80 implement Finance Code Chapter 156, Residential Mortgage Loan Companies (Chapter 156).

Changes Concerning Office Requirements and Remote Work

Prior to September 1, 2021, pursuant to now former Finance Code Sections 156.2041(7) and 156.2042(6), a residential mort-

gage loan company or credit union subsidiary organization licensed by the department under Finance Code Chapter 156 was required to "maintain a physical office in Texas" (physical office requirement). During the 87th Legislature (Regular Session), Senate Bill 1900 (SB1900) and House Bill 3617 (HB3617) were enacted into law (eff. September 1, 2021) which, among things, amended Finance Code Sections 156.2041 and 156.2042 to eliminate the physical office requirement. One stated purpose for HB3617, as reflected by the bill's House Committee Report was to address "a rise in demand for remote working." The adopted rules implement those portions of HB3617 addressing elimination of the physical office requirement and further seek to fulfill the stated purpose of HB3617 by formalizing and clarifying in rule existing authority for the employees and sponsored originators of a "residential mortgage loan company" (as defined by Finance Code §156.002(13); mortgage company) to work remotely. The adopted rules also formalize and clarify in rule existing requirements concerning what constitutes the main office or a branch office of a mortgage company such that the office must be licensed by the department. The adopted rules: (i) eliminate use of the term "physical office" throughout Chapter 80 and instead use the terms "main office" and "branch office" - terms that are used in Chapter 156; (ii) eliminate existing requirements for a mortgage company to maintain records tied to the now defunct physical office requirement; (iii) create definitions for the terms "administrative office," "branch office," "licensed office," and "main office" for purposes of administering the adopted rules, including to clarify which offices of a mortgage company must be licensed by the department; (iv) clarify that the main office or a branch office must be established by the mortgage company and not a sponsored originator; (v) describe conditions under and parameters by which the employees and sponsored originators of a mortgage company are authorized to work from a remote location; (vi) establish a new requirement for a mortgage company to provide appropriate training to its employees and sponsored originators to ensure that remote work is conducted in an environment conducive and appropriate to consumer privacy; (vii) establish a new requirement for a mortgage company to establish, adopt, maintain, and follow written procedures concerning its employees and sponsored originators working remotely; (viii) establish a new requirement for a mortgage company to create and maintain a list of its offices constituting an "administrative office" as defined by the adopted rules; and (xi) establish a new requirement for a mortgage company to maintain records reflecting compliance with the requirements for the employees and sponsored originators of the mortgage company to work remotely.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments, or October 3, 2021. A public hearing in accordance with Government Code §2001.029 was not required. The commission received one comment in response the proposal from Black Mann & Graham L.L.P. (commenter). The commenter suggested proposed §80.206 (relating to Office Locations; Remote Work) be adopted with changes to define use of the terms "residential mortgage loan business" (as used in proposed §80.206(a)(5)) or "business and work" (as used in proposed §80.206(c)), or otherwise clarify the scope of work that an employee or sponsored originator of a mortgage company may perform remotely. The commission agrees with the substance of the comment, and the adopted rules reflect changes responsive to such comment.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §80.2

Statutory Authority

The rule is adopted under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rule affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration 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 C. DUTIES AND RESPONSIBILITIES

7 TAC §§80.203, 80.204, 80.206

Statutory Authority

The rules are adopted under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rules affect the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§80.206. Office Locations; Remote Work.

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

(1) "Administrative office" means any office of a mortgage company that is separate and distinct from its main office or a branch office, whether located in Texas or not, at which the mortgage company conducts residential mortgage loan business in Texas. The term does not include a "remote location" as defined by this section. The term includes:

(A) an office or location at which the employees of the mortgage company act solely in the capacity of a "loan processor or underwriter," as that term is defined by Tex. Fin. Code §180.002;

(B) an office or location at which the employees of the mortgage company perform solely administrative or clerical tasks on behalf of an individual licensed as an originator, as provided by Tex. Fin. Code §180.002(19)(B)(i); or

(C) an office or location which conducts any combination of activities described by subparagraphs (A) or (B) of this paragraph.

(2) "Branch office" means any office a mortgage company maintains that is separate and distinct from its main office, whether located in Texas or not, at which it conducts residential mortgage loan origination business with mortgage applicants or prospective mortgage applicants in Texas or concerning residential real estate located in Texas. The term does not include:

(A) an office or location at which the employees of the mortgage company act solely in the capacity of a "loan processor or underwriter," as that term is defined by Tex. Fin. Code §180.002;

(B) an office or location at which the employees of the mortgage company perform solely administrative or clerical tasks on behalf of an individual licensed as an originator, as provided by Tex. Fin. Code §180.002(19)(B)(i);

(C) an office or location which conducts any combination of the activities described by subparagraphs (A) and (B) of this paragraph; or

(D) a "remote location" as defined by this section.

(3) "Licensed office" means a physical office of the mortgage company that is licensed by the Department as its main office or a branch office.

(4) "Main office" means the office the mortgage company has listed in its NMLS license records (MU1 filing) as its "main address" (principal address) under "identifying information," and is therefore licensed by the Department through the mortgage company's license.

(5) "Remote location" means a location other than a licensed office or an administrative office of the mortgage company from which the employees or sponsored originators of the mortgage company conduct residential mortgage loan business as provided by subsection (c) of this section.

(b) Office Requirements. A mortgage company must obtain a license for any office constituting the main office or a branch office of the mortgage company. A mortgage company must also obtain a license for any office or location it advertises or promotes to the general public as an office or location at which the mortgage company's sponsored originators meet in-person with mortgage applicants or prospective mortgage applicants. A licensed office of the mortgage company must be a physical office and have a permanent physical or street address (a post office box or other similar arrangement is not sufficient). The main office or a branch office must be established by the mortgage company. A sponsored originator cannot establish his or her own office other than an office or location from which he or she performs remote work as provided by subsection (c) of this section.

(c) Authorization for Remote Work. The employees of a mortgage company and its sponsored originators may conduct business and work from a remote location to the same extent as if such employees or originators were physically present at a licensed office of the mortgage company; provided, the mortgage company:

(1) maintains appropriate safeguards for the mortgage company and its consumer data, information, and records, including the use of secure virtual private networks and data storage encryption (including cloud storage) where appropriate;

(2) employs appropriate risk-based monitoring and oversight processes for work performed from a remote location and maintains records of those processes;

(3) ensures that physical records containing consumer information are not maintained at a remote location (as defined by this section) and any electronic records containing consumer information located at or accessible from the remote location are secured;

(4) ensures that consumer information and records of the mortgage company, including written procedures and training for work from remote locations authorized under this section, are accessible and available to the Commissioner or the Commissioner's designee on request;

(5) provides appropriate training to its employees and sponsored originators to ensure that remote employees or sponsored originators work in an environment conducive and appropriate to consumer privacy; and

(6) adopts, maintains, and follows written procedures to ensure that:

(A) the mortgage company and its employees and sponsored originators comply with this section; and

(B) the employees and sponsored originators do not perform an activity from a remote location that would be prohibited at a licensed office or administrative office of the mortgage company.

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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7 TAC §80.206

Statutory Authority

The rule repeal is adopted under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rule repeal affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

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SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

7 TAC §80.300

Statutory Authority

The rule is adopted under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rule affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

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CHAPTER 80. TEXAS RESIDENTIAL MORTGAGE LOAN COMPANIES

SUBCHAPTER B. LICENSING

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts amendments, new rules, and rule repeals in 7 TAC Chapter 80, Texas Residential Mortgage Loan Companies. The commission's proposal was published in the September 10, 2021 issue of the *Texas Register* (46 TexReg 5679). The following rules sections are adopted with changes to the published text and are republished to reflect such changes: §80.102, and §80.107. The changes regulate no new parties and affect no new subjects of regulation. As a result, the rules will not be republished as proposed rules for comment. The remaining rules sections in the proposal are adopted without changes to the text as published in the *Texas Register,* and will not be republished.

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 80 implement Finance Code Chapter 156, Residential Mortgage Loan Companies (Chapter 156). The adopted rules were identified during the department's periodic review of 7 TAC Chapter 80 conducted pursuant to Government Code §2001.039.

Changes Concerning Licensing Procedures

The department licenses residential mortgage loan companies (for purposes of the adopted rules, a "residential mortgage loan company" has the meaning assigned by Finance Code §156.002; mortgage company). The department utilizes the Nationwide Mortgage Licensing System & Registry (NMLS), owned and operated by a company that is a wholly-owned subsidiary of the Conference of State Bank Supervisors (CSBS), as its licensing database system. The adopted rules make various changes to clarify and set forth in rule various procedures utilized by the department in licensing mortgage companies. The adopted rules, among other things: (i) clarify how a mortgage company goes about sponsoring individual residential mortgage loan originators and its responsibility for supervising such originators; (ii) clarify the role of the individual residential mortgage loan originator appointed as the qualifying individual for purposes of Finance Code §156.002(10-b), including requiring the consent of such individual to be appointed; and (iii) clarify the commissioner's authority to approve a license renewal or reinstatement application with a minor deficiency so as to enable the licensed mortgage company to conduct regulated activities while the deficiency is resolved.

Changes Concerning License Records

The adopted rules make various changes concerning: the license records the department maintains with respect to each licensee in NMLS; responsibility for a licensed mortgage company to update such records; and the department's procedures for contacting a licensed mortgage company using the contact information derived from such records. The adopted rules, among other things: (i) expand existing requirements concerning a mortgage company updating and keeping current in the NMLS system various information associated with its license (contact information, information concerning its owners, etc.) by requiring that the mortgage company update such records within ten days after a material change occurs in such information; (ii) set forth in rule an existing requirement prohibiting a licensed mortgage company from allowing an individual residential mortgage loan originator to act on its behalf prior to becoming sponsored of record by such mortgage company in the NMLS system; (iii) set forth in rule procedures for the department to contact a mortgage company utilizing the contact information designated by the licensed mortgage company; and (iv) establish a new requirement providing that a licensed mortgage company must monitor the email address it has designated in the NMLS system for purposes of receiving correspondence or other notices from the department.

Other Modernization and Update Changes

The adopted rules make changes to modernize and update the rules including: adding and replacing language to improve clarity and readability; removing unnecessary or duplicative provisions; updating terminology; and reorganizing the rules sections by subject matter and to align more closely with similar subject matter in 7 TAC Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments, or October 10, 2021. A public hearing in accordance with Government Code §2001.029 was not required. The commission received

one comment in response the proposal from Black Mann & Graham L.L.P. (commenter). The commenter suggested proposed §80.102 (relating to Qualified Individual) be adopted with changes to subsection (b) to eliminate language the commenter deemed unnecessary. The commission agrees with the substance of the comment, and the adopted rules reflect changes responsive to such comment. The commenter further suggested proposed §80.107 (relating to NMLS License Records; Notice to Licensee) be adopted with changes to subsection (d) to use the term "mortgage company" in place of "originator." The commission agrees with the substance of the comment, and the adopted rules reflect changes responsive to such comment.

7 TAC §§80.101, 80.102, 80.105 - 80.107

Statutory Authority

The rules are adopted under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rules affect the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§80.102. Qualified Individual.

(a) Qualified Individual Required. A mortgage company must appoint at least one originator to be the mortgage company's qualifying individual for purposes of Tex. Fin. Code §156.002 (Qualified Individual). As provided by Tex. Fin. Code §156.002, the Qualified Individual is a personal representative of the mortgage company and is deemed to have authority to bind the mortgage company concerning its operations in Texas. In order to serve as the Qualified Individual the licensee must hold his or her individual license in a status which enables him or her to engage in regulated activities with the license, and must be sponsored by the mortgage company for which he or she seeks to serve as Qualified Individual. A mortgage company may appoint more than one originator as Qualifying Individual. If a mortgage company appoints more than one originator to serve as Qualified Individual, each such originator is deemed to serve concurrently and is responsible for all of the originators sponsored by the mortgage company or individuals otherwise allowed to act as originator on its behalf.

(b) Consent Required. The appointment of the Qualified Individual must be consented to by the originator. The originator must acknowledge and confirm his or her consent by making a corresponding license record amendment in NMLS to reflect such appointment using the appropriate form prescribed by NMLS.

§80.107. NMLS License Records; Notice to Licensee.

(a) Amendments to License Records Required. Unless Tex. Fin. Code §156.211 applies and requires additional notice, a mortgage company must amend its NMLS license records (MU1 filing) within 10 days after any material change occurs affecting any aspect of the MU1 filing, including but not limited to:

(1) name (which must be accompanied by supporting documentation submitted to the Department establishing the name change);

(2) the addition or elimination of an assumed name (a/k/a trade name or "doing business as" name; which must be accompanied by a certificate of assumed business name or other documentation establishing or abandoning the assumed name);

(3) the contact information for the mortgage company listed in the MU1 filing under "Identifying Information":

(A) principal address (main address);

(B) mailing address;

(C) phone number;

(D) fax number; and

(E) email address;

(4) the contact information listed under "Resident/Registered Agent";

(5) the contact information listed under "Contact Employee Information;" and

(6) answers to disclosure questions (which must be accompanied by explanations for each such disclosure, together with supporting documentation concerning such disclosure).

(b) Amendments to MU2 Associations Required. A mortgage company must cause the individuals who are required to register an association with the mortgage company (MU2 filing) to do so within the NMLS system and must ensure such associations are amended within 10 days after any material change occurs affecting such associations.

(c) Branch Office License Required. A mortgage company must apply for and obtain a branch office license for each office constituting a branch office of the mortgage company for purposes of §80.206 of this title (relating to Office Locations; Remote Work), which must be licensed prior to conducting operations at such office. The application must be submitted through NMLS and must be made using the appropriate form prescribed by NMLS (MU3 filing). A mortgage company must amend its MU3 filing to surrender the branch office license within 10 days after closing a branch office.

(d) Notice to Licensee. Service of any correspondence, notification, alert, message, official notice or other written communication issued by the Department will be served on the licensee in accordance with this subsection utilizing the licensee's current contact information of record in NMLS unless another method is prescribed by other applicable law (notice to the mortgage company in a matter referred to the State Office of Administrative Hearings for an adjudicative hearing will be performed in accordance with 1 Texas Administrative Code §155.105).

(1) Service by Email. Service by email will be made utilizing the email address the mortgage company has designated in its MU1 filing listed under "Identifying Information." Service by email is complete on transmission of the email by the Department to the mortgage company's email service provider; provided, the Department does not receive a "bounce back" notification, or similar, from the email service provider indicating that delivery was not effective. The mortgage company has an ongoing duty and a continuing obligation to monitor such email account including to ensure that correspondence from the Department is not lost in a "spam" or similar folder, or undelivered due to intervention by a "spam filter" or similar service. A mortgage company is deemed to have constructive notice of any email correspondence or NMLS system notifications sent to the email address it has designated in its MU1 filing listed under "Identifying Information."

(2) Service by Mail. Service by mail is complete on deposit of the document, postpaid and properly addressed, in the mail or with a commercial delivery service. If service is made on the mortgage company by mail and the document communicates a deadline by or a time during which the mortgage company must perform some act, such deadline or time period for action is extended by three days. However, if service was made by another method prescribed by this subsection, such deadline or time period will be calculated based on the earliest possible deadline or shortest applicable time period.

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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Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1535

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7 TAC §§80.102 - 80.104, 80.107

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rule repeals affect the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration 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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CHAPTER 81. MORTGAGE BANKERS AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts amendments, new rules, and rule repeals in 7 TAC Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators, §§81.2, 81.203, 81.204, 81.206, 81.300. The commission's proposal was published in the September 3, 2021, issue of the *Texas Register* (46 TexReg 5506). Section 81.206 is adopted with changes to the published text and is republished to reflect such changes. The changes regulate no new parties and affect no new subjects of regulation. The remaining rule sections in the proposal are adopted without changes to the text as published in the *Texas Register,* and will not be republished.

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 81 implement Finance Code Chapter 157, Mortgage Bankers and Residential Mortgage Loan Originators (Chapter 157), and Chapter 180, Residential Mortgage Loan Originators (Texas SAFE Act), with respect to persons regulated under Chapter 157.

Changes Concerning Office Requirements and Remote Work

The adopted rules recognize the growing demand for the employees and sponsored originators of a mortgage banker to work remotely by formalizing and clarifying in rule existing authority for the employees and sponsored originators of a mortgage banker to do so. The adopted rules also formalize and clarify in rule existing requirements concerning what constitutes the main office or a branch office of a mortgage banker such that the office must be registered with the department. The adopted rules are further designed to fully implement the requirement, pursuant to Finance Code §157.003(b)(6), for a mortgage banker to provide the commissioner with "a list of any offices that are separate and distinct from the primary office identified on the mortgage banker registration and that conduct residential mortgage loan business." The adopted rules: (i) create definitions for the terms "administrative office," "branch office," "main office," and "registered office," for purposes of administering the adopted rules, including to clarify which offices of a mortgage banker must be registered with the department; (ii) clarify that the main office or a branch office must be established by the mortgage banker or mortgage company and not an originator; (iii) describe conditions under and parameters by which the employees and sponsored originators of a mortgage banker are authorized to work from a remote location; (iv) establish a new requirement for a mortgage banker to provide appropriate training to its employees and sponsored originators to ensure that remote work is conducted in an environment conducive and appropriate to consumer privacy; (v) establish a new requirement for a mortgage banker to establish, adopt, maintain, and follow written procedures concerning its employees and sponsored originators working remotely; (vi) establish a new requirement for a mortgage banker to create and maintain a list of its offices constituting an "administrative office" as defined by the adopted rules; and (vii) establish a new requirement for a mortgage banker to maintain records reflecting compliance with the requirements for the employees and sponsored originators of the mortgage banker to work remotely.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments, or October 3, 2021. A public hearing in accordance with Government Code §2001.029 was not required. The commission received two comments in response the proposal. One commenter (Black Mann & Graham L.L.P.) suggested proposed §81.206 (relating to Office Locations; Remote Work) be adopted with changes to define use of the terms "residential mortgage loan business" (as used in proposed §81.206(a)(5)) or "business and work" (as used in proposed §81.206(c)), or otherwise clarify the scope of work that an employee or sponsored originator or a mortgage company may perform remotely. The commission agrees with the substance of the comment, and the adopted rules reflect changes responsive to such comment. One commenter (Texas Mortgage Bankers Association) suggested that proposed §81.206(a) be adopted with changes to clarify and better define the types of activities that a mortgage banker acting as a residential mortgage loan servicer may perform at an "administrative office" of the mortgage banker as defined by the

adopted rules. The commission agrees with the substance of the comment, and the adopted rules reflect changes responsive to such comment.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §81.2

Statutory Authority

The rule is adopted under the authority of Finance Code §157.0023 and §180.004 which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rule affects the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator Act, and Chapter 180, the Texas Fair Enforcement for Mortgage Licensing Act of 2009.

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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Associate General Counsel
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SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §§81.203, 81.204, 81.206

Statutory Authority

The rules are adopted under the authority of Finance Code §157.0023 and §180.004, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rules affect the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator Act, and Chapter 180, the Texas Fair Enforcement for Mortgage Licensing Act of 2009.

§81.206. Office Locations; Remote Work.

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

(1) "Administrative office" means any office of a mortgage banker that is separate and distinct from its main office or a branch office, whether located in Texas or not, at which the mortgage banker conducts residential mortgage loan business in Texas. The term does not include a "remote location" as defined by this section. The term includes:

(A) an office or location at which the employees of the mortgage banker act solely in the capacity of a "loan processor or underwriter," as that term is defined by Tex. Fin. Code §180.002;

(B) an office or location at which the employees of the mortgage banker perform solely administrative or clerical tasks on behalf of an individual licensed as an originator, as provided by Tex. Fin. Code §180.002(19)(B)(i);

(C) with respect to a mortgage banker whose registration under Finance Code Chapter 157 reflects it acts as a servicer of residential mortgage loans, an office or location at which a mortgage banker or its employees solely perform activities relating to residential mortgage loan servicing, including:

(i) collection of the residential mortgage loan;

(ii) the administration of escrow accounts;

(iii) loss mitigation;

(iv) administering or enforcing the terms of a residential mortgage loan; or

(v) administering the terms of an investor servicing agreement for a residential mortgage loan; or

(D) an office or location which conducts any combination of activities described by subparagraphs (A) - (C) of this paragraph.

(2) "Branch office" means any office a mortgage banker maintains that is separate and distinct from its main office, whether located in Texas or not, at which it conducts residential mortgage loan origination business with mortgage applicants or prospective mortgage applicants in Texas or concerning residential real estate located in Texas. The term does not include:

(A) an office or location at which the employees of the mortgage banker act solely in the capacity of a "loan processor or underwriter," as that term is defined by Tex. Fin. Code §180.002;

(B) an office or location at which the employees of the mortgage banker perform solely administrative or clerical tasks on behalf of an individual licensed as an originator, as provided by Tex. Fin. Code §180.002(19)(B)(i);

(C) with respect to a mortgage banker whose registration under Finance Code Chapter 157 reflects it acts as a servicer of residential mortgage loans, an office or location at which a mortgage banker or its employees solely perform activities relating to residential mortgage loan servicing, including:

(i) collection of the residential mortgage loan;

(ii) the administration of escrow accounts;

(iii) loss mitigation;

(iv) administering or enforcing the terms of a residential mortgage loan; or

(v) administering the terms of an investor servicing agreement for a residential mortgage loan;

(D) an office or location which conducts any combination of activities described by subparagraphs (A) - (C) of this paragraph; or

(E) a "remote location" as defined by this section.

(3) "Main office" means the office the mortgage banker has listed in its NMLS registration (MU1 filing) as its "main address" (principal address) under "identifying information," and is therefore registered with the Department.

(4) "Registered office" means a physical office of the mortgage banker that is registered with the Department as its main office or a branch office.

(5) "Remote location" means a location other than a registered office or an administrative office of the mortgage banker from which the employees or sponsored originators of the mortgage banker conduct residential mortgage loan business as provided by subsection (c) of this section.

(b) Office Requirements. A mortgage banker must register any office constituting the main office or a branch office of the mortgage banker. A mortgage banker must also register any office or location it advertises or promotes to the general public as an office or location at which the mortgage banker's sponsored originators meet in-person with mortgage applicants or prospective mortgage applicants. A registered office of the mortgage banker must be a physical office and have a permanent physical or street address (a post office box or other similar arrangement is not sufficient). The main office or a branch office must be established by the mortgage banker or mortgage company. An originator cannot establish his or her own office other than an office or location from which he or she performs remote work as provided by subsection (c) of this section.

(c) Authorization for Remote Work. The employees of a mortgage banker and its sponsored originators may conduct business and work from a remote location to the same extent as if such employee or originators were physically present at a licensed or registered office of the mortgage banker; provided:

(1) maintains appropriate safeguards for the mortgage banker and its consumer data, information, and records, including the use of secure virtual private networks and data storage encryption (including cloud storage) where appropriate;

(2) employs appropriate risk-based monitoring and oversight processes for work performed from a remote location and maintains records of those processes;

(3) ensures that physical records containing consumer information are not maintained at a remote location (as defined by this section) and any electronic records containing consumer information located at or accessible from the remote location are secured;

(4) ensures that consumer information and records of the mortgage banker, including written procedures and training for work from remote locations authorized under this section, are accessible and available to the Commissioner or the Commissioner's designee on request;

(5) provides appropriate training to its employees and sponsored originators to ensure that remote employees or sponsored originators work in an environment conducive and appropriate to consumer privacy; and

(6) adopts, maintains, and follows written procedures to ensure that:

(A) the mortgage banker and its employees and sponsored originators comply with this section; and

(B) the employees and sponsored originators do not perform an activity from a remote location that would be prohibited at a registered office or administrative office of the mortgage banker.

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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Iain A. Berry
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7 TAC §81.206

Statutory Authority

The rule repeal is adopted under the authority of Finance Code §157.0023 and §180.004, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rule repeal affects the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator Act, and Chapter 180, the Texas Fair Enforcement for Mortgage Licensing Act of 2009.

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. COMPLIANCE AND ENFORCEMENT

7 TAC §81.300

Statutory Authority

The rule is adopted under the authority of Finance Code §157.0023 and §180.004, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rule affects the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator Act, and Chapter 180, the Texas Fair Enforcement for Mortgage Licensing Act of 2009.

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 81. MORTGAGE BANKERS AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts rule repeals (§§81.102 - 81.104, 81.106 - 81.110), amendments (§81.101, §81.105), and new rules (§§81.102 - 81.104, 81.106 - 81.111) in 7 TAC Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators. The commission's proposal was published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5683). The following rules are adopted with changes to the proposed text and are republished to reflect such changes: §81.103, and §81.110. The changes regulate no new parties and affect no new subjects of regulation. As a result, the rules will not be republished as proposed rules for comment. The remaining rules in the proposal are adopted without changes to the proposed text as published in the *Texas Register* and will not be republished.

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 81 implement Finance Code Chapter 157, Mortgage Bankers and Residential Mortgage Loan Originators (Chapter 157), and Chapter 180, Residential Mortgage Loan Originators (Texas SAFE Act), with respect to persons regulated under Chapter 157. The adopted rules were identified during the department's periodic review of 7 TAC Chapter 81 conducted pursuant to Government Code §2001.039.

Criminal Conviction Guidelines

The department licenses individuals to act as residential mortgage loan originators. Pursuant to Occupations Code §53.025, the department, as a licensing authority for an occupational license, is required to issue guidelines relating to the department's administration of Occupations Code Chapter 53, including stating the reasons a particular crime is considered to relate the duties and responsibilities of the license and any other criterion that affects the decisions of the department in administering Occupations Code Chapter 53. The adopted rules implement Occupations Code §53.025 by adopting comprehensive criminal conviction guidelines in rule. The authority for denial of an application for licensure based on an individual's criminal history under the Occupations Code is in addition to and augments that arising from the Finance Code. The adopted rules further outline the commissioner's authority for denial of an application for licensure under the Finance Code based on criminal history, including outlining certain offenses deemed by rule to be grounds for denial of licensure under the Finance Code.

Changes Concerning Licensing Procedures

The department licenses individuals to act as residential mortgage loan originators. The department utilizes the Nationwide Mortgage Licensing System & Registry (NMLS), owned and operated by a company that is a wholly-owned subsidiary of the Conference of State Bank Supervisors (CSBS), as its licensing database system. The adopted rules make various changes to clarify and set forth in rule various procedures utilized by the department in licensing residential mortgage loan originators. The adopted rules, among other things: (i) clarify how a residential mortgage loan originator goes about being sponsored by a mortgage company or mortgage banker so as to engage in regulated activities with the license; (ii) clarify how an individual licensed in another jurisdiction or by a different licensing authority as a residential mortgage loan originator, or is a "registered mortgage loan originator" (as defined by Finance Code §180.002(16)) may engage in regulated activities under temporary authority while he or she seeks licensure by the department; (iii) with respect to an applicant for licensure who is a military service member or military veteran, clarify that his or her military service, training, or education cannot constitute grounds for waiving the pre-licensing examination required by Finance Code §180.057, the pre-licensing education training and coursework required by Finance Code §180.056, or the continuing education training and coursework required by Finance Code §180.060; (iv) with respect to a military spouse, clarify that a military spouse seeking temporary authority to act as a residential mortgage loan originator in Texas must do in conformity with Finance Code §180.0511; (v) with respect to pre-licensing education, expand an existing requirement by requiring that such pre-licensing education lapses if the individual does not achieve licensure by limiting the applicable time period from four years to three years; (vi) with respect to pre-licensing education taken in another jurisdiction, establish a new requirement that any portion of such training and coursework which was specific to such jurisdiction does not count towards the minimum hours of required pre-licensing education; (vii) clarify the commissioner's authority to approve a license renewal or reinstatement application with a minor deficiency so as to enable the individual to conduct regulated activities while the deficiency is resolved (viii) clarify the commissioner's authority to conduct background checks other than through the NMLS system; and (ix) set forth in rule procedures for conducting background checks by the department.

Changes Concerning License Records

The adopted rules make various changes concerning: the license records the department maintains with respect to each licensee in NMLS; responsibility for a licensed residential mortgage loan originator to update such records; and the department's procedures for contacting a residential mortgage loan originator using the contact information derived from such records. The adopted rules, among other things: (i) expand existing requirements concerning a residential mortgage loan originator updating and keeping current in the NMLS system various information associated with his or her license (contact information, disclosures concerning criminal history and financial background, etc.) by requiring that the originator update such records within ten days after a material change occurs in such information; (ii) set forth in rule an existing requirement prohibiting a residential mortgage loan originator from engaging in regulated activities prior to becoming sponsored of record in the NMLS system by a mortgage company or mortgage banker; (iii) set forth in rule procedures for the department to contact a residential mortgage loan originator utilizing the contact information designated by the residential mortgage loan originator

in his or her NMLS license records; and (iv) establish a new requirement requiring a residential mortgage loan originator to monitor the email address he or she has designated in the NMLS system to manage his or her account with NMLS and receive system-generated messages from NMLS, for purposes of receiving correspondence or other notices from the department.

Other Modernization and Update Changes

The adopted rules make changes to modernize and update the rules including: adding and replacing language to improve clarity and readability; removing unnecessary or duplicative provisions; updating terminology; and reorganizing the rules sections by subject matter and to align more closely with similar subject matter in 7 TAC Chapter 80, Texas Residential Mortgage Loan Companies.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments, or October 10, 2021. A public hearing in accordance with Government Code §2001.029 was not required. The commission received one comment in response the proposal from Black Mann & Graham, L.L.P. (commenter). The commenter suggested proposed §81.103 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses) be adopted with changes to subsection (c) to replace a reference to Finance Code §157.0062 with a reference to Finance Code §157.016. The commission agrees with the substance of the comment, and the adopted rules reflect changes responsive to such comment. The commenter further suggested proposed §81.110 be adopted with changes to: (i) revise subsection (f)(4) to clarify that the factors used by the department to evaluate an individual with a criminal history for licensure pertain to a license to act as a residential mortgage loan originator; (ii) revise subsection (g)(8) to use gender-specific pronouns; (iii) make clarifying revisions to resolve differing usage within the section of the terms "ineligible" and "disqualified" (or derivations thereof) with respect to the eligibility of an individual with a criminal history for a residential mortgage loan originator license; and (iv) reorganize or otherwise clarify the interplay between subsections (c) and (e) as proposed. The commission agrees with the substance of the comment, and the adopted rules reflect changes responsive to such comment.

SUBCHAPTER B. LICENSING OF INDIVIDUAL ORIGINATORS

7 TAC §§81.101 - 81.111

Statutory Authority

The rules are adopted under the authority of Finance Code §157.0023, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act). 7 TAC §81.103 is also adopted under the authority of, and to implement, Occupations Code Chapter 55. 7 TAC §81.108 is also adopted under the authority of Government Code §411.1385. 7 TAC §81.110 is also adopted under the authority of, and to implement, Occupations Code §53.025. 7 TAC §81.111 is also adopted under the authority of, and to implement, Occupations Code Chapter 53, Subchapter D.

The adopted rules affect the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act, and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

§81.103. Licensing of Military Service Members, Military Veterans, and Military Spouses.

(a) Purpose and Applicability. The purpose of this section is to specify licensing requirements for military service members, military veterans, and military spouses, in accordance with Occupations Code Chapter 55.

(b) Definitions. In this section, the terms "military service member," "military spouse," and "military veteran" have the meanings assigned by Tex. Occ. Code §55.001.

(c) Late Renewal (Reinstatement). As provided by Tex. Occ. Code §55.002, an individual is exempt from any increased fee or other penalty for failing to renew his or her originator license in a timely manner if the individual establishes to the satisfaction of the Commissioner that the individual failed to timely renew the license because the individual was serving as a military service member. A military service member who fails to timely renew his or her originator license must seek reinstatement of the license within the time period prescribed by Tex. Fin. Code §157.016; otherwise, the individual must obtain a new license, including complying with the requirements and procedures then in existence for obtaining an original license.

(d) Expedited License Procedure. As provided by Tex. Occ. Code §55.004 and §55.005, the Department will process a license application as soon as practicable and issue a license to a qualifying applicant who is a military service member, military veteran, or military spouse, if the applicant:

(1) holds a current license in another jurisdiction as a residential mortgage loan originator in accordance with the S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §§5101-5117; or

(2) held a residential mortgage loan originator license in Texas within the five years preceding the date of the application.

(e) Temporary Authority for Military Spouse. Tex. Occ. Code §55.0041 provides that a military spouse may engage in a business or occupation for which a license is required without obtaining the applicable license if the spouse is currently licensed in good standing in another jurisdiction with substantially similar licensing requirements. However, federal law imposes specific, comprehensive requirements governing when and under what circumstances an individual sanctioned to act as an originator in another jurisdiction may act under temporary authority in this state (12 U.S.C. §5117 (relating to Employment Transition of Loan Originators)). Tex. Occ. Code §55.0041(c) further requires that a military spouse "comply with all other laws and regulations applicable to the business or occupation." As a result, a military spouse seeking to avail himself or herself of the temporary authority conferred by Tex. Occ. Code §55.0041 must apply for and seek temporary authority in accordance with Tex. Fin. Code §180.0511 and §81.102 of this title (relating to Temporary Authority).

(f) Substantial Equivalency. For purposes of this section and Tex. Occ. Code §55.004, a residential mortgage loan originator license issued in another jurisdiction is substantially equivalent to a Texas residential mortgage loan originator license if it is issued in accordance with the requirements of the S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §§5501-5117. The Department will verify a license issued in another jurisdiction through NMLS.

(g) Credit for Military Experience. As provided by Tex. Occ. Code §55.007, with respect to an applicant who is a military service

member or military veteran, the Department will credit verified military service, training or education toward the requirements for an originator license by considering the service, training, or education as part of the applicant's employment history. The following items cannot be substituted for military service, training, or education:

(1) the pre-licensing examination, as provided by Tex. Fin. Code §180.057;

(2) the required pre-licensing education training and coursework, as provided by Tex. Fin. Code §180.056 and §81.104 of this title (relating to Required Education); and

(3) continuing education training and coursework, as provided by Tex. Fin. Code §180.060 and §81.104 of this title (relating to Required Education).

§81.110. Criminal Conviction Guidelines.

(a) Purpose and Applicability. This section establishes the criteria utilized by the Commissioner and Department staff in reviewing an individual with a criminal history to determine his or her eligibility and fitness to be licensed by the Department as an originator. This section implements the requirements of Tex. Occ. Code §53.025, requiring the Department to establish guidelines related to such reviews, including designating particular crimes and offenses the Department considers to be directly related to the duties and responsibilities of acting as an originator and may constitute grounds for denial of licensure. The Commissioner's authority to deny an application for licensure based on an individual's criminal history under the Occupations Code is in addition to and augments that arising from the Finance Code. This section also describes the Commissioner's other statutory authority arising from the Finance Code for denial of licensure based on an individual's criminal history, including outlining certain offenses deemed by this section to be grounds for denial under the Finance Code.

(b) Ineligibility by Operation of Law. The following individuals are ineligible for licensure by operation of law due to his or her criminal history:

(1) an individual who, within the seven years preceding the date of the application, has been convicted of, or pled guilty or nolo contendere to, a felony in a court of this state, another state or territory of the United States, a federal court of the United States, or other foreign, or military court, in accordance with Tex. Fin. Code §180.055(a); and

(2) an individual who, at any time, has been convicted of, or pled guilty or nolo contendere to, a felony offense involving an act of fraud, dishonesty, breach of trust, or money laundering, in accordance with Tex. Fin. Code §180.055(a). Any felony offense listed in the schedule contained in subsection (e) of this section having a nexus to residential mortgage loan origination arising from the categories of criminal offenses related to residential mortgage loan origination under subsection (d)(1) or (2) of this section (concerning crimes involving fraud, falsification, dishonesty, deception and breach of trust, and theft or embezzlement, respectively) is deemed to constitute a crime involving an act of fraud, dishonesty, breach of trust, or money laundering for purposes of Tex. Fin. Code §180.055(a).

(c) Duties and Responsibilities of a Residential Mortgage Loan Originator. An originator acts as an intermediary between the consumer seeking a residential mortgage loan and the underwriter who ultimately determines whether the consumer qualifies for the loan. The originator may assist the consumer in reviewing his or her income, expenses and credit worthiness to determine whether he or she will qualify for a loan, and on what terms he or she might qualify. The originator may assist the consumer in making the loan application, and sometimes directs the consumer to present his or her financial information in the manner to which the lender or underwriter is accustomed. A residential mortgage loan often takes place in the context of a real estate transaction, and as a result, an originator sometimes advises the consumer of his or her financial ability to purchase residential real estate, including providing prequalification documents to establish the consumer's purchasing power while shopping in the marketplace. Once the loan has entered the underwriting process, the originator may assist the consumer in resolving any outstanding conditions of the underwriter to qualify for the loan and obtain approval, including addressing items of concern on a consumer's credit report, immigration/residency status, available cash-on-hand for the transaction, and income which may not be readily established by documentary evidence, such as that of an independent contractor. The originator communicates to the consumer the ever-changing loan terms as prevailing rates in the marketplace fluctuate, and is often a key figure in advising the consumer of when and how he or she may "lock" the loan in advance of closing and solidify the loan terms. The originator may serve as communications liaison between the consumer and various parties to the transaction, including the lender, the underwriting department or a third-party underwriter, real estate brokers and sales agents, appraisers, insurance providers, closing/settlement agents, and representatives of various taxing authorities. In performing his or her duties, an originator has access to sensitive information of the consumer, including his or her social security number, date of birth, immigration/residency status, and all the personal financial details of the consumer, including employment, income, assets, and expenses.

(d) Categories of Offenses Related to Residential Mortgage Loan Origination. The Finance Commission of Texas and the Department's Commissioner has determined the following categories of criminal offenses are directly related to the duties and responsibilities of acting as an originator:

(1) criminal offenses involving fraud, falsification, dishonesty, deception, and breach of trust;

(2) criminal offenses involving theft or embezzlement; and

(3) criminal offenses involving intoxication by drugs or alcohol.

(e) Schedule of Criminal Offenses Determined to be Directly Related. The Finance Commission of Texas and the Department's Commissioner has determined the criminal offenses in the following schedule meet one or more of the categories deemed to relate to residential mortgage loan origination by subsection (d) of this section, and are directly related to the duties and responsibilities of an individual licensed by the Department to act as an originator. The schedule includes those criminal offenses most likely to be encountered by Department staff and is made from the perspective of the criminal laws of the State of Texas and the United States federal government. However, the schedule is not an exhaustive review of all offenses, and does not limit the Department from considering a criminal offense not specifically listed in the schedule. The schedule should be construed to include any criminal offense meeting one or more of the categories deemed to relate to residential mortgage loan origination, as provided by subsection (d) of this section. The schedule should further be construed to include the substantially similar or functionally equivalent crime of any state or territory of the United States, violations of the Texas Code of Military Justice (Government Code Chapter 432), violations of the Uniform Code of Military Justice, or crimes of a foreign country or governmental subdivision thereof. In determining whether a criminal offense of another jurisdiction is substantially similar or functionally equivalent, an inquiry will be made comparing the subject offense with an offense on the schedule to determine whether the subject offense has similar elements, including intent and

classification of punishment, and whether the crime would have been punishable had the acts been committed in Texas.
Figure: 7 TAC §81.110(e)

(f) Factors. Unless the individual is ineligible for licensure by operation of law as provided by subsection (b) of this section, in determining whether a criminal offense is directly related to the duties and responsibilities of an individual licensed by the Department to act as an originator, the Commissioner will consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to act as an originator;

(3) the extent to which an originator license might offer an opportunity for the individual to engage in further criminal activity of the same type as that in which the individual has previously been involved;

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensed originator; and

(5) any correlation between the elements of the crime and the duties and responsibilities of licensed originator.

(g) In addition to the factors listed in subsection (f) of this section, the Commissioner, in determining whether an individual who has been convicted of a crime (as determined by Tex. Fin. Code §157.0131 and subsection (h) of this section) is unfit and ineligible for licensure, will consider:

(1) the extent and nature of the individual's past criminal activity;

(2) the age of the individual when the crime was committed;

(3) the amount of time that has elapsed since the individual's criminal activity;

(4) the amount of time that has elapsed since the individual's release from incarceration;

(5) the conduct and work activity of the individual before and after the criminal activity;

(6) evidence of the individual's rehabilitation or rehabilitative efforts;

(7) letters of recommendation, signed and dated, by a current employer, if the individual is employed, or a previous employer, stating that the employer has specific and complete knowledge of the individual's criminal history and the reasons the employer is recommending that the individual be considered fit to be licensed by the Department; and

(8) any other letters of recommendation, signed and dated, by an individual familiar with the applicant and his or her character and fitness, with specific and complete knowledge of the individual's criminal history, able to offer competent information about the nature and extent of the applicant's rehabilitative efforts.

(h) Convictions Considered. The determination of whether a criminal proceeding is considered to have resulted in a conviction for purposes of this section will be made in accordance with Tex. Fin. Code §157.0131, which states that an individual is considered to have been convicted of a criminal offense if:

(1) a sentence is imposed on the individual;

(2) the individual received probation or community supervision, including deferred adjudication or community service; or

(3) the court deferred final disposition of the individual's case.

(i) Consideration of Disciplinary Actions. Unless the individual is ineligible for licensure by operation of law as provided by subsection (b) of this section, in addition to the individual's criminal history, the Commissioner may consider the individual's past history of disciplinary actions with the Department, or another regulatory body or official of another jurisdiction regulating residential mortgage loan origination or other financial services, which may serve as separate grounds for license ineligibility, or as an aggravating factor rendering the individual ineligible for licensure.

(j) Consideration of Financial Responsibility, Character and General Fitness. Unless the individual is ineligible for licensure by operation of law as provided by subsection (b) of this section, in addition to the individual's criminal history, the Commissioner may consider the individual's financial responsibility, and other evidence of character and general fitness, which may serve as separate grounds for license ineligibility, or as an aggravating factor rendering the individual ineligible for licensure. A conviction for a criminal offense having a nexus to residential mortgage loan origination arising from the categories of criminal offenses deemed to relate to residential mortgage loan origination under subsection (d) of this section is indicative of a failure to demonstrate requisite character and general fitness to command the confidence of the community in accordance with Tex. Fin. Code §180.055(a)(3), and honesty, trustworthiness and integrity in accordance with Tex. Fin. Code §157.012(c)(1).

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. LICENSING

7 TAC §§81.102 - 81.104, 81.106 - 81.110

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §157.0023, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rule repeals affect the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act, and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

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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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 89. PROPERTY TAX LENDERS

The Finance Commission of Texas (commission) adopts amendments to §89.310 (relating to Fees) and §89.405 (relating to Denial, Suspension, or Revocation Based on Criminal History), and adopts the repeal of §89.409 (relating to License Reissuance), in 7 TAC, Chapter 89, concerning Property Tax Lenders. The commission adopts the amendments to §89.310 and the repeal of §89.409 without changes to the proposed text as published in the September 3, 2021, issue of the *Texas Register* (46 TexReg 5513). These rules will not be republished. The commission adopts the amendments to §89.405 with changes to the proposed text as published in the September 3, 2021, issue of the *Texas Register* (46 TexReg 5513). This rule will be republished.

The commission received no written comments on the proposal.

In general, the purpose of the rule changes to 7 TAC Chapter 89 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 89 was published in the *Texas Register* on May 28, 2021 (46 TexReg 3425). The commission received no comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received one informal precomment on the rule text draft, addressing the issue of below-market-rate loans under Texas Tax Code, §32.06(a-8). The precomment did not address the proposed rule changes in §§89.310, 89.405, and 89.409. The OCCC appreciates the thoughtful input provided by stakeholders.

An amendment to §89.310 adjusts the volume-based portion of the annual fee paid by property tax lender licensees. Under Texas Finance Code, §351.154, property tax lender licensees are required to pay a license fee to the OCCC. Under Texas Finance Code, §14.107, the commission is authorized to set the amount of the license fee in an amount necessary to recover the costs of administering Texas Finance Code, Chapter 351. Under Texas Finance Code, §16.002 and §16.003, the OCCC is a self-directed, semi-independent agency. This means that the OCCC is responsible for the costs of its operations, and may set fees in amounts necessary for the purpose of carrying out its functions.

Under current §89.310(g)(1), the annual license fee paid by active property tax lender licensees consists of two components: (1) a fixed fee up to $600, and (2) a volume fee up to $0.03 for each $1,000 advanced in property tax loans, in accordance with the property tax lender's most recent annual report. Under current §89.310(g)(3), the total annual license fee shall not average more than $1,200 per active licensed location.

The amendment to §89.310(g)(1)(B) adjusts the volume-based portion of the annual license fee from $0.03 to $0.05 per $1,000 advanced. The commission and the OCCC believe that this change is necessary to ensure that licensing fees are sufficient to recover the costs of administering Texas Finance Code, Chapter 351. Currently, property tax lenders contribute approximately 0.8% of the total revenue that the OCCC receives from license fees. However, property tax lender examinations make up approximately 1.5% of the OCCC's workload of examination hours. This suggests that the current revenue from property tax lender license fees is not sufficient in comparison to other industries.

In the OCCC's experience, the property tax lending industry has required significant staff resources due to the complexity of the property tax loan transaction. A property tax lender examination often requires a team of examiners with specialized training and experience. On average, a property tax lender examination requires approximately 20 examination hours (compared to 16 hours for motor vehicle sales finance licensees and 10 hours for regulated lenders). The OCCC has also received a number of complaints about property tax lenders. Compared to other industries, property tax lenders have consistently tended to have a higher ratio of complaints to the number of active licensees. Many of these complaints are complex and require significant staff time to process. In the OCCC's experience, costs for property tax lenders tend to scale with loan volumes, with the OCCC generally expending more resources on property tax lenders that have larger loan volumes.

Currently, the volume-based fee for property tax lenders is lower than the corresponding fee for regulated lenders. Whereas property tax lenders currently pay $0.03 per $1,000 advanced under §89.310(g)(1)(B), regulated lenders currently pay $0.05 per $1,000 of loans made under Texas Finance Code, Chapter 342, Subchapter E, as provided by the current rule at 7 TAC §83.310(g)(1)(B)(iii) (relating to Fees). Adjusting the volume-based fee for property tax lenders from $0.03 to $0.05 would bring property tax lenders more in line with other licensees. This would help ensure that property tax lenders pay their fair share of costs for regulating the industry, and that other industries are not subsidizing the cost of regulating property tax lenders.

Amendments to §89.405 relate to the OCCC's review of the criminal history of a property tax lender applicant or licensee. The OCCC is authorized to review criminal history of applicants and licensees under Texas Occupations Code, Chapter 53; Texas Finance Code, §14.109; and Texas Government Code, §411.095. The amendments to §89.405 will ensure consistency with HB 1342, which the Texas Legislature enacted in 2019. HB 1342 included the following changes in Texas Occupations Code, Chapter 53: (1) the bill repealed a provision that generally allowed denial, suspension, or revocation for any offense occurring in the five years preceding the application, (2) the bill added provisions requiring an agency to consider correlation between elements of a crime and the duties and responsibilities of the licensed occupation, as well as compliance with conditions of community supervision, parole, or mandatory supervision, and (3) the bill

removed previous language specifying who could provide a letter of recommendation on behalf of an applicant. Amendments throughout subsections (c) and (f) of §89.405 implement these statutory changes from HB 1342. Other amendments to §89.405 include technical corrections, clarifying changes, and updates to citations.

Since the proposal, a change has been made in §89.405(d), to correct an internal reference that should refer to §89.405(f)(1).

The adoption repeals §89.409. Currently, §89.409 requires a licensee to return its license certificate in the event of reissuance of a license. When this section was adopted, it was based on the assumption that the OCCC would issue a paper license certificate. Because the OCCC now issues licenses through an online system (ALECS), this section is no longer necessary.

SUBCHAPTER C. APPLICATION PROCEDURES

7 TAC §89.310

The rule changes are adopted under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351. In addition, Texas Finance Code, §14.107 authorizes the commission to set licensing fees under Chapter 351 at amounts necessary to recover the costs of administering that chapter. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 351.

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. LICENSE

7 TAC §89.405

The rule changes are adopted under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351. In addition, Texas Finance Code, §14.107 authorizes the commission to set licensing fees under Chapter 351 at amounts necessary to recover the costs of administering that chapter. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 351.

§89.405. Denial, Suspension, or Revocation Based on Criminal History.

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §89.310 of this title (relating to Fees), the OCCC will investigate the applicant and its principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions of the applicant and its principal parties;

(2) reliable documents or testimony necessary to make a determination under subsection (c) of this section, including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid or are current.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Finance Code, Chapter 351, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating, acquiring, or servicing loans under Texas Finance Code, Chapter 351 involves or may involve making representations to consumers regarding the terms of the loan, receiving money from consumers, remitting money to third parties, maintaining accounts, collecting due amounts in a legal manner, foreclosing on real property in compliance with state and federal law, and compliance with reporting requirements to government agencies. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft;

(B) assault;

(C) any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);

(D) any offense that involves breach of trust or other fiduciary duty;

(E) any criminal violation of a statute governing credit transactions, property tax lending, or debt collection;

(F) failure to file a government report, filing a false government report, or tampering with a government record;

(G) any greater offense that includes an offense described in subparagraphs (A) - (F) of this paragraph as a lesser included offense;

(H) any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;

(D) the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of a licensee; and

(E) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

(3) In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served;

(F) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(G) evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation.

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §351.104(a)(1). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(1) of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) and (3) of this section in its review of character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

(1) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054 or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(2)-(3);

(2) errors or incomplete information in the license application;

(3) a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §351.156(3); and

(4) any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §351.104(a)(1) and §351.156.

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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7 TAC §89.409

The rule repeal is adopted under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351. In addition, Texas Finance Code, §14.107 authorizes the commission to set licensing fees under Chapter 351 at amounts necessary to recover the costs of administering that chapter. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 351.

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 85. VEHICLE STORAGE FACILITIES

16 TAC §85.722

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 85, §85.722, regarding the Vehicle Storage Facilities Program, without changes to the proposed text as published in the August 13, 2021, issue of the *Texas Register* (46 TexReg 4965). The rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 85 implement Texas Occupations Code, Chapter 2303, Vehicle Storage Facilities.

The adopted rule addresses the maximum amounts for vehicle storage and impoundment fees that may be charged by a vehicle storage facility company. The adopted rule increases the allowable vehicle storage facility impoundment fee and daily storage fee in accordance with changes in the Consumer Price Index (CPI) during the preceding state fiscal biennium, as authorized by statute. Pursuant to Texas Occupations Code §2303.1552, the Texas Commission of Licensing and Regulation (Commission) is authorized to adjust the vehicle impoundment and daily storage fees based upon changes in the CPI not later than November 1 of every odd-numbered year. The adopted rule, based upon analysis of the CPI during the preceding state fiscal biennium by Department staff, is necessary to comply with the statutory requirements to implement changes in the vehicle impoundment and storage fees for 2021.

SECTION-BY-SECTION SUMMARY

The adopted rule amends §85.722(d) by reflecting the new maximum amounts for daily storage fees that may be charged by a vehicle storage facility in connection with receipt and storage of a vehicle, as authorized by statute.

The adopted rule amends §85.722(e) by reflecting the new maximum amount for the vehicle impoundment fee that may be charged by a vehicle storage facility in connection with impoundment and custody of a vehicle, as authorized by statute.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the August 13, 2021, issue of the *Texas Register* (46 TexReg 4965). The deadline for public comments was September 13, 2021. The Department received seven comments from six interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment - The Department received a comment from an interested party in opposition to the proposed rule which asserted that VSF fees should increase with the cost of living. Moreover, the commenter stated the proposed storage fee was too low and should rise with property tax rates. The commenter proposed a 3% annual rise in VSF fees.

Department Response - The Department respectfully disagrees with this comment. In determining the VSF daily storage fee and the impoundment fee levels, the Department was bound by the statutory calculation method under Occupations Code §2303.1552. The method by which the proposed fees were reached was based upon changes in the consumer price index for urban consumers (CPI-U) during the preceding state biennium. The Department was not authorized by statute to employ any other method. No change was made to the proposed rule as a result of this comment.

Comment - The Department received a comment from an interested party that contended that the VSF notification fee was excessive, and that the Department should have consulted with licensees prior to determining the proposed levels for the daily storage fee and the impoundment fee. The commenter further objected and noted that, after 14 years of regulation, the daily storage fee was not raised enough to compensate the licensees.

Department Response - The Department respectfully disagrees with this comment. In determining the VSF daily storage fee and the impoundment fee levels, the Department was bound by the statutory calculation method under Occupations Code §2303.1552. The method by which these fees were reached was based upon changes in the consumer price index for urban consumers (CPI-U) during the preceding state biennium. The Department was not authorized by statute to employ any other method. Moreover, the notification fee was not amended by the current rulemaking. Consequently, that aspect of the comment was beyond the scope of the proposed rule. No change was made to the proposed rule as a result of this comment.

Comment - The Department received two comments from the Southwest Tow Operators Association (STOA) in opposition to the proposed rule. The second comment was nearly identical to the first but offered a correction to an exhibit in the initial comment. The commenter contended that the proposed fee increases made an error in using 2005 fee rates to calculate the proposed fees. STOA asserted that the Department should have accounted for increases in the CPI over the last 14 years, as contemplated by the Legislature in Occupations Code §2303.1552. The commenter notes that the increase in CPI over this time period should have been used in the methodology prior to calculating the CPI increase. The commenter argued that the higher fee adjustment does not harm Texas consumers and properly compensates operators for their true expenses based on today's prices not those of 2005.

Department Response - The Department respectfully disagrees with this comment. In determining the VSF daily storage fee and the impoundment fee levels, the Department was bound by the statutory calculation method under Occupations Code §2303.1552. The method by which these proposed fees were reached was based upon changes in the consumer price index

for urban consumers (CPI-U) during the preceding state biennium. The Department was not authorized by statute to employ any other method. The Department further notes that the daily storage fee was raised two years ago. No change was made to the proposed rule as a result of this comment.

Comment - The Department received a comment from an interested party opposing the proposed rule that contended the proposed VSF storage fee increases were not set high enough and suggested that the fee should be set at $30 per day for vehicles less than 25 feet, and $45 per day for those vehicles exceeding that length. The commenter noted that there had not been a significant increase in the storage fee for a long time.

Department Response - The Department respectfully disagrees with this comment. In determining the proposed VSF daily storage fee, the Department was bound by the statutory calculation method under Occupations Code §2303.1552. The method by which the daily storage fee level was reached was based upon changes in the consumer price index for urban consumers (CPI-U) during the preceding state biennium. The Department was not authorized to employ any other method. Moreover, the Department notes that the daily storage fee was raised two years ago. No change was made to the proposed rule as a result of this comment.

Comment - The Department received a comment from an interested party in support of the amendments to the proposed rule, describing the fee increases as aiding licensees in absorbing increased operational costs.

Department Response - The Department appreciates the comments in support of the proposed rule and no change was made to the proposed rule as a result of this comment.

Comment - The Department received a comment from the American Property Casualty Insurance Association (APCIA) in opposition to the proposed rule. The APCIA is concerned that the proposed rule will lead to higher insurance premiums for consumers if the changes are adopted.

Department Response - The Department respectfully disagrees with this comment. While the Department does not comment on the future of consumer insurance premiums as a result of the proposed rule, the Department notes that it is bound by the dictates for statutory calculation method under Occupations Code §2303.1552. The Department was not authorized to employ any other method or consideration not authorized by law. No change was made to the proposed rule as a result of this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Towing and Storage Advisory Board met on September 15, 2021, to discuss the proposed rules and the public comments received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register.* At its meeting on October 5, 2021, the Commission adopted the proposed rules as recommended by the Advisory Board.

STATUTORY AUTHORITY

The adopted rule is adopted under Texas Occupations Code, Chapters 51 and 2303, which authorize the Commission, 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 adopted rule are those set forth in Texas Occupations Code, Chapters 51 and 2303. No other statutes, articles, or codes are affected by the adopted rule.

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 October 12, 2021.

TRD-202104041
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: November 1, 2021
Proposal publication date: August 13, 2021
For further information, please call: (512) 463-3671

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CHAPTER 86. VEHICLE TOWING AND BOOTING

16 TAC §86.455

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 86, §86.455, regarding the Vehicle Towing and Booting program, without changes to the proposed text as published in the August 13, 2021, issue of the *Texas Register* (46 TexReg 4967). The rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 86 implement Texas Occupations Code, Chapter 2308, Vehicle Towing and Booting.

The adopted rule addresses the maximum amounts for private property tows and drop fees that may be charged by a towing company. Pursuant to Occupations Code §2308.0575, the Texas Commission of Licensing and Regulation (Commission) is required to biennially contract for a fee study which examines private property towing fees assessed by towing companies based on factors such as: (1) the costs of company towing services; (2) changes in the Consumer Price Index for All Urban Consumers (CPI-U); (3) the geographic area, in this instance, a specific focus on the urban consumers for the U.S. South Region; and (4) individual cost components, including the CPI-U for motor vehicle maintenance and repair and the CPI-U for motor vehicle insurance and state gasoline prices. The adopted rule is based upon findings from the 2020 fee study and is necessary to comply with the statutory requirements to implement the biennial adjustment of fees for 2021, in order to protect public health and safety of consumers.

SECTION-BY-SECTION SUMMARY

The adopted rule amends §86.455(b), by reflecting the new maximum amounts for private property tows that may be charged by a towing company in connection with a private property tow, as determined by the 2020 fee study required by statute.

The adopted rule amends §86.455(c), by reflecting the new maximum amounts for motor vehicle drop charges that may be charged by a towing company in connection with a private property tow prior to its removal from the premises or parked

location, as determined by the 2020 fee study required by statute.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the August 13, 2021, issue of the *Texas Register* (46 TexReg 4967). The deadline for public comments was September 13, 2021. The Department received comments from four interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment - The Department received a comment from an interested party that contended that the private property tow fee increase would adversely impact the current economy and hurt Texas consumers.

Department Response - The Department respectfully disagrees with this comment. In determining the proposed private property tow fees, the Department was bound by the statutory calculation method under Occupations Code §2308.0575(b). The method employed for these proposed fees were reached from the results of a Department contracted fee study that examined the results of previous fee studies, the costs of towing services by company, the consumer price index, geographic area, and individual cost components. The Department was not authorized to employ any other method. The proposed fees were the product of that method. No change was made to the proposed rule as a result of this comment.

Comment - The Department received two comments from interested parties in support of the amendment to the proposed rule, describing the fee increases as aiding licensees in absorbing increased operational costs.

Department Response - The Department appreciates the comments in support of the proposed rule and no change was made to the proposed rule as a result of this comment.

Comment - The Department received a comment in opposition to the proposed rule from an interested party that contended that towing fees are not affordable and requested that they not increase.

Department Response - The Department acknowledges and respectfully disagrees with this comment. In determining the proposed private property tow fees, the Department was bound by the statutory provisions under Occupations Code §2308.0575(b). In keeping with the law, the Department contracted fee study reached the increase in private property tow fees as indicated in the proposed rule. The proposed increase is mandated by law to take effect not later than November 1st of this year. The Department was not authorized to employ any other method. No change was made to the proposed rule as a result of this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Towing, Storage and Booting Advisory Board met on September 15, 2021, to discuss the proposed rules and the public comments received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register.* At its meeting on October 5, 2021, the Commission adopted the proposed rules as recommended by the Advisory Board.

STATUTORY AUTHORITY

The adopted rule is adopted under Texas Occupations Code, Chapters 51 and 2308, which authorize the Commission 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 adopted rule are those set forth in Texas Occupations Code, Chapters 51 and 2308. No other statutes, articles, or codes are affected by the adopted rule.

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 October 12, 2021.

TRD-202104040
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: November 1, 2021
Proposal publication date: August 13, 2021
For further information, please call: (512) 463-3671

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CHAPTER 88. POLYGRAPH EXAMINERS

16 TAC §§88.1, 88.10, 88.20 - 88.29, 88.40, 88.70 - 88.80, 88.90, 88.91, 88.100, 88.101

The Texas Commission of Licensing and Regulation (Commission) adopts the repeal of existing rules at 16 Texas Administrative Code (TAC), Chapter 88, §§88.1, 88.10, 88.20 - 88.29, 88.40, 88.70 - 88.80, 88.90, 88.91, 88.100, and 88.101, regarding the Polygraph Examiners Program, without changes to the proposed text as published in the August 20, 2021, issue of the *Texas Register* (46 TexReg 5123). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 88 implement Texas Occupations, Chapter 1703, Polygraph Examiners.

The adopted repeals implement House Bill (HB) 1560, 87th Legislature, Regular Session (2021), which deregulates the polygraph examiners program by repealing Chapter 1703, Occupations Code, effective September 1, 2021. The adopted repeals are necessary to repeal the existing chapter establishing the regulatory structure for polygraph examiner licenses. Due to the repeal of Chapter 1703, Occupations Code, the Department no longer has authority over the licensure of Polygraph Examiners, and the adopted repeals remove all rules related to the regulation of this program.

SECTION-BY-SECTION SUMMARY

The adopted repeal of §88.1, Authority. This section states the authority for regulation by the Department.

The adopted repeal of §88.10, Definitions. This section provides definitions for Chapter 88.

The adopted repeal of §88.20, Licensing Requirements--Polygraph Examiner. This section establishes licensure requirements for the Polygraph Examiner license.

The adopted repeal of §88.21, Licensing Requirements--Polygraph Examiner Renewal. This section establishes renewal licensure requirements for the Polygraph Examiner license.

The adopted repeal of §88.22, Licensing Requirements--Polygraph Examiner Non-resident Applicants. This section establishes non-resident application requirements for the Polygraph Examiner license.

The adopted repeal of §88.23, Licensing Requirements--Registration with County Clerk. This section establishes the registration requirements with county clerks.

The adopted repeal of §88.24, Licensing Requirements--Polygraph Examiner Applicant with Out-of-State License. This section establishes the out-of-state reciprocity procedures for Polygraph Examiner license applications.

The adopted repeal of §88.25, Continuing Education. This section establishes continuing education requirements for the licenses issued under Chapter 88.

The adopted repeal of §88.26, Licensing Requirements--Polygraph Examiner Internship License. This section establishes licensure requirements for the Polygraph Examiner Internship license.

The adopted repeal of §88.27, Polygraph Examiner Internship License Term. This section establishes the term of a Polygraph Examiner Internship license.

The adopted repeal of §88.28, Responsibilities of Registered Curriculum Providers. This section establishes requirements for curriculum providers.

The adopted repeal of §88.29, State Examination for Polygraph Examiner License. This section establishes the requirements for examination eligibility and passage.

The adopted repeal of §88.40, Financial Security. This section establishes financial security requirements of $5,000 for Polygraph Examiner licensees.

The adopted repeal of §88.70, General Responsibilities--Sponsor. This section outlines the responsibilities of a sponsor for a trainee.

The adopted repeal of §88.71, General Responsibilities--Polygraph Examiner Internship. This section outlines the responsibilities of a trainee in an internship.

The adopted repeal of §88.72, Responsibility of Licensee--Change of Name and/or Address. This section establishes the requirement to inform the Department of a change of name or address.

The adopted repeal of §88.73, Responsibility of Licensee--Display of License. This section establishes the requirement to display a Polygraph Examiner license.

The adopted repeal of §88.74, Responsibility of Licensee--Conducting Polygraph Examinations. This section establishes the responsibilities of a Polygraph Examiner during a polygraph examination.

The adopted repeal of §88.75, Responsibility of Licensee--Prohibited Acts. This section establishes prohibited acts by licensees under Chapter 88.

The adopted repeal of §88.76, Responsibility of Licensee--Polygraph Examination Results. This section outlines the responsibilities of licensees after conducting a polygraph examination.

The adopted repeal of §88.77, Responsibility of Licensee--Confidentiality of Examination Results. This section establishes the confidentiality of polygraph examination results.

The adopted repeal of §88.78, Responsibility of Licensee--Contract for Services and Waiver of Liability. This section contains mandatory language that must be included in any contract for polygraph examinations or waivers of liability.

The adopted repeal of §88.79, Responsibility of Licensee--Record Keeping. This section establishes the recordkeeping requirements a licensee must observe for polygraph examinations.

The adopted repeal of §88.80, Fees. This section establishes the fees to be paid to the Department for licenses issued under Chapter 88.

The adopted repeal of §88.90, Sanctions and Administrative Penalties. This section establishes that the Department may apply sanctions or administrative penalties under Chapter 88 or other Department laws and rules.

The adopted repeal of §88.91, Enforcement Authority. This section establishes the Department's enforcement authority.

The adopted repeal of §88.100, Technical Requirements--Polygraph Examiner Course Training Material and Internship. This section establishes the hours and subject matter requirements for Polygraph Examiner license training courses.

The adopted repeal of §88.101, Other Instruments and Instrumentation. This section states that the Texas Commission of Licensing and Regulation (Commission) may adopt rules to identify instruments acceptable for use in Texas.

PUBLIC COMMENTS

The Department drafted and distributed the proposed repeals to persons internal and external to the agency. The proposed rules were published in the August 20, 2021, issue of the *Texas Register* (46 TexReg 5123). The deadline for public comments was September 20, 2021. The Department received comments from one interested party on the proposed rules during the 30-day public comment period. The public comment is summarized below.

Comment -- One commenter expressed sadness with the Texas Legislature's decision to deregulate polygraph examiners in Texas, and concern regarding the legitimacy of the profession in the future.

Department Response -- This comment is outside the scope of the proposed rules as it concerns legislative decision-making by elected representatives. The Department has made no changes as a result of this comment.

COMMISSION ACTION

At its meeting on October 5, 2021, the Commission adopted the proposed rules as recommended by the Department.

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapters 51 and 1703, which authorize the Commission, 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 adopted repeals are those set forth in Texas Occupations Code, Chapters 51 and

1703. No other statutes, articles, or codes are affected by the adopted repeals.

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 October 12, 2021.

TRD-202104039
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: November 1, 2021
Proposal publication date: August 20, 2021
For further information, please call: (512) 463-3671

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CHAPTER 97. MOTOR FUEL METERING AND QUALITY

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 97, Subchapter A, §97.1 and §97.2, and Subchapter D, §97.59; and adopts a new rule at Subchapter B, §97.29, regarding the Motor Fuel Metering and Quality Program, without changes to the proposed text as published in the August 6, 2021, issue of the *Texas Register* (46 TexReg 4814). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 97 implement Texas Business and Commerce Code, Chapter 607, Payment Card Skimmers on Motor Fuel Metering Devices.

The adopted rules are necessary to implement House Bill (HB) 2106, 87th Legislature, Regular Session (2021), which transferred regulatory authority related to payment card skimmers on motor fuel metering devices from the Office of the Attorney General (OAG) to the Department effective September 1, 2021. The adopted rules are necessary to reconcile differences in the legislation and current Department rules and enable the Texas Commission of Licensing and Regulation, the Department's governing body (Commission), and the Department to administer Chapter 607, Texas Business and Commerce Code.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §97.1, Authority, by adding a reference to the Texas Business and Commerce Code.

The adopted rules amend §97.2, Definitions, by adding definitions for "Merchant," and "Skimmer," to align with statute, and renumbering the remaining definitions.

The adopted rules add new §97.29, Discovery of Payment Card Skimmers, which prescribes the requirements a merchant must follow if a skimmer is located at their facility.

The adopted rules amend §97.59, Inspection for Payment Card Skimmers. The adopted rules remove the definitions which were included in proposed §97.2 and prescribe that service companies must report skimmers, as required by statute.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the August 6, 2021, issue of the *Texas Register* (46 TexReg 4814). The deadline for public comments was September 6, 2021. The Department received comments from one interested party on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment: The Department received a comment from an individual regarding training and procedures related to skimmer identification.

Department Response: The comment is outside the scope of the proposed rule, and the Department has taken no action on the comment; however, the comment has been provided to staff for consideration.

COMMISSION ACTION

At its meeting on October 5, 2021, the Commission adopted the proposed rules as recommended by the Department.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §97.1, §97.2

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and Chapter 2310, and Texas Business and Commerce Code, Chapter 607, which authorize the Commission, 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 adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 2310, and Texas Business and Commerce Code, Chapter 607. No other statutes, articles, or codes are affected by the adopted rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 12, 2021.

TRD-202104031
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: November 1, 2021
Proposal publication date: August 6, 2021
For further information, please call: (512) 463-3671

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SUBCHAPTER B. MOTOR FUEL METERING DEVICES

16 TAC §97.29

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and Chapter 2310, and Texas Business and Commerce Code, Chapter 607, which authorize the Commission, 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 adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 2310, and Texas Business and Commerce Code, Chapter 607. No other statutes, articles, or codes are affected by the adopted rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 12, 2021.

TRD-202104034
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: November 1, 2021
Proposal publication date: August 6, 2021
For further information, please call: (512) 463-3671

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SUBCHAPTER D. SERVICE COMPANIES AND SERVICE TECHNICIANS

16 TAC §97.59

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and Chapter 2310, and Texas Business and Commerce Code, Chapter 607, which authorize the Commission, 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 adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 2310, and Texas Business and Commerce Code, Chapter 607. No other statutes, articles, or codes are affected by the adopted rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 12, 2021.

TRD-202104035
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: November 1, 2021
Proposal publication date: August 6, 2021
For further information, please call: (512) 463-3671

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PART 8. TEXAS RACING COMMISSION

CHAPTER 303. GENERAL PROVISIONS

SUBCHAPTER D. TEXAS BRED INCENTIVE PROGRAMS

DIVISION 3. PROGRAMS FOR GREYHOUNDS

16 TAC §303.102

The Texas Racing Commission ("the Commission") adopts amendments to 16 TAC §303.102, Greyhound Rules, without changes to the text as proposed in the August 13, 2021, issue of the *Texas Register* (46 TexReg 4968). The amendments allow for the Texas Greyhound Association (TGA), rather than the National Greyhound Association, to register greyhounds as Texas-bred. These amendments were requested by the TGA as a cost-saving measure for its members. The rule will not be republished.

REASONED JUSTIFICATION

The reasoned justification for these amendments is reduced cost to persons wishing to register Texas-bred greyhounds.

PUBLIC COMMENTS

No comments were submitted in response to the proposal of these amendments.

STATUTORY AUTHORITY

The amendments are adopted under Tex. Occ. Code § 2023.004, which authorizes the Commission to adopt rules to administer the Act.

No other statute, code, or article is affected by the amendments.

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 October 18, 2021.

TRD-202104117
Connie Estes
Interim Executive Director
Texas Racing Commission
Effective date: November 7, 2021
Proposal publication date: August 13, 2021
For further information, please call: (512) 833-6699

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING INSTRUCTIONAL MATERIALS AND TECHNOLOGY ALLOTMENT

19 TAC §§66.1309, 66.1311, 66.1312

The Texas Education Agency adopts amendments to §§66.1309, 66.1311, and 66.1312, concerning the technology and instructional materials allotment. The amendments are adopted without changes to the proposed text as published in

the August 20, 2021 issue of the *Texas Register* (46 TexReg 5155) and will not be republished. The adopted amendments update terminology, provide clarifications, make technical edits, and remove outdated information.

REASONED JUSTIFICATION: The rules in Chapter 66, Subchapter CC, implement Texas Education Code, §31.0211, which establishes the instructional materials and technology allotment and gives the commissioner rulemaking authority over the allotment. The adopted amendments update the subchapter as follows.

The title of Chapter 66, Subchapter CC, is updated to "Commissioner's Rules Concerning Instructional Materials and Technology Allotment" to align with the name of the allotment used in statute.

The adopted amendment to §66.1309, High Enrollment Growth Adjustment, updates references to the instructional materials and technology allotment.

The adopted amendment to §66.1311, Special Instructional Materials, updates language to refer to the federal Web Content Accessibility Guidelines (WCAG) generally. As the federal WCAG standards are updated, the amended rule language refers to the WCAG standards applicable according to each instructional materials proclamation and does not become outdated. In addition, the specific reference to the EMAT system is replaced with a more general reference to the state ordering system.

The adopted amendment to §66.1312, Delayed Publisher Payment Option, updates references to the instructional materials and technology allotment for consistency.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began August 20, 2021, and ended September 20, 2021. No public comments were received.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §31.0211, as amended by House Bill (HB) 1525 and HB 3261, 87th Texas Legislature, Regular Session, 2021, which authorizes the commissioner to adopt rules regarding the instructional materials allotment (IMA), including the amount of the per-student allotment, the authorization of juvenile justice alternative education program allotments, allowed expenditures, required priorities, and adjustments to the number of students for which a district's IMA is calculated; TEC, §31.0212, which requires the commissioner to adopt rules regarding the documentation required for requisitions and disbursement to be approved, rules regarding districts' online instructional materials ordering system accounts, and rules requiring school districts to submit to the commissioner the title and publication information for any materials the district purchases with its IMA; TEC, §31.0214, which authorizes the commissioner to adopt rules regarding high enrollment growth; TEC, §31.0215, which authorizes the commissioner to adopt rules regarding allotment purchases, including announcing to districts the amount of their allotments and delayed payment options; TEC, §31.0231, which requires the commissioner to adopt rules regarding the Commissioner's List of Instructional Materials, including electronic or other tools, models, and investigative materials for Kindergarten-Grade 5 science and Kindergarten-Grade 8 personal financial literacy, various requirements for the adoption, the criteria the materials must meet, coverage of the Texas Essential Knowledge and Skills, teacher training, accessibility standards, and allowed changes; TEC, §31.029, which requires the commissioner to adopt rules regarding instructional materials for use in bilingual education classes; TEC, §31.031, which requires the commissioner to adopt rules regarding the purchase of college preparatory instructional materials with the IMA; TEC, §31.076, which authorizes the commissioner to adopt rules regarding state-developed open-source instructional materials; and TEC, §31.104, which requires the commissioner to adopt rules that include criteria for determining whether instructional materials and technological equipment are returned in an acceptable condition.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§31.0211; 31.0212; 31.0214; 31.0215; 31.0231; 31.029; 31.031; 31.076; and 31.104.

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 October 13, 2021.

TRD-202104049
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: November 2, 2021
Proposal publication date: August 20, 2021
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 571. LICENSING

SUBCHAPTER A. GENERAL

22 TAC §571.15

The Texas Board of Veterinary Medical Examiners (Board) adopts this amendment to §571.15, concerning Temporary Veterinary License. The amendment is adopted without changes to the proposed text published in the April 16, 2021, issue of the *Texas Register* (46 TexReg 2551) and will not be republished.

Reasoned Justification and Factual Basis

This purpose of the amendment is to is to help make temporary licensure less restrictive for out of state veterinarians who wish to volunteer their services in high need areas in Texas.

Summary of Comments and Agency Response

The agency did not receive any public comments that concerned the proposed amendment to this rule.

Statutory Authority

The amendment is adopted under the authority of §801.151(a), Occupations Code, which states that the Board may adopt rules necessary to administer the chapter, and the authority of 801.151(a), Occupations Code, which states that Board may adopt rules as necessary to administer the chapter and the authority of 801.151(b) Occupations Code, which states that the Board may adopt rules of professional conduct appropriate

to establish and maintain a high standard of integrity, skills and practice in the veterinary medicine profession.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 18, 2021.

TRD-202104118
John Helenberg
Executive Director
Texas Board of Veterinary Medical Examiners
Effective date: November 7, 2021
Proposal publication date: April 16, 2021
For further information, please call: (512) 305-7561

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CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §573.27

The Texas Board of Veterinary Medical Examiners (Board) adopts this amendment to §573.27, concerning Honesty, Integrity and Fair Dealing. The amendment is adopted without changes to the proposed text as published in the April 16, 2021, issue of the *Texas Register* (46 TexReg 2552) and will not be republished.

Reasoned Justification and Factual Basis

This purpose of the amendment is to ensure that the rule for honesty, integrity and fair dealing is more inclusive and reflective of the types of complaints received and adjudicated by the Board. This rule modifies existing regulations.

Summary of Comments and Agency Response

The agency did not receive any public comments that concerned the proposed amendment to this rule.

Statutory Authority

The rule is adopted under the authority of §801.151(a), Occupations Code, which states that the Board may adopt rules necessary to administer the chapter, and the authority of §801.151(b), Occupations Code, which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the veterinary medicine profession.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 18, 2021.

TRD-202104119
John Helenberg
Executive Director
Texas Board of Veterinary Medical Examiners
Effective date: November 7, 2021
Proposal publication date: April 16, 2021
For further information, please call: (512) 305-7561

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SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.65

The Texas Board of Veterinary Medical Examiners (Board) adopts this amendment to §573.65, concerning Proof of Acceptable Continuing Education. The amendment is adopted without changes to the proposed text as published in the April 16, 2021, issue of the *Texas Register* (46 TexReg 2553) and will not be republished.

Reasoned Justification and Factual Basis

This purpose of the amendment is to is to allow licensees the flexibility to earn continuing education hours in whatever format they prefer, whether that be live or virtual.

Summary of Comments and Agency Response

The agency received a total of eight public comments regarding this rule, six in favor of the rule and two opposed to the elimination of in-person continuing education. The agency's response to the opposition is that this rule does eliminate in-person continuing education, it merely allows licensees the option to obtain their continuing education hours virtually, via correspondence, in-person or a combination of those formats.

Statutory Authority

The amendment is adopted under the authority of §801.151(a), Occupations Code, which states that the Board may adopt rules necessary to administer the chapter, and the authority of §801.151(b), Occupations Code, which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the veterinary medicine profession.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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John Helenberg
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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES
SUBCHAPTER PP. ANNUITY DISCLOSURES
DIVISION 2. ANNUITY SUITABILITY DISCLOSURES

28 TAC §3.9721, §3.9722

The Commissioner of Insurance adopts new Division 2, consisting of new §3.9721 and §3.9722, in Chapter 3, Subchapter PP. These sections concern annuity suitability disclosures. Section 3.9722 is adopted with nonsubstantive changes to the proposed text as published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5347). The rule will be republished. Section 3.9721 is adopted without changes and will not be republished. To improve clarity when referencing new forms, the date the forms were created, 07/21, was added in parentheses after each form name: FIN 194 in §3.9722(a)(1), FIN 195 in §3.9722(b)(1), and FIN 196 in §3.9722(c)(1). The goal of this nonsubstantive change is to account for possible future revisions to the forms and make it easier to discern the most recent form version adopted by the rule.

REASONED JUSTIFICATION. The new sections are necessary to implement House Bill 1777, 87th Legislature, 2021. HB 1777 amends Insurance Code Chapter 1115 to incorporate a "best interest" standard of care for annuities that is similar to the Security Exchange Commission's standard, to harmonize the standards of care for annuities across regulatory platforms. HB 1777 applies to all annuity transactions occurring on or after September 1, 2021; agents must use a compliant disclosure form for annuity transactions on and after that date.

Insurance Code §1115.0514 and §1115.0516 require the Commissioner to prescribe by rule three new disclosure forms an agent must provide to a consumer, where applicable, either before or at the time of a recommendation or sale of an annuity. The forms must contain statutorily required information, including information incorporating the new best-interest standard and other consumer protection provisions, and they must be substantially similar to forms promulgated by the National Association of Insurance Commissioners (NAIC).

The adopted new sections, which implement §1115.0514 and §1115.0516, are described in the following paragraphs.

Division 2. Annuity Suitability Disclosures. The Commissioner adopts new Division 2 (relating to Annuity Suitability Disclosures) to distinguish new §3.9721 and §3.9722 from existing §§3.9701 - 3.9712, which address annuity contract disclosures. After this rule's adoption, a new Division 1, with a heading clarifying that it addresses annuity contract disclosures, will be administratively added for §§3.9701 - 3.9712.

Section 3.9721. New §3.9721 describes the purpose of new Division 2, stating that it provides standards for the disclosure of certain minimum information about annuity suitability as required by Insurance Code Chapter 1115.

Section 3.9722. New §3.9722 specifies which forms may be used by agents to satisfy the requirements of HB 1777.

Section 3.9722(a) covers the form mandated by Insurance Code §1115.0514(b) for use by agents before the recommendation or sale of an annuity.

Section 3.9722(b) covers the form mandated by Insurance Code §1115.0516(2) for use by agents if a consumer does not provide the agent some or all of the information needed to decide whether the annuity effectively meets the consumer's needs at the time of a recommendation or sale of an annuity.

Section 3.9722(c) covers the form mandated by Insurance Code §1115.0516(3) for use by agents if a consumer decides to enter into an annuity transaction that is not based on an agent's recommendation.

Section 3.9722 references forms adopted by the NAIC in its Suitability in Annuity Transactions Model Regulation (Model 275), which, at the date of publication of this adoption, is available at content.naic.org/sites/default/files/inline-files/MDL-275.pdf. The section also provides an option to use forms developed by the Texas Department of Insurance (TDI) that are substantially similar to the NAIC model forms, which are available at www.tdi.texas.gov/forms. Finally, the rule gives industry flexibility to develop their own disclosure forms that meet the statutory requirements and plain language standards, consistent with the federal government's plain language website (www.plainlanguage.gov). Additional plain language resources can be found on TDI's website at tdi.texas.gov/commissioner/plain-language-industry.html.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: There was one commenter, the Insured Retirement Institute, in support of the proposal.

Comment on §3.9721 and §3.9722

Comment. A commenter communicates general support of the proposal, stating that the adoption of these proposed rules is "important for the sake of uniformity and consistency," and states its appreciation that Texas has promulgated the NAIC suitability disclosure forms.

Agency Response. TDI thanks the commenter for its support.

STATUTORY AUTHORITY. The Commissioner adopts new Division 2, §3.9721 and §3.9722, under Insurance Code §§1115.005, 1115.0514, 1115.0516, and 36.001.

Insurance Code §1115.005 provides that the Commissioner may adopt reasonable rules to accomplish and enforce the purpose of Chapter 1115.

Insurance Code §1115.0514 requires that an agent, before the recommendation or sale of an annuity, provide a disclosure to the consumer on a form prescribed by the Commissioner by rule.

Insurance Code §1115.0516 requires two additional disclosure forms to be prescribed by the Commissioner by rule. Insurance Code §1115.0516(2) requires that an agent use a form at the time of an annuity recommendation or sale that documents (1) when a consumer refuses to provide either consumer profile information, and (2) the consumer's understanding of the consequences of failing to provide or providing insufficient consumer profile information. Insurance Code §1115.0516(3) requires that an agent use a form at the time of an annuity recommendation or sale that documents a statement from the consumer acknowledging when the consumer is entering into an annuity transaction that is not recommended by the agent.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

§3.9722. Required Forms.

(a) Before the recommendation or sale of an annuity, an agent must provide to the consumer a form that meets the requirements of Insurance Code §1115.0514(b), concerning Disclosure Obligation. The agent must use:

(1) form FIN194 (07/21), which is adopted by reference and is available on the department's form website;

(2) the Insurance Agent (Producer) Disclosure for Annuities form, adopted by the National Association of Insurance Commissioners in the Suitability in Annuity Transactions Model Regulation; or

(3) another form that:

(A) meets the requirements of Insurance Code §1115.0514(b) and is substantially similar to the form specified in paragraph (2) of this subsection;

(B) is understandable to a person with an 8th-grade reading level; and

(C) is written in plain language, consistent with federal plain language recommendations from the Plain Language Action and Information Network.

(b) If, at the time of a recommendation or sale of an annuity, a consumer has not given an agent some or all of the information needed to decide whether the annuity effectively meets the consumer's needs, the agent must obtain a statement signed by the consumer on a form that meets the requirements of Insurance Code §1115.0516(2), concerning Documentation Obligation. The agent must use:

(1) form FIN195 (07/21), which is adopted by reference and is available on the department's form website;

(2) the Consumer Refusal to Provide Information form, adopted by the National Association of Insurance Commissioners in the Suitability in Annuity Transactions Model Regulation; or

(3) another form that:

(A) is substantially similar to the form specified in paragraph (2) of this subsection;

(B) is understandable to a person with an 8th-grade reading level; and

(C) is written in plain language, consistent with federal plain language recommendations from the Plain Language Action and Information Network.

(c) At the time of a recommendation or sale of an annuity, if a consumer decides to enter into an annuity transaction that is not based on the agent's recommendation, the agent must obtain a statement signed by the consumer that meets the requirements of Texas Insurance Code §1115.0516(3). The agent must use:

(1) form FIN196 (07/21), which is adopted by reference and is available on the department's form website;

(2) the Consumer Decision to Purchase an Annuity Not Based on a Recommendation form, adopted by the National Association of Insurance Commissioners in the Suitability in Annuity Transactions Model Regulation; or

(3) another form that:

(A) is substantially similar to the form specified in paragraph (2) of this subsection;

(B) is understandable to a person with an 8th-grade reading level; and

(C) is written in plain language, consistent with federal plain language recommendations from the Plain Language Action and Information Network.

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 21. TRADE PRACTICES

The Commissioner of Insurance adopts amendments to 28 TAC §§21.2 - 21.4, 21.6, 21.102, 21.104, 21.120, 21.203 - 21.205, 21.301, 21.403, 21.408, 21.701, 21.703 - 21.705, 21.901, 21.1004 - 21.1007, 21.1101, 21.1110, 21.2001, 21.2006, 21.2010, 21.2011, 21.2106, 21.2202, 21.2204, 21.2212, 21.2501, 21.2601, 21.2604, 21.2606, 21.2702, 21.2819, 21.2901, 21.2902, 21.3201, 21.3302, 21.3303, 21.3305, 21.3701, 21.3802, and 21.4105, relating to trade practices.

The amendments to §§21.2 - 21.4, 21.204, 21.205, 21.301, 21.403, 21.408, 21.701, 21.703 - 21.705, 21.1004, 21.1006, 21.1101, 21.1110, 21.2010, 21.2011, 21.2106, 21.2202, 21.2204, 21.2212, 21.2601, 21.2604, 21.2606, 21.2702, 21.2819, 21.2901, 21.2902, 21.3201, 21.3302, 21.3303, 21.3305, 21.3701, 21.3802, and 21.4105 are adopted without changes to the proposed text published in the June 18, 2021, issue of the *Texas Register* (46 TexReg 3701). These sections will not be republished.

The amendments to §§21.6, 21.102, 21.104, 21.120, 21.203, 21.901, 21.1005, 21.1007, 21.2001, 21.2006, and 21.2501 are adopted with nonsubstantive changes to the proposed text and will be republished.

REASONED JUSTIFICATION. Amendments to Chapter 21 are necessary to (1) change instances of the obsolete "State Board of Insurance" to "Department of Insurance;" (2) replace obsolete statutory citations to Insurance Code articles that have changed because of codification; (3) update agency names, websites, and addresses; (4) correct typographical, punctuational, and grammatical errors, and (5) make nonsubstantive language and usage changes to adhere to current agency style (e.g., capitalizing "Commissioner" and changing "shall" to other context-appropriate words).

The amendments to the sections are described in the following paragraphs, organized by subchapter.

Subchapter A. Unfair Competition and Unfair Practices of Insurers, and Misrepresentation of Policies. Amendments to §§21.2, 21.3, and 21.6 update obsolete statutory citations. Additional amendments to §21.3 and §21.4 update obsolete references to the State Board of Insurance.

Additional amendments include amending §21.3 to replace "shall" with "may," amending §21.4 to remove superfluous "or" instances, and in §21.6 "shall" is replaced with "will."

Subchapter B. Advertising, Certain Trade Practices, and Solicitation. Amendments to §§21.102, 21.104, and 21.120 remove obsolete references to "viatical." An amendment to §21.120 updates an obsolete mailing address. Amendments to §21.120 change "shall" to "must," change "division" to "title," and update a regulatory reference.

A change from the proposal text removes an unnecessary comma in §21.102(4) after "premium finance companies." A change from the proposed text in §21.104 replaces "shall" with "must." A change from the proposal text in §21.120(e)(1) adds a comma after "sales."

Subchapter C. Unfair Claims Settlement Practices. Amendments to §21.203 and §21.205 update obsolete statutory citations. Amendments to §21.204 correct a typo in a citation to §21.203 and update obsolete references to the State Board of Insurance.

Additional amendments to §21.203 include replacing "shall" with "may" or "will," as appropriate; capitalization of "Commissioner of Insurance"; addition of missing periods; deletions of "the"; changes to syntax for proper grammar; and correcting a citation to the Insurance Code. In §21.204, additional amendments include replacing "shall" with "must," replacing "such" with "the" in two places and replacing "of" with "by." In §21.205, an additional amendment replaces "shall" with "must."

A change from the proposal text in §21.203 clarifies the corrected statutory reference, adding "Subchapter B" to Chapter 542.

Subchapter D. Statistical Agents. Amendments to §21.301 update obsolete statutory citations. Amendments also include deleting "shall" or replacing it with "will" and "must," as appropriate; capitalizing "Commissioner"; inserting the word "following"; and inserting a comma and a colon where needed.

Subchapter E. Unfair Discrimination Based on Sex or Marital Status. Amendments to §21.403 update obsolete references to "the board," remove obsolete references to "non-profit legal service corporations," delete unnecessary uses of the word "shall" and revise text as appropriate to reflect removal of "shall" and correct punctuation. Amendments to §21.403 and §21.408 update obsolete statutory citations.

Subchapter H. Unfair Discrimination. Amendments to §§21.701, 21.703, and 21.705 update obsolete statutory citations. Amendments to §21.704 update an obsolete mailing address and replace "shall" with "may." Additional amendments to §21.703 replace "mental retardation" with "intellectual disability" to conform with the *Diagnostic and Statistical Manual of Mental Disorders* and to conform with changes to the Health and Safety and Insurance Codes and replace "handicap or partial handicap" with "disability or partial disability" to conform with changes to Insurance Code §544.002.

Subchapter I. Prohibited Agent Practices. Amendments to §21.901 update obsolete statutory citations. Additional amendments add and delete commas; delete one instance of "shall" and replace another instance with "will"; and replace "shall be" with "are," "pursuant" with "according"; and "article" with "chapter."

A change from the proposal text in §21.901 revises "will" to "do" where "will" was used as a revision of the word "shall."

Subchapter J. Prohibited Trade Practices. Amendments to §§21.1004 - 21.1007 update obsolete statutory citations. Additional amendments add a hyphen in §21.1004; delete an unnecessary comma and replace "shall" with "may" and "shall be" with "is" in §21.1005, as appropriate; make the word "To" lowercase in the heading of §21.006 and replace "shall" with "does" in §21.1006.

An amendment to §21.1004 updates a section title. An amendment to §21.1004(d) updates a section title. In addition, amendments delete §21.1004(f) and (g) because subsection (f) is no longer effective, and subsection (g) is no longer relevant. Subsection (g) contains an expiration clause for subsection (f), providing for the section to expire on January 1, 2008.

An amendment to §21.1007 removes an unnecessary and obsolete mailing address.

A change from the proposal text in §21.1005 changes amended text at the end of section (a) from "will be" to "is."

A change from the proposal text in §21.1007 adds a hyphen in "PC327 WDR-1."

Subchapter K. Certification of Creditable Coverage. Amendments to §21.1101 update obsolete statutory citations, and an amendment to §21.1110 removes an unnecessary and obsolete mailing address. Additional amendments include adding a comma and hyphens, punctuating "USC" to make it "U.S.C.," and capitalizing "Commissioner of Insurance." The defined term "risk pool" is removed from §21.1101 because the term is not used in the subchapter, and the paragraphs that follow it are renumbered as appropriate.

Subchapter L. Medical Child Support, Unfair Practices. Amendments to §§21.2001, 21.2006, 21.2010, and 21.2011 update obsolete statutory citations and delete the words "shall" and "shall be" or replace it with "must," "will," or "are," as appropriate. Additional amendments in §21.2001 replace dashes with double hyphens and add punctuation to "USC" to make it "U.S.C." An additional amendment in §21.2010 removes an unnecessary and obsolete mailing address. Additional amendments in §21.2011 include deleting "will subject" and replacing with "subjects" and replacing "application" with "applicable."

A change from the proposal text in §21.2001 removes an unnecessary ending parenthesis in (8)(B)(ii) after "Chapter 1578." A change from the proposal text in §21.2006 in subsection (a) changes "Insurance Codes" to "Insurance Code."

Subchapter M. Mandatory Benefit Notice Requirements. Amendments to §21.2106 remove an unnecessary and obsolete mailing address.

Subchapter N. Life Insurance Illustrations. Amendments to §§21.2202, 21.2204, and 21.2212 update obsolete statutory citations. Additional amendments to §21.2202 include changing the capitalization of "subchapter" and "Commissioner." Additional amendments to §21.2204 include changing the capitalization of "subchapter" and "Commissioner," deleting two instances of an unnecessary "shall," and changes to syntax. Additional amendments to §21.2212 include changing "subsection" to "subchapter" and deleting an unnecessary "shall."

Subchapter Q. Complaint Records to be Maintained. Amendments to §21.2501 update obsolete statutory citations and eliminate unnecessary uses of "the."

A change from the proposal text in §21.2501 corrects a rule reference.

Subchapter R. Diabetes. Amendments to §§21.2601, 21.2604, and 21.2606 update obsolete statutory citations. Additional amendments to §21.2601 include changing a colon to a period, eliminating unnecessary uses of "shall," capitalizing "Commissioner," revising references to current statutes for consistency with current agency style, and adding punctuation to "USC" to change it to "U.S.C." Additional amendments to §21.2604 include replacing "shall" with "must," adding hyphens and commas where grammatically appropriate, changing numbers rendered in words to numerals, replacing "on-going" with "ongoing," and eliminating unnecessary use of "services." Additional amendments to §21.2606 include replacing "shall" with "must" or "should" as appropriate and updating the title of the Commissioner of Public Health.

Subchapter S. Association Plans. Amendments to §21.2702 update obsolete statutory citations. Additional amendments include changing a colon to a period, capitalizing "Commissioner," eliminating unnecessary uses of "shall," and adding commas and hyphens where appropriate.

Subchapter T. Submission of Clean Claims. Amendments to §21.2819 revise a reference to an Administrative Code section and remove an unnecessary and obsolete mailing address.

Subchapter U. Arrangements Between Indemnity Carriers and HMOs for Point-of-Service Coverage. Amendments to §21.2901 and §21.2902 update obsolete statutory citations. Additional amendments in §21.2901 include eliminating an unnecessary "shall" and adding commas where grammatically appropriate. Additional amendments in §21.2902 include replacing "shall" with "must," "will," "do," or "may" as appropriate; replacing "pursuant" with "according"; adding the word "by"; and updating the heading of a subchapter in a reference to the Administrative Code.

Subchapter X. Evaluation of Network Physicians and Providers. Amendments to §21.3201 update obsolete statutory citations and an out-of-date website address. Additional amendments include changing the capitalization of "Applicability," changing a colon to a period, eliminating an unnecessary "shall," replacing "shall" with "must," and removing text addressing ways to request the Texas Standardized Credentialing Application via mail or over the phone.

Subchapter Y. Unfair Discrimination in Compensation for Women's Health Care. Amendments to §§21.3302, 21.3303, and 21.3305 update obsolete statutory citations. Additional amendments include replacing a colon with a period and eliminating an unnecessary "shall" in §21.3302 and replacing "shall" with "must," "than" with "from," and "if" with "whether" in §21.3305.

Subchapter CC. Electronic Health Care Transactions. Amendments to §21.3701 update obsolete statutory citations and a mailing address. Additional amendments include correcting a citation to a section in the Administrative Code, replacing "shall" with "must" or "will," as appropriate; replacing "ten" with "10"; and replacing "Department of Insurance" with "department." Amendments also update the titles of department staff, which have changed due to internal reorganizations.

Subchapter DD. Eligibility Statements. Amendments to §21.3802 update obsolete statutory citations and eliminate an unnecessary "shall."

Subchapter GG. Health Care Quality Assurance Presumed Compliance. Amendments to §21.4105 update obsolete website references and an obsolete mailing address. Additional amendments include adding the word "as," making the word "department" possessive, replacing "shall" with "will," and eliminating an unnecessary use of the word "internet."

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The Texas Department of Insurance (TDI) received one comment from the Texas Medical Association on the proposed amendments. The commenter was neither for nor against the proposal, but requested changes.

Comment on Chapter 21 Generally

Comment. A commenter raises concerns that changing "shall" to "must" in some of the amended rules could change the meaning of the rules. As an example, the commenter points to the proposed amendment to §21.205. The commenter says that replacing the word "shall" with "must" or another comparable word may lead to someone misconstruing the rule proposal as removing the various duties imposed on health benefit plan issuers under the rules. The commenter requests that TDI clarify its intent with the change of the word.

The commenter refers to §311.016 of the Government Code (the Code of Construction Act), which provides definitions for the words "may," "shall," and "must," and objects to TDI making any change of the use of the word "shall" in rule text that could be construed as removing a duty imposed on a health benefit plan issuer or that is inconsistent with use of the word "shall" in the underlying statute that forms the basis of the rule.

The commenter requests that TDI provide more information on its style guidelines so that stakeholders, the public, and the regulated community may better understand its intended use of "must" and "shall" and whether they are interchangeable under TDI style preferences.

Agency Response. TDI disagrees that changing "shall" to "must" in this rulemaking is a substantive change. As the Texas Supreme Court said in *Helena Chemical Co. v. Wilkins,* 47 S.W.3d 486, 493 (Tex. 2001), "shall" and "must" are both "generally recognized as mandatory, creating a duty or obligation." The proposed changes of the word "shall" contemplate the content of applicable statutes and the context of the rule text in implementing those statutes, and that context makes it clear that the meaning of the impacted rules is not being changed.

The purpose of changing the word "shall" is to provide plain language clarification of the rule text, consistent with current agency style and guidance on the TDI website, which provides links to resources on writing in plain language. Resources TDI uses for plain language guidance include plainlanguage.gov, which provides the federal government's plain language guidelines, and the National Archives guidelines for clear legal documents. Both sources advise using alternatives to the word "shall" to provide clarity for readers.

SUBCHAPTER A. UNFAIR COMPETITION AND UNFAIR PRACTICES OF INSURERS, AND MISREPRESENTATION OF POLICIES

28 TAC §§21.2 - 21.4, 21.6

STATUTORY AUTHORITY. The Commissioner adopts the amendments to §§21.2 - 21.4 and 21.6 under Insurance Code §§463.006, 541.401, 543.001, and 36.001.

Insurance Code §463.006 provides that the Commissioner may adopt rules necessary to carry out and supplement the Texas Life and Health Insurance Guaranty Association Act.

Insurance Code §541.401 provides that the Commissioner may adopt and enforce rules necessary to accomplish the purpose of Chapter 541, which is to regulate trade practices in the business of insurance by defining or determining trade practices that are unfair methods of competition or deceptive acts or practices and prohibiting them.

Insurance Code §543.001 provides that the Commissioner may adopt and enforce rules as provided by Chapter 541, Subchapter I, to ensure life insurance companies do not circulate statements that misrepresent the terms, benefits, or dividends received on a life insurance policy or certificate.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

§21.6. Prohibition against the Use of Guaranty Fund Protection in the Sale of Insurance.

The use in any manner of the protection afforded by the Life and Health Insurance Guaranty Association Act (the Act) by any person in the sale of any product included within the scope of the Act (Insurance Code Chapter 463) will constitute unfair competition and unfair practices under Insurance Code Chapter 541 and will be subject to the provisions thereof.

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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James Person
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6584

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SUBCHAPTER B. ADVERTISING, CERTAIN TRADE PRACTICES, AND SOLICITATION
DIVISION 1. INSURANCE ADVERTISING

28 TAC §§21.102, 21.104, 21.120

STATUTORY AUTHORITY. The Commissioner adopts amendments to §§21.102, 21.104, and 21.120 under Insurance Code §562.106 and §36.001.

Insurance Code §562.106 provides that if the Commissioner reasonably believes that a program operator or marketer may not be operating in compliance with Chapter 562, the Commissioner by order may require the program operator or marketer to submit to the Commissioner any advertisement, solicitation, or marketing materials or other document requested by the Commissioner.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

§21.102. Scope.

For the purpose of this division:

(1) "Advertisement" includes, but is not limited to:

(A) printed and published material, audio visual material and electronic media, descriptive literature of an insurer or agent used in direct mail, newspapers, magazines, radio, telephone and television scripts, billboards, and similar displays;

(B) descriptive literature and sales aids of all kinds issued by an insurer or agent for presentation to members of the public, including circulars, leaflets, booklets, depictions, illustrations, and form letters;

(C) prepared sales talks, presentations and materials for use by agents, and those representations recurringly made by agents to members of the public;

(D) material used to:

(i) solicit additional coverage or policies from existing insureds; or

(ii) modify existing coverage or policies;

(E) material included with a policy when the policy is delivered and materials used in the solicitation of renewals and reinstatements, except those reinstatements provided for in the policy;

(F) lead solicitations which are defined as communications distributed to the public which, regardless of form, content, or stated purpose, are intended to result in the compilation or qualification of a list containing names or other personal information regarding persons who have expressed a specific interest in a product or coverage and which are intended to be used to solicit residents of this state for the purchase of a policy, as defined in paragraph (3) of this section; and

(G) any other communication directly or indirectly related to a policy, as defined in paragraph (3) of this section, and intended to result in the eventual sale or solicitation of a policy.

(2) "Advertisement" does not include:

(A) communications or materials used within an insurer's own organization, not used as sales aids and not disseminated to the public;

(B) communications with policyholders other than materials urging policyholders to purchase, increase, modify, or retain a policy;

(C) a general announcement by a group or blanket policyholder to eligible individuals on an employment or membership list that a policy or program has been written or arranged, provided the announcement clearly indicates that it is preliminary to the issuance of a booklet explaining the proposed coverage;

(D) material used solely for the recruitment, training, and education of an insurer's personnel, agents, counselors, and solicitors, provided it is not also used to induce the public to purchase, increase, modify, or retain a policy of insurance; and

(E) correspondence between a prospective group or blanket policyholder and an insurer or agent in the course of negotiating a group or blanket contract.

(3) "Policy" includes any policy, plan, certificate, contract, evidence of coverage, agreement, statement of coverage, cover note, certificate of policy, rider or endorsement which provides, limits, or

controls insurance for any kind of loss or expense or because of the continuation, impairment, or discontinuance of human life or annuity benefits issued by an insurer, life settlement contracts, premium finance agreements, or any other product offered by an insurer and regulated by the Department.

(4) "Insurer" includes any individual, partnership, corporation, organization, or person issuing evidence of coverage or insurance, or any other entity acting as an insurer to which this division can be made legally applicable including, as applicable, Health Maintenance Organizations, and all insurance companies doing the business of insurance in this state such as capital stock companies, mutual companies, title insurance companies, fraternal benefits societies, local mutual aid associations, local mutual burial associations, statewide mutual assessment companies, county mutual and farm mutual insurance companies, Lloyds' plan companies, reciprocal or interinsurance exchanges, stipulated premium insurance companies, and group hospital service companies and, as can be made appropriate, premium finance companies and life settlement providers.

(5) "Agent" includes each agent, solicitor, counselor, and soliciting representative of an insurer and, as can be made appropriate, life settlement brokers and provider representatives.

(6) "Institutional advertisement" is an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or agent. Correspondence and materials used by an insurer only for the purpose of explaining Legislative or Texas Department of Insurance mandated changes, amendments, additions, or innovations relative to forms, rules, or rates which are subject to the Insurance Code shall be considered institutional advertising for the purpose of §21.104(b) of this division (relating to Requirement of Identification of Policy or Insurer). Web pages on an Internet website that do not refer to a specific insurance policy, certificate of coverage, or evidence of coverage or that do not provide an opportunity for an individual to apply for coverage or to request a quote are considered to be institutional advertisements. Advertisements in other media that do not refer to a specific insurance policy, certificate of coverage, or evidence of coverage or that do not provide an opportunity for an individual to apply for coverage or to request a quote or other information, are considered to be institutional advertisements. In addition, web pages or navigation aids within an Internet website that provide a link to another web page, the content of which refers to a specific insurance policy, certificate of coverage, or evidence of coverage or provides an opportunity for an individual to apply for coverage or request a quote, but that do not, themselves, otherwise include such content are considered to be institutional advertisements.

(7) "Invitation to inquire" for the purpose of this section is an advertisement that refers to a specific insurance policy or provides an opportunity to request a quote or that, except for Internet advertising, provides an opportunity to request other information. An "invitation to inquire" advertisement for accident or health coverage may refer to rates only as permitted under §21.113(b) of this division (relating to Rules Pertaining Specifically to Accident and Health Insurance Advertising and Health Maintenance Organization Advertising). An "invitation to inquire" is not an "invitation to contract."

(8) "Invitation to contract" is an advertisement that includes an application or enrollment form for insurance or which is presented with an opportunity to apply for the advertised coverage.

§21.104. Requirement of Identification of Policy or Insurer.

(a) An advertisement must identify the person or entity responsible for the advertisement.

(1) The full licensed name of the insurer is required to be stated in each of its invitation to inquire and invitation to contract advertisements, including the portion of the advertisement to be returned to the insurer or agent, unless the portion to be returned is delivered as a form detachable from another form containing the insurer's full licensed name. The full licensed name must appear at or before the first appearance of any shortened or substitute name in the body of the text, which shortened or substitute name may be indicated as representing the insurer thereafter in the advertisement.

(2) It is sufficient to state the full licensed name, assumed name registered with the department pursuant to §19.902 of this title (relating to One Agent, One License) or Texas agent's license number of the agent when advertisements address coverages in general and do not describe a specific policy or coverages of a particular insurer.

(b) An advertisement other than institutional, may not use a trade name, any insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, service mark, slogan, symbol, or other device which without disclosing the name of the actual insurer would have the capacity and tendency to mislead or deceive a prospective purchaser as to the true identity of the insurer, or its relation with public or private institutions.

(c) No advertisement may use a combination of words, symbols, or physical materials which by their content, phraseology, shape, color, or other characteristics are so similar to combinations of words, symbols, or physical material normally or usually used by agencies of the federal government or of this state, or that otherwise appear to be of such a nature that the advertisement or solicitation has the capacity or tendency to confuse or mislead prospective insureds into believing that such advertisement or solicitation is connected with an agency of the municipal, state, or federal government.

(d) All advertisements, other than institutional, must explicitly and conspicuously disclose that the product concerned is property, life or other insurance, an annuity, HMO coverage, a life settlement contract, or a prepaid legal services contract, on the basis that each of these products are classified or addressed by statute or rule or as the products are filed with the department. It is sufficient for an insurer to use the term "PPO plan" in advertisements when referring to a preferred provider benefit plan offered under Insurance Code Chapter 1301.

(e) An advertisement that is intended to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed may not imply licensing beyond those limits.

(f) An advertisement may not contain statements that avoid a clear and unequivocal statement that insurance or an annuity or HMO coverage is the subject matter of the solicitation.

(g) An advertisement that contains an application and is advertising more than one policy shall be presented in such manner as to clearly reflect that the cost and benefits are applicable to separate policies of insurance.

(h) No advertisement by an insurer or agent may be used that, directly or by implication, has the capacity and tendency to mislead or deceive prospective purchasers with respect to an insurer's assets, corporate structure, financial standing, age or relative position in the insurance business, or in any other material respect.

(i) Multiple insurers may be represented in one advertisement, provided that an invitation to inquire or invitation to contract advertisement must clearly identify the issuer of each product advertised and the advertisement discloses that each insurer has sole financial responsibility for its own products.

§21.120. Filing for Review.

(a) Any advertisement required to be submitted or submitted voluntarily by an insurer licensed to do business in Texas must be accompanied by a transmittal letter addressed to the Texas Department of Insurance, Life and Health Lines, MC-LH-LHL, P.O. Box 12030, Austin, Texas 78711-2030. The transmittal letter must contain the following information:

(1) the identifying form number of each form submitted including a separate identifying form number for each Internet page and pop-up having a distinct URL;

(2) the type of advertisement submitted, i.e., institutional advertisement, invitation to inquire, or invitation to contract;

(3) the form number(s) of the approved policy and/or rider form(s) advertised;

(4) the method or media used for dissemination of the advertisement;

(5) the form number(s) for all other advertising material to be used with the advertisement(s) being submitted; and

(6) an attachment explaining all variable material; the variable material must be identified with brackets on the advertisement(s).

(b) All advertisements must be submitted in duplicate.

(c) Advertisements may be submitted in printers' proof or as "pasteups."

(d) An advertisement subject to requirements regarding filing of the advertisement with the department for review under the Insurance Code or Texas Administrative Code, Title 28, and that is the same as or substantially similar to an advertisement previously reviewed and accepted by the department, is not required to be filed for review. For the purposes of this subsection, "substantially similar" means the new advertisement does not introduce any substantive content not previously reviewed, nor does it eliminate any content satisfying required disclosures or that would render the advertisement noncompliant with §21.112 of this title (relating to General Prohibition). A person or entity wishing to introduce a "substantially similar" advertisement must file a signed written statement with the department at the address identified in subsection (a) of this section. Such statement must identify or illustrate the changes to be introduced, and list the previously reviewed and accepted form(s) in which those changes would appear, including the form number(s) and the department's filing number(s) under which those forms were previously reviewed and accepted.

(e) The following rules require that advertisements be filed with the department for review at or prior to use:

(1) §3.1744 of this title (relating to Advertising, Sales, and Solicitation Materials; Filing Prior to Use), regarding life settlement contracts;

(2) §3.3313 of this title (relating to Filing Requirements for Advertising), regarding Medicare supplement insurance;

(3) §3.3838 of this title (relating to Filing Requirements for Advertising), regarding long-term care insurance; and

(4) §11.603 of this title (relating to Filings), regarding certain Medicare HMO contracts.

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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James Person
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6584

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SUBCHAPTER C. UNFAIR CLAIMS SETTLEMENT PRACTICES

28 TAC §§21.203 - 21.205

STATUTORY AUTHORITY. The Commissioner adopts amendments to §§21.203 - 21.205 under Insurance Code §542.014 and §36.001.

Insurance Code §542.014 provides that the Commissioner may adopt rules necessary to implement the Unfair Claims Settlement Practices Act.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

§21.203. Unfair Claim Settlement Practices.

No insurer may engage in unfair claim settlement practices. Unfair claim settlement practices means committing or performing any of the following:

(1) misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue;

(2) failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies, provided that "pertinent communications" will exclude written communications that are direct responses to specific inquiries made by the insurer after initial report of a claim. An acknowledgment within 15 business days is presumed to be reasonably prompt;

(3) failing to adopt and implement reasonable standards for prompt investigation of claims arising under its policies;

(4) not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims submitted in which liability has become reasonably clear;

(5) compelling policyholders to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them;

(6) failure of any insurer to maintain, in substantial compliance with §21.2504 of this title (relating to Complaint Record; Required Elements; Explanation and Instructions), a complete record of all complaints, as that term is defined in §21.202(4) of this title (relating to Definitions), which it has received during the preceding three years or since the date of its most recent financial examination by the Commissioner of Insurance, whichever time is shorter. For purposes of this section, "substantial compliance" has the meaning set out in §21.2503 of this title (relating to Compliance Standard);

(7) failing to provide promptly, when provided for in the policy, claim forms when the insurer requires such forms as a prerequisite for a claim settlement;

(8) not attempting in good faith to promptly settle claims where liability has become reasonably clear under one portion of the

policy in order to influence settlement under other portions of the policy coverage. (This provision does not apply to those situations where payment under one portion of coverage constitutes evidence of liability under another portion of coverage.);

(9) failing to promptly provide to a policyholder a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement;

(10) failing to affirm or deny coverage of a claim to a policyholder within a reasonable time. The reasonable submission of a reservation of rights letter by an insurer to a policyholder within a reasonable time is deemed compliance with the provisions of this paragraph;

(11) except as may be specifically provided in the policy, to refuse, fail, or unreasonably delay offer of settlement under applicable first-party coverage on the basis that other coverage may be available or third parties are responsible in law for damages suffered;

(12) attempting to settle a claim for less than the amount to which a reasonable person would have believed she/he was entitled by reference to an advertisement, as described in §21.102 of this title (relating to Scope), made by an insurer or person acting on behalf of an insurer;

(13) undertaking to enforce a full and final release from a policyholder when, in fact, only a partial payment has been made. (This provision will not prevent or have application to the compromise settlement of doubtful or disputed claims.);

(14) failing to establish a policy and proper controls to make certain that agents calculate and deliver to policyholders or their assignees funds due under policy provisions relative to cancellation of coverage within a reasonable time after such coverages are terminated;

(15) refusing to pay claims without conducting a reasonable investigation based upon all available information;

(16) failing to respond promptly to a request by a claimant for personal contact about or review of the claim;

(17) with respect to the Texas personal auto policy, delaying or refusing settlement of a claim solely because there is other insurance of a different type available to satisfy partially or entirely the loss forming the basis of that claim. The claimant who has a right to recover from either or both insurers is entitled to choose under which coverage and in what order payment is to be made;

(18) a violation of Insurance Code Chapter 542, Subchapter B, by an insurer subject to its provisions; or

(19) requiring a claimant, as a condition of settling a claim, to produce the claimant's federal income tax returns for examination or investigation by the insurer unless the claimant is ordered to produce those tax returns by a court of competent jurisdiction, the claim involves a fire loss, or the claim involves a loss of profits or income.

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SUBCHAPTER D. STATISTICAL AGENTS

28 TAC §21.301

STATUTORY AUTHORITY. The Commissioner adopts amendments to §21.301 under Insurance Code §38.207 and §36.001.

Insurance Code §38.207 provides that the Commissioner may adopt rules necessary to accomplish the purposes of Chapter 38, Subchapter E.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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SUBCHAPTER E. UNFAIR DISCRIMINATION BASED ON SEX OR MARITAL STATUS

28 TAC §21.403, §21.408

STATUTORY AUTHORITY. The Commissioner adopts amendments to §21.403 and §21.408 under Insurance Code §541.401 and §36.001.

Insurance Code §541.401 provides that the Commissioner may adopt and enforce rules necessary to accomplish the purpose of Chapter 541, which is to regulate trade practices in the business of insurance by defining or determining trade practices that are unfair methods of competition or deceptive acts or practices and prohibiting them.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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SUBCHAPTER H. UNFAIR DISCRIMINATION

28 TAC §§21.701, 21.703 - 21.705

STATUTORY AUTHORITY. The Commissioner adopts amendments to §§21.701 and 21.703 - 21.705 under Insurance Code §541.401 and §36.001. The Commissioner adopts amendments to §21.705 under Insurance Code §545.003.

Insurance Code §541.401 provides that the Commissioner may adopt and enforce rules necessary to accomplish the purpose of Chapter 541, which is to regulate trade practices in the business of insurance by defining or determining trade practices that are unfair methods of competition or deceptive acts or practices and prohibiting them.

Insurance Code §545.003 provides that the Commissioner may adopt rules to be followed for an HIV-related test requested or required by an issuer.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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SUBCHAPTER I. PROHIBITED AGENT PRACTICES

28 TAC §21.901

STATUTORY AUTHORITY. The Commissioner adopts amendments to §21.901 under Insurance Code §541.401 and §36.001.

Insurance Code §541.401 provides that the Commissioner may adopt rules necessary to accomplish the purpose of Chapter 541, which is to regulate trade practices in the business of insurance by defining or determining trade practices that are unfair methods of competition or deceptive acts or practices and prohibiting them.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

§21.901. Prohibition Against Solicitation or Acceptance of Power of Attorney.

(a) Scope and application. This section applies to any person required to be licensed as an agent pursuant to the provisions of the Insurance Code or other insurance law of this state. For purposes of this section, "person" means both natural persons and business association entities.

(b) Prohibition. No person subject to the provisions of this section is permitted, directly or indirectly, to require, solicit or accept any power of attorney to act as attorney-in-fact for any applicant for any insurance coverage in this state for purposes of placing, procuring, instituting, maintaining, canceling or nonrenewing any insurance coverage, or for any other act in connection with the placement or institution of such insurance coverage.

(c) Exceptions. This section does not apply to the situations described in paragraphs (1) and (2) of this subsection, as follow:

(1) insurance activities for which the Insurance Code or other insurance law of this state expressly authorizes a person to conduct such insurance activities as an attorney-in-fact pursuant to a power of attorney; or

(2) instances in which a person required to be licensed as an agent under the Insurance Code is appointed attorney-in-fact by a relative or household member of such person for purposes which include placing personal lines insurance coverages for such relative or household member.

(d) Premium finance company provisions. The provisions of this section do not prohibit any person subject to the provisions of this section from accepting applications for premium financing on premium financing agreement forms that include a power of attorney in favor of the premium financing company for purposes of canceling a financed insurance contract, so long as the power-of-attorney provisions comply with statutory provisions of Insurance Code Chapter 651, concerning the financing of insurance premiums.

(e) Declaration of unfair practice. The failure to comply with the provisions of this section constitutes unfair competition and unfair practices according to Insurance Code Chapter 541 and is subject to the provisions of that chapter.

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SUBCHAPTER J. PROHIBITED TRADE PRACTICES

28 TAC §§21.1004 - 21.1007

STATUTORY AUTHORITY. The Commissioner adopts amendments to §§21.1004 - 21.1007 under Insurance Code §§541.401, 544.304, 544.354, and 36.001.

Insurance Code §541.401 provides that the Commissioner may adopt rules necessary to accomplish the purpose of Chapter 541, which is to regulate trade practices in the business of insurance by defining or determining trade practices that are unfair methods of competition or deceptive acts or practices and prohibiting them.

Insurance Codes §544.304 provides that the Commissioner adopt rules necessary to implement Insurance Code Chapter 544, Subchapter G.

Insurance Code §544.354 provides that the Commissioner adopt rules necessary to accomplish the purpose of Insurance Code Chapter 544, Subchapter G.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

§21.1005. Prohibition of Underwriting Guidelines Based on the Purchase of Types or Amounts of Coverage in Excess of Minimum Limits Liability Coverage.

(a) Prohibition. Effective September 1, 1995, an insurer or agent may not use an underwriting guideline for private passenger automobile insurance based, in whole or in part, on whether an insured or applicant purchases types or amounts of coverage in excess of the minimum automobile liability coverage required to show proof of financial responsibility under the Motor Vehicle Safety Responsibility Act, Transportation Code, Chapter 601. The failure to comply with this section constitutes an unfair trade practice in the business of insurance in violation of Insurance Code Chapter 541, and is subject to the provisions thereof.

(b) Definition of "Underwriting Guideline." For the purposes of this rule, an "underwriting guideline" is a rule, standard, marketing decision, guideline, or practice, whether written, oral or electronic, used by an insurer or its agent to examine, bind, accept, reject, renew, non-renew, cancel or limit coverages made available to classes of consumers.

(c) Definition of "Private Passenger Automobile Insurance." For the purposes of this rule, "private passenger automobile insurance" is the insurance for which a personal auto policy is issued.

§21.1007. Restrictions on Using Guidelines Based on a Water Damage Claim, Previous Mold Damage, or a Mold Damage Claim.

(a) Purpose. The purpose of this section is to protect persons and property from being unfairly stigmatized in obtaining residential property insurance due to previous mold damage, or by filing a mold damage claim, a water damage claim, or certain appliance-related claims under a residential property insurance policy.

(b) Definitions. The following words and terms, when used in this section, have the following meanings:

(1) Appliance--A household device operated by gas or electric current, including hoses directly attached to the device. The term includes air conditioning units, heating units, refrigerators, dishwashers, icemakers, clothes washers, water heaters, and disposals.

(2) Appliance-related claim--A claim for a loss arising from the discharge or leakage of water or steam from an appliance that is the direct result of the failure of the appliance.

(3) Consumer--The person making the application to insure a property and includes both existing insureds and applicants for insurance.

(4) Insurer--An insurance company, reciprocal or interinsurance exchange, mutual, capital stock company, county mutual insurance company, farm mutual insurance company, association, Lloyd's plan company, or other entity writing residential property insurance in this state. The term includes an affiliate as described by Insurance Code §823.003 if that affiliate is authorized to write and is writing residential property insurance in Texas. The term does not include the Texas Windstorm Insurance Association, the FAIR Plan, or an eligible surplus lines insurer regulated under Insurance Code Chapter 981.

(5) Residential property insurance--Insurance against loss to residential real property at a fixed location or tangible personal property provided in a homeowners policy, including a tenant policy, a condominium owners policy, or a residential fire and allied lines policy.

(6) Underwriting guideline--A rule, standard, guideline, or practice, whether written, oral, or electronic, that is used by an insurer or an agent of an insurer to decide to accept or reject an application for a residential property insurance policy or to determine how to classify risks that are accepted for the purpose of determining a rate.

(7) Water damage claim--A claim for a loss arising from the discharge or leakage of water or steam that is the direct result of the failure of a plumbing system or other system that contains water or steam.

(c) Water damage claims - underwriting. An insurer may not use an underwriting guideline based solely on a single previous water damage claim either filed by the applicant or on the covered property. This subsection does not affect the surcharge and renewal provisions in Insurance Code §551.107 (concerning Renewal of Certain Policies; Premium Surcharge Authorized; Notice).

(d) This subsection contains provisions related to underwriting and rating based on a previous appliance-related claim.

(1) Except as provided in Insurance Code §544.353(e) (concerning Restrictions on Use of Claims History for Water Damage) an insurer must not use a previous appliance-related claim as a basis for determining a rate to be paid or for determining whether to issue, renew, or cancel a residential property insurance policy if the consumer complies with the requirements in Insurance Code §544.353(c) and §544.353(d). It is the consumer's option whether to have the appliance-related claim inspected and certified. The consumer is responsible for the cost of the inspection and certification. An appliance-related claim that is not inspected and certified is subject to subsection (c) of this section.

(2) Nothing in this subsection exempts an insurer from the notice provisions in Insurance Code §551.107(e). However, appliance-related losses are a special class of non-weather-related losses. The notice must be specific to the insured's appliance-related loss history.

(3) The following individuals are inspectors that may have the knowledge and experience in water damage remediation to inspect and certify the proper remediation of an appliance-related claim:

(A) inspectors licensed or certified through the Voluntary Inspection Program under Insurance Code Chapter 2003, Subchapter C;

(B) persons licensed to perform real estate property inspections under the Real Estate Licensing Act;

(C) persons licensed as mold assessment consultants or mold remediation contractors by the Department of Licensing and Regulation under Occupations Code Chapter 1958;

(D) engineers licensed by the Texas Board of Professional Engineers; and

(E) persons authorized by an insurer to perform appliance-related water damage remediation inspections.

(4) An insurer that maintains a list of authorized inspectors must give verbal and written notice that a claimant has the right to choose an inspector. The inspector does not have to be on the insurer's list. The insurer must give verbal notice when the claimant calls to report the claim. The insurer must send written notice within 15 days after the insurer receives notice of the claim.

(5) If a consumer uses an inspector from an insurer's list, the insurer may not reject or challenge the certification. If the consumer uses an inspector who is not on the insurer's list, the insurer may reject or challenge the certification by reinspecting the property. The insurer must give the consumer a list of all reasons it will not accept the certification. The insurer must keep all documentation of the reinspection.

(6) If an inspector physically inspects the property and determines that the appliance-related water damage was properly remediated, the inspector must issue a water damage repair certificate (PC327 WDR-1) within 10 days of completing the inspection.

(7) Water damage repair certificate form (PC327 WDR-1). An inspector must use the water damage repair certificate form (PC327 WDR-1) found on TDI's website at www.tdi.texas.gov. TDI adopts by reference the water damage repair certificate form (PC327 WDR-1) that an inspector must use, subject to the provisions of this subchapter and Insurance Code Chapter 544. Persons using the form should confirm that they are using the most recent online version before giving a copy to the property owner.

(8) TDI has information about inspectors who may have the knowledge and experience in water damage remediation to inspect and certify the proper remediation of an appliance-related claim. A list of inspectors can be obtained from TDI's website or by requesting it from the TDI Property and Casualty Lines Office.

(e) This subsection contains provisions related to underwriting based on previous mold damage or a previous mold damage claim.

(1) An insurer may not use an underwriting guideline based on previous mold damage or a previous mold damage claim filed by the applicant or on the covered property if:

(A) the property is eligible for residential property insurance coverage;

(B) the property had mold damage;

(C) mold remediation was performed on the property; and

(D) the property was:

(i) remediated in accordance with the requirements in Occupations Code Chapter 1958, Subchapter D and any applicable rules adopted by the Department of Licensing and Regulation, and inspected by a licensed mold assessment consultant; and a mold damage remediation certificate (PC326 MDR-1) was issued to the property owner under Occupations Code §1958.154, certifying with reasonable certainty that the underlying cause or causes of the mold at the property were remediated; or

(ii) inspected by a licensed, independent mold assessment consultant or a licensed adjuster; and a mold damage remediation certificate (PC326 MDR-1) was issued to the property owner under Occupations Code §1958.154, certifying that, based on the mold assessment inspection, the property does not contain evidence of mold damage.

(2) Mold damage remediation certificate form (PC326 MDR-1). Mold remediation contractors, mold assessment consultants, and adjusters must use the mold damage remediation certificate form (PC326 MDR-1) found on TDI's website at www.tdi.texas.gov or by requesting the form from the TDI Property and Casualty Lines Office, or from the Department of Licensing and Regulation. TDI adopts by reference the mold damage remediation certificate form (PC326 MDR1) that must be used, subject to the provisions of this subchapter, Occupations Code Chapter 1958, and Insurance Code Chapter 544. Persons using the form should confirm that they are using the most recent online version before giving a copy to the property owner.

(3) This subsection does not affect the surcharge and renewal provisions in Insurance Code §551.107 (concerning Renewal of Certain Policies; Premium Surcharge Authorized; Notice).

(f) This subsection contains provisions for filing underwriting guidelines related to water damage claims, previous mold damage, or mold damage claims.

(1) All underwriting guidelines relating to water damage claims, previous mold damage, or mold damage claims must be filed with TDI. They must comply with the requirements in this section and with any rules adopted by the Commissioner.

(2) Underwriting guidelines relating to water damage claims, previous mold damage, or mold damage claims must be submitted to TDI as described in §5.9310(f) of this title (relating to Property and Casualty Transmittal Information and General Filing Requirements).

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SUBCHAPTER K. CERTIFICATION OF CREDITABLE COVERAGE

28 TAC §21.1101, §21.1110

STATUTORY AUTHORITY. The Commissioner adopts amendments to §21.1101 and §21.1110 under Insurance Code §§845.004, 846.005, and 36.001.

Insurance Code §845.004 provides that the Commissioner adopt rules necessary to implement Insurance Code Chapter 845, Subchapters A - D.

Insurance Code §846.005 provides that the Commissioner may adopt rules necessary to augment and implement Insurance Code Chapter 846.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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SUBCHAPTER L. MEDICAL CHILD SUPPORT, UNFAIR PRACTICES

28 TAC §§21.2001, 21.2006, 21.2010, 21.2011

STATUTORY AUTHORITY. The Commissioner adopts amendments to §§21.2001, 21.2006, 21.2010, and 21.2011 under Insurance Code §§541.401, 846.005, 1301.007, 1355.258, 1504.002, 1701.060, and 36.001.

Insurance Code §541.401 provides that the Commissioner may adopt rules necessary to accomplish the purpose of Chapter 541, which is to regulate trade practices in the business of insurance by defining or determining trade practices that are unfair methods of competition or deceptive acts or practices and prohibiting them.

Insurance Code §846.005 provides that the Commissioner may adopt rules necessary to augment and implement Insurance Code Chapter 846.

Insurance Code §1301.007 provides that the Commissioner adopt rules necessary to implement Insurance Code Chapter 1301.

Insurance Code §1355.258 provides that the Commissioner adopt rules necessary to implement Insurance Code Chapter 1355, Subchapter F.

Insurance Code §1504.002 provides that the Commissioner adopt rules necessary to implement Insurance Code Chapter 1504, including rules that define acts that constitute unfair or deceptive practices under Insurance Code Chapter 541, Subchapter I.

Insurance Code §1701.060 provides that the Commissioner may adopt rules necessary to implement the purposes of Insurance Code Chapter 1701.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

§21.2001. Definitions.

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

(1) Actuarial assumptions--The value of a parameter, or other choice, having an impact on an estimate of a future cost or other actuarial item under evaluation.

(2) Actuarially equivalent--Producing equal actuarial present value, determined as of a given date with each value based on the same set of actuarial assumptions.

(3) Actuarial present value--The value of an amount or series of amounts payable or receivable at various times, determined as of a given date by the application of a particular set of actuarial assumptions.

(4) Child--

(A) a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes; or

(B) in the context of child support, "child" includes a person over 18 years of age for whom a person may be obligated to pay child support.

(5) Child support agency--As defined in Family Code §101.004.

(6) Custodial parent--

(A) a managing conservator of a child or a possessory conservator of a child who is a parent of the child; or

(B) a guardian of the person of a child, or another custodian of a child if the guardian or custodian is designated by a court or administrative agency of this or another state.

(7) Health insurer--Any insurance company, stipulated premium company, fraternal benefit society, group hospital service corporation, or HMO that delivers or issues for delivery an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an evidence of coverage that provides benefits for medical or surgical expenses incurred as a result of an accident or sickness.

(8) Insurer--

(A) a health insurer;

(B) a governmental entity subject to:

(i) Insurance Code, Articles 3.51-1, 3.51-4, or 3.51-5; or

(ii) Insurance Code Chapter 1578; Local Government Code, Chapter 177; or Insurance Code §1355.151 or §1364.101;

(C) a multiple employer welfare arrangement, as that term is defined by Insurance Code §§846.001, 846.002, 846.202, and 846.251; or

(D) a health insurer that issues coverage for a group health plan, as defined by the Employee Retirement Income Security Act of 1974, §607(1) (29 U.S.C. §1167).

(9) Medical assistance--Medical assistance under the state Medicaid program.

(10) Medical support order--A court or administrative judgment, decree, or order whether temporary, final, or subject to modification for the benefit of a child that provides for health coverage of the child.

(11) Policy--Includes an individual, blanket, or franchise insurance agreement or contract, a certificate issued under a group policy, a group hospital service contract, or evidence of coverage issued by a health maintenance organization.

(12) Qualified actuary--An actuary who is either:

(A) a Fellow of the Society of Actuaries, or

(B) a Member of the American Academy of Actuaries.

§21.2006. Notice of Availability of Continuation or Conversion Coverage.

(a) For the purpose of providing notification to the custodial parent under Insurance Code §1504.054 and §21.2008 of this title (relating to Information Provided by an Insurer), the custodial parent must notify the insurer of any change of address. If no such change of address is submitted by the custodial parent to the insurer, then the insurer must comply with the provisions of Insurance Code §1504.054 and §21.2008 of this title (relating to Information Provided by an Insurer) regarding notification to the custodial parent if such notice is sent to the last known address of the custodial parent.

(b) The insurer must enroll or continue enrollment of the child on application of a parent of the child, a child support agency, or the child over 18 years of age.

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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James Person
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6584

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SUBCHAPTER M. MANDATORY BENEFIT NOTICE REQUIREMENTS

28 TAC §21.2106

STATUTORY AUTHORITY. The Commissioner adopts amendments to §21.2106 under Insurance Code §§843.151, 1251.008, 1370.004, and 36.001.

Insurance Code §843.151 provides that the Commissioner may adopt rules as necessary and proper to implement Insurance Code Chapter 1271.

Insurance Code §1251.008 provides that the Commissioner may adopt rules necessary to administer Insurance Code Chapter 1251.

Insurance Code §1370.004 provides that health benefit plan issuers must provide written notice of coverage required under Insurance Code Chapter 1370 to each woman 18 years of age or older enrolled in the plan in accordance with rules adopted by the Commissioner.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER N. LIFE INSURANCE ILLUSTRATIONS

28 TAC §§21.2202, 21.2204, 21.2212

STATUTORY AUTHORITY. The Commissioner adopts amendments to §§21.2202, 21.2204, and 21.2212 under Insurance Code §§541.401, 543.001, and 36.001.

Insurance Code §541.401 provides that the Commissioner may adopt rules necessary to accomplish the purpose of Chapter 541, which is to regulate trade practices in the business of insurance by defining or determining trade practices that are unfair methods of competition or deceptive acts or practices and prohibiting them.

Insurance Code §543.001 provides that the Commissioner may adopt rules as provided by Chapter 541, Subchapter I, to ensure life insurance companies do not circulate statements that misrepresent the terms, benefits, or dividends received on a life insurance policy or certificate.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER Q. COMPLAINT RECORDS TO BE MAINTAINED

28 TAC §21.2501

STATUTORY AUTHORITY. The Commissioner adopts amendments to §21.2501 under Insurance Code §541.401 and §36.001.

Insurance Code §541.401 provides that the Commissioner may adopt and enforce rules necessary to accomplish the purpose of Chapter 541, which is to regulate trade practices in the business of insurance by defining or determining trade practices that are unfair methods of competition or deceptive acts or practices and prohibiting them.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

§21.2501. Applicability and Purpose.

This subchapter applies to all insurers as defined in §21.2502 of this title (relating to Definitions). The purpose of this subchapter is to prescribe the minimum information required to be maintained in the complaint record of an insurer, to provide a recommended format for the maintenance of such a record by insurers, and to require presentation of such information at the time of examination of insurers or upon other request for complaint record information by the department. Complaint record maintenance provisions of this subchapter apply to all complaints of an insurer not specifically excepted by this subchapter, including complaints relating to the claims settlement practices of an insurer.

(1) This subchapter does not apply to complaints received and maintained by Health Maintenance Organizations. Insurance Code Chapter 843, Subchapter G, as amended, as well as §11.205 of this title (relating to Additional Documents to be Available for Review), expressly and specifically provide for complaint record maintenance by HMOs.

(2) This subchapter does not apply to the complaints received by an insurer in its capacity as a utilization review agent. Complaint record maintenance and reporting for such complaints are addressed in §19.1705 of this title (relating to General Standards of Utilization Review).

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 R. DIABETES

28 TAC §§21.2601, 21.2604, 21.2606

STATUTORY AUTHORITY. The Commissioner adopts amendments to §§21.2601, 21.2604, and 21.2606 under Insurance Code §1358.057 and §36.001.

Insurance Code §1358.057 provides that the Commissioner adopt rules necessary to implement Insurance Code Chapter 1358, Subchapter B.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER S. ASSOCIATION PLANS

28 TAC §21.2702

STATUTORY AUTHORITY. The Commissioner adopts amendments to §21.2702 under Insurance Code §§843.151, 1115.005, 1251.0008, and 36.001.

Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement Insurance Code Chapter 843.

Insurance Code §1115.005 provides that the Commissioner may adopt reasonable rules to accomplish and enforce the purpose of Chapter 1115.

Insurance Code §1251.008 provides that the Commissioner may adopt rules necessary to administer Insurance Code Chapter 1251.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER T. SUBMISSION OF CLEAN CLAIMS

28 TAC §21.2819

STATUTORY AUTHORITY. The Commissioner adopts amendments to §21.2819 under Insurance Code §§843.336, 1301.007 and 36.001.

Insurance Code §843.336 provides that the Commissioner may adopt rules that specify the information that must be entered on the claim form for a claim to be a clean claim.

Insurance Code §1301.007 provides that the Commissioner may adopt rules necessary to implement Chapter 1301 relating to preferred provider benefit plans, including the prompt payment of claims.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER U. ARRANGEMENTS BETWEEN INDEMNITY CARRIERS AND HMOS FOR POINT-OF-SERVICE COVERAGE

28 TAC §21.2901, §21.2902

STATUTORY AUTHORITY. The Commissioner adopts amendments to §21.2901 and §21.2902 under Insurance Code §§843.151, 1201.006, 1251.008, 1273.005, 1301.007, 1701.060, 4201.003, and 36.001.

Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement Insurance Code Chapters 843; 1452, Subchapter A; 1507, Subchapter B; 222; 251; and 258 as applicable to health maintenance organizations; and Insurance Code Chapters 1271 and 1272.

Insurance Code §1201.006 provides that the Commissioner may adopt rules necessary to implement the purposes and provisions of Insurance Code Chapter 1201.

Insurance Code §1251.008 provides that the Commissioner may adopt rules necessary to administer Insurance Code Chapter 1251.

Insurance Code §1273.005 provides that the Commissioner may adopt rules to implement Chapter 1273, Subchapter A.

Insurance Code §1301.007 provides that the Commissioner adopt rules necessary to implement Insurance Code Chapter 1301 and to ensure reasonable accessibility and availability of preferred provider services to residents of this state.

Insurance Code §1701.060 provides that the Commissioner may adopt rules necessary to implement the purpose of Insurance Code Chapter 1701.

Insurance Code §4201.003 provides that the Commissioner may adopt rules to implement Chapter 4201.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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SUBCHAPTER X. EVALUATION OF NETWORK PHYSICIANS AND PROVIDERS

28 TAC §21.3201

STATUTORY AUTHORITY. The Commissioner adopts amendments to §21.3201 under Insurance Code §1452.052 and §36.001.

Insurance Code §1452.052 provides that the Commissioner adopt a standardized verification of credentials form for physicians, advanced practice nurses, and physician assistants.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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SUBCHAPTER Y. UNFAIR DISCRIMINATION IN COMPENSATION FOR WOMEN'S HEALTH CARE

28 TAC §§21.3302, 21.3303, 21.3305

STATUTORY AUTHORITY. The Commissioner adopts amendments to §§21.3302, 21.3303, and 21.3305 under Senate Bill 8, 77th Legislature, 2001, and Insurance Code §36.001.

The enacting language of SB 8, which enacted the article that was codified as Insurance Code Chapter 1454, effective April 1, 2005, provides that TDI may adopt rules necessary to implement the act.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER CC. ELECTRONIC HEALTH CARE TRANSACTIONS

28 TAC §21.3701

STATUTORY AUTHORITY. The Commissioner adopts amendments to §21.3701 under Insurance Code §1213.006 and §36.001.

Insurance Code §1213.006 provides that the Commissioner may adopt rules necessary to implement the requirements for electronic health care transactions found in Chapter 1213.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER DD. ELIGIBILITY STATEMENTS

28 TAC §21.3802

STATUTORY AUTHORITY. The Commissioner adopts amendments to §21.3802 under Insurance Code §1274.004 and §36.001.

Insurance Code §1274.004 provides that the Commissioner adopt rules necessary to implement Chapter 1274.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER GG. HEALTH CARE QUALITY ASSURANCE PRESUMED COMPLIANCE

28 TAC §21.4105

STATUTORY AUTHORITY. The Commissioner adopts amendments to §21.4105 under Insurance Code §847.007 and §36.001.

Insurance Code §847.007 provides that the Commissioner may by rule determine the application of compliance with national accreditation requirements by a delegated entity, delegated third party, or utilization review agent to compliance by the health benefit plan issuer that contracts with the delegated entity, delegated third party, or agent.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 6. LICENSE TO CARRY HANDGUNS

SUBCHAPTER B. ELIGIBILITY AND APPLICATION PROCEDURES FOR A LICENSE TO CARRY A HANDGUN

37 TAC §6.14, §6.17

The Texas Department of Public Safety (the department) adopts amendments to §6.14, concerning Proficiency Requirements, and new §6.17, concerning Protective Order Designation, in Subchapter B, Eligibility and Application Procedures for a License to Carry a Handgun. These rules are adopted without changes to the proposed text as published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5361) and will not be republished.

Amendments to §6.14, concerning Proficiency Requirements, are intended to clarify the content and manner of instruction of the range portion of the handgun proficiency requirements. New §6.17, Protective Order Designation, is necessary to implement House Bill 918, 87th Legislative Session and to verify the continued eligibility of certain license holders for the protective order designation.

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, §411.197, which authorizes the director to adopt rules to administer this subchapter, and §411.1735(e) (added by House Bill 918, 87th Legislative Session), which requires the director to adopt rules relating to the verification of a license holder's eligibility for the protective order designation.

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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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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CHAPTER 7. TEXAS DIVISION OF EMERGENCY MANAGEMENT

SUBCHAPTER A. EMERGENCY MANAGEMENT PROGRAM REQUIREMENTS

37 TAC §§7.1 - 7.3

The Texas Department of Public Safety (the department) adopts the repeal of §§7.1 - 7.3, concerning Emergency Management Program Requirements. These repeals are adopted without changes to the proposed text as published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5362) and will not be republished.

Texas Government Code, Chapter 418 establishes the system of Emergency Management in Texas. The current External Operating Rules for the system are located at https://tdem.texas.gov/wp-content/uploads/2020/02/External-Operating-Rule-Chapter-418.pdf. The current provisions replace these sections of the Texas Administrative Code, making the repeal necessary.

No comments were received regarding the adoption of these repeals.

These repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

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. EMERGENCY MANAGEMENT PLANNING AND PREPLANNING REQUIREMENTS

37 TAC §§7.11 - 7.13

The Texas Department of Public Safety (the department) adopts the repeal of §§7.11 - 7.13, concerning Emergency Management Planning and Preplanning Requirements. These repeals are adopted without changes to the proposed text as published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5363) and will not be republished.

Texas Government Code, Chapter 418 establishes the system of Emergency Management in Texas. The current External Operating Rules for the system are located at https://tdem.texas.gov/wp-content/uploads/2020/02/External-Operating-Rule-Chapter-418.pdf. The current provisions replace these sections of the Texas Administrative Code, making the repeal necessary.

No comments were received regarding the adoption of these repeals.

These repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

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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D. Phillip Adkins
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SUBCHAPTER C. EMERGENCY MANAGEMENT OPERATIONS

37 TAC §§7.21 - 7.27

The Texas Department of Public Safety (the department) adopts the repeal of §§7.21 - 7.27, concerning Declaration of a State of Disaster and Effects of a Declaration. These repeals are adopted without changes to the proposed text as published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5364) and will not be republished.

Texas Government Code, Chapter 418 establishes the system of Emergency Management in Texas. The current External Operating Rules for the system are located at https://tdem.texas.gov/wp-content/uploads/2020/02/External-Operating-Rule-Chapter-418.pdf. The current provisions replace these sections of the Texas Administrative Code, making the repeal necessary.

No comments were received regarding the adoption of these repeals.

These repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

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. RECOVERY AND REHABILITATION REQUIREMENTS

37 TAC §§7.41 - 7.45

The Texas Department of Public Safety (the department) adopts the repeal of §§7.41 - 7.45, concerning Recovery and Rehabilitation Requirements. These repeals are adopted without changes to the proposed text as published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5364) and will not be republished.

Texas Government Code, Chapter 418 establishes the system of Emergency Management in Texas. The current External Operating Rules for the system are located at https://tdem.texas.gov/wp-content/uploads/2020/02/External-Operating-Rule-Chapter-418.pdf. The current provisions replace these sections of the Texas Administrative Code, making the repeal necessary.

No comments were received regarding the adoption of these repeals.

These repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

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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D. Phillip Adkins
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CHAPTER 36. METALS RECYCLING ENTITIES

SUBCHAPTER C. PRACTICE BY CERTIFICATE HOLDERS AND REPORTING REQUIREMENTS

37 TAC §36.38

The Texas Department of Public Safety (the department) adopts new §36.38, concerning Marking of Catalytic Converters. This rule is adopted without changes to the proposed text as published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5365) and will not be republished.

This new rule is required in order to comply with House Bill 4110, 87th Legislative Session, requiring the commission to prescribe by rule the manner in which a metal recycling entity mark catalytic converters purchased by the entity.

The department accepted comments on the proposed amendments through September 27, 2021. Written comments relating to §36.38 were submitted by Karen Phillips, on behalf of Texas Automobile Dealers Association in support of the new rule. No changes were made to the proposal based on these comments.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which authorizes the commission to adopt rules to administer Chapter 1956.

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. DISCIPLINARY PROCEDURES AND ADMINISTRATIVE PROCEDURES

37 TAC §36.52

The Texas Department of Public Safety (the department) adopts the repeal of §36.52, concerning Advisory Letters, Reprimands and Suspensions of a Certificate of Registration. This repeal is adopted without changes to the proposed text as published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5366) and will not be republished.

Section 36.52 is to be consolidated with §36.60, concerning Administrative Penalties, thereby providing a single rule relating to both administrative sanctions and penalties.

No comments were received regarding the adoption of this repeal.

This repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §411.506, which authorizes the commission to adopt rules establishing procedures for the informal resolution of complaints filed against metal recycling entities; and Texas Occupations Code, §1956.013, which authorizes the commission to adopt rules to administer Chapter 1956.

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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37 TAC §36.55, §36.60

The Texas Department of Public Safety (the department) adopts amendments to §36.55 and §36.60, concerning Disciplinary Procedures and Administrative Procedures. These rules are adopted without changes to the proposed text as published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5367) and will not be republished.

Texas Occupations Code, §53.025(a) requires a licensing agency's guidelines to state the reasons that particular disqualifying criminal offenses are considered to relate to the license. The amendments to §36.55 will bring the rule into compliance with Texas Occupations Code, §53.025(a). The amendments to §36.60 reflect in part its consolidation with §36.52, which is to be repealed, thereby providing a single rule relating to both administrative sanctions and penalties. Additional changes to §36.60 authorize the suspension of a license when the licensee has refused to pay an administrative penalty for which there is a final order. The proposed change to the penalty schedule within §36.60 is necessary to implement House Bill 4110, 87th Legislative Session, requiring the commission to prescribe by rule the manner in which a metal recycling entity mark catalytic converters purchased by the entity. This rule change provides the administrative penalty for violation of the requirements reflected in proposed §36.38 and various provisions of Occupations Code, Chapter 1956 as amended by H.B. 4110.

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which

authorizes the commission to adopt rules to administer Chapter 1956.

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 October 15, 2021.

TRD-202104083
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: November 4, 2021
Proposal publication date: August 27, 2021
For further information, please call: (512) 424-5848

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PART 4. TEXAS MILITARY DEPARTMENT

CHAPTER 137. LEAVE POOL

37 TAC §137.1

The Texas Military Department adopts new 37 TAC §137.1, concerning the establishment of the State Employee Family Leave Pool. Section 137.1 is adopted without changes to the proposed text as published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5368). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the rule is for the agency to comply with the statutory requirement under Texas Government Code §661.022, directing agencies to adopt rules in order to properly implement the newly authorized State Employee Family Leave Pool.

COMMENTS

The agency received no comments regarding the proposed rule.

STATUTORY AUTHORITY

The rule is adopted under Texas Government Code §661.022.

The new rules affect the following statutes: Government Code §661.021-028, which relates to establishment of a State Employee Family Leave Pool.

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 October 14, 2021.

TRD-202104057
Mark McHargue
Attorney
Texas Military Department
Effective date: November 3, 2021
Proposal publication date: August 27, 2021
For further information, please call: (512) 782-5057

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37 TAC §137.2

The Texas Military Department adopts new 37 TAC §137.2, concerning establishment of the State Employee Sick Leave Pool. Section 137.2 is adopted without changes to the proposed text as published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5369). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the rule is for the agency to comply with the statutory requirement under Texas Government Code §661.002, directing agencies to adopt rules in order to properly implement the authorized State Employee Sick Leave Pool.

COMMENTS

The agency received no comments regarding the proposed rule.

STATUTORY AUTHORITY

The rule is adopted under Texas Government Code §661.002.

The new rules affect the following statutes: Texas Government Code §661.001-008, which relates to establishment of a State Employee Sick Leave Pool.

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 October 14, 2021.

TRD-202104058
Mark McHargue
Attorney
Texas Military Department
Effective date: November 3, 2021
Proposal publication date: August 27, 2021
For further information, please call: (512) 782-5057

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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: 7 TAC §78.101(b)(3)

NOTICE OF WRAP-AROUND MORTGAGE FINANCING ENCUMBERED BY SUPERIOR LIEN PURSUANT TO TEXAS FINANCE CODE SECTION 159.101 AND TEXAS PROPERTY CODE SECTION 5.016

WARNING: ONE OR MORE RECORDED LIENS HAVE BEEN FILED THAT MAKE A CLAIM AGAINST THE PROPERTY REFERENCED BELOW AND WILL BE IN A SUPERIOR POSITION TO ANY LIEN CREATED BY THE FINANCING YOU ARE SEEKING. THIS NOTICE CONTAINS INFORMATION CONCERNING WHETHER OR NOT THE SUPERIOR LIENHOLDER(S) HAVE CONSENTED TO THE PROPERTY BEING TRANSFERRED TO YOU. IF A SUPERIOR LIEN HAS NOT BEEN RELEASED AND THE PROPERTY IS CONVEYED WITHOUT THE CONSENT OF THE SUPERIOR LIENHOLDER, IT IS POSSIBLE THE SUPERIOR LIENHOLDER COULD DEMAND FULL PAYMENT OF THE OUTSTANDING BALANCE SECURED BY THE SUPERIOR LIEN AND MAY AFFECT YOUR RIGHTS AS BUYER OF THE PROPERTY. YOU MAY WISH TO CONTACT EACH LIENHOLDER FOR FURTHER INFORMATION OR DISCUSS THIS MATTER WITH AN ATTORNEY.

IMPORTANT NOTICE REGARDING PROPERTY INSURANCE: ANY INSURANCE MAINTAINED BY A SELLER, LENDER, OR OTHER PERSON WHO IS NOT THE BUYER OF THE PROPERTY MAY NOT PROVIDE COVERAGE TO THE BUYER IF THE BUYER SUFFERS A LOSS OR INCURS LIABILITY IN CONNECTION WITH THE PROPERTY. TO ENSURE YOUR INTERESTS ARE PROTECTED, YOU SHOULD PURCHASE YOUR OWN PROPERTY INSURANCE POLICY TO INSURE THE PROPERTY. BEFORE PURCHASING THIS PROPERTY, YOU MAY WISH TO CONSULT WITH AN INSURANCE AGENT LICENSED BY THE TEXAS DEPARTMENT OF INSURANCE REGARDING THE INSURANCE COVERAGE OPTIONS AVAILABLE TO YOU AS BUYER OF THE PROPERTY.

PROPERTY INFORMATION:

Physical Address		
Street:		
City:	State:	Zip:
Legal Description		

NOTICE OF WRAP-AROUND MORTGAGE FINANCING

ISSUED BY:

Lender		
Legal Name:		
Date of Issuance		
Date:		
Mailing Address		
Street:		
City:	State:	Zip:
Contact Information		
Phone:	Fax:	
Email:	Website:	
Loan Originator (Company) License/Registration Information (if applicable)		
Legal Name:		
NMLS ID:		

LIENHOLDER(S) AND LIEN INFORMATION (list by order of the date the lien was perfected, from oldest to newest; attach additional sheets as necessary):

Lien 1:		
Lienholder		
Legal Name:		
Mailing Address		
Street:		
City:	State:	Zip:
Contact Information		
Phone:	Fax:	
Email:	Website:	
Lien Information		
Account/Reference No.:		
Principal Balance:	Payoff Figure:	
Payment Frequency:	Payment Amount:	
Interest Rate:	Date of Maturity:	
Other Terms or Conditions:		
Consent		
Has the Lienholder Consented to the Transfer?	☐ YES	☐ NO

NOTICE OF WRAP-AROUND MORTGAGE FINANCING

Lien 2:		
Lienholder		
Legal Name:		
Mailing Address		
Street:		
City:	State:	Zip:
Contact Information		
Phone:	Fax:	
Email:	Website:	
Lien Information		
Account/Reference No.:		
Principal Balance:	Payoff Figure:	
Payment Frequency:	Payment Amount:	
Interest Rate:	Date of Maturity:	
Other Terms or Conditions:		
Consent		
Has the Lienholder Consented to the Transfer?	☐ YES	☐ NO

INSURANCE INFORMATION (attach additional sheets as necessary):

Policy 1:		
Insurer		
Legal Name:		
Mailing Address		
Street:		
City:	State:	Zip:
Contact Information		
Phone:	Fax:	
Email:	Website:	
Policy Information		
Account/Reference No.:		
Insured Amount:		
Insured Property:		
Insured Party:		

NOTICE OF WRAP-AROUND MORTGAGE FINANCING

Policy 2:		
Insurer		
Legal Name:		
Mailing Address		
Street:		
City:	State:	Zip:
Contact Information		
Phone:	Fax:	
Email:	Website:	
Policy Information		
Account/Reference No.:		
Insured Amount:		
Insured Property:		
Insured Party:		

PROPERTY TAX INFORMATION:

Property Taxes Due on the Property	
Amount:	
Annual Property Tax Estimate	
Amount:	Tax Year:

ACKNOWLEDGMENT BY BUYER(S):

_____ _____

Signature Date

_____

Printed Name

_____ _____

Signature Date

_____

Printed Name

Figure: 37 TAC §35.52(a)

Violation	1st Action	2nd Action within 2 years	3rd Action within 2 years	4th Action within 2 years
Failure to display required items on uniform — TAC 35.14	$250	$500	Suspension, 60 days	Revocation
Failure to establish drug-free workplace policy —TAC 35.13	$250	$500	Suspension, 60 days	Revocation
Failing to complete required continuing education – TAC 35.161	$250	$500	Suspension, 60 days	Revocation
Failure to notify Department of change in ownership — OCC 1702.129	$500	$1000	Suspension, 60 days	Revocation
Failure to notify Department of required information —OCC 1702.129	$250	$500	Suspension, 60 days	Revocation
Failure to maintain records — TAC 35.3, 35.111; 35.112	$250	$500	Suspension, 60 days	Revocation
Failure to conduct pre-employment check – TAC 35.3	$250	$500	Suspension, 60 days	Revocation
Failure to license employee —OCC 1702.386	$500	$1000	Suspension, 60 days	Revocation
Failure to license employee -- ineligible individual -- OCC 1702.386	$1000	Suspension, 60 days	Revocation	
Failure to provide report to client within 7 days— TAC 35.6	$500	$1000	Suspension, 60 days	Revocation
Failure to qualify company representative (90 days) — TAC 35.43	$250	$500	Suspension, 60 days	Revocation
Comp. Rep. failing to oversee business— TAC 35.41 (company violation)	$1,000	Suspension, 60 days	Revocation	
Operating while suspended or expired —OCC 1702.101 -- .1025; 1702.361	$500	$1000	Suspension, 60 days	Revocation
Operating outside of scope of license —OCC 1702.101 --.1025; 1702.361	$5000	Revocation		
Failure to present pocket card, valid ID upon request -- TAC 35.5	$250	$500	Suspension, 60 days	Revocation
Failure to cooperate with investigation or inspection -- TAC 35.5	$500	$1000	Revocation	

Consumer information violation -- TAC 35.8	$250	$500	Suspension, 60 days	Revocation
Advertising violation -- TAC 35.5; 35.9	$500	$1000	Suspension, 60 days	Revocation
Capias or arrest warrant violation – TAC 35.10	$500	$1,000	Suspension, 60 days	Revocation
Operating without license – OCC. 1702.101 – 1025; 1702.388	$5,000	$5,000	$5,000	$5,000
School record violation -- TAC 35.147; .162	$250	$500	Suspension, 60 days	Revocation
Firearm violations -- TAC 35.7	$500	$1000	Suspension, 60 days	Revocation
Requiring proof of vaccination — TAC 35.5(d)	$250	$500	Suspension, 60 days	Revocation

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Notice of Settlement of a Texas Water Code Enforcement Action

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate or inconsistent with the requirements of the law.

Case Title: *United States of America and State of Texas v. E.I. du Pont de Nemours and Co. and Performance Materials, NA, Inc.;* No. 1:21-cv-516, in the U.S. District Court for the Eastern District of Texas.

Background: This is an environmental enforcement action brought jointly by the United States, on behalf of the U.S. Environmental Protection Agency, and the State of Texas, on behalf of the Texas Commission on Environmental Quality, for civil penalties and injunctive relief. It concerns the operations of the defendants at the Sabine River Works Chemical Manufacturing Complex, located at 3055 FM 1006, Orange, Orange County, Texas ("the Facility"). The Complaint alleges violations of the Resource Conservation and Recovery Act, the Clean Water Act, the Clean Air Act, the Texas Water Code, the Texas Clean Air Act, and state and federal regulations promulgated thereunder.

Proposed Settlement: The lawsuit is to be settled by a Consent Decree in the U.S. District Court providing for payment of $1,675,000 in civil penalties and attorneys' fees to the State of Texas, plus an equal amount to the United States, and injunctive relief.

For a complete description of the settlement, the proposed Consent Decree should be reviewed in its entirety. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Thomas Edwards, Assistant Attorney General, Office of the Attorney General of Texas, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911, or email: Thomas.Edwards@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202104122
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: October 18, 2021

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Texas Water Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. B, C & C Management, Inc., et al.;* Cause No. D-1-GN-20-002810 in the 345th Judicial District Court, Travis County, Texas.

Background: Defendant Jerry L. Barth ("Barth") is the sole President, Director, and Manager of Defendant B, C & C Management, Inc. ("BCC"), Defendant J. L. Barth Company ("JLB Co."), and Defendant Sur Valley Transport Company ("Sur Valley") (collectively "Defendants"). The State filed suit against the Defendants for the alleged failure to timely perform permanent removal from service three underground storage tank ("UST") systems from their properties located in Sinton, Carrizo Springs, and Falfurrias, in violation of the Texas Water Code and the rules promulgated by the Texas Commission on Environmental Quality ("TCEQ"). At this time, two out of three UST systems have been removed.

Proposed Settlement: The parties propose an Agreed Final Judgment and Permanent Injunction which provides for an award to the State of $57,500 in civil penalties ($25,000 from BCC, $20,000 from Sur Valley, and $12,500 from JLB Co.), $7,500 in attorney's fees to be paid by Barth, and $8,260 in unpaid TCEQ administrative penalties from Sur Valley. It also includes injunctive relief requiring BCC and Barth to permanently remove the remaining UST from service in accordance with TCEQ rules.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed in its entirety. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Logan Harrell, Assistant Attorney General, Office of the Attorney General of Texas, P.O. Box 12548, MC-066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911; email: Logan.Harrell@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202104159
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: October 19, 2021

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009 and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/25/21 - 10/31/21 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/25/21 - 10/31/21 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 11/01/21 - 11/30/21 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 11/01/21 - 11/30/21 is 5.00% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-202104208
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 19, 2021

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Credit Union Department

Application to Expand Field of Membership

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application was received from Public Employees Credit Union, Austin, Texas, to expand its field of membership. The proposal would permit persons who live, worship, work, or attend school within the confines of Williamson County, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.cud.texas.gov/page/bylaw-charter-applications. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202104214
John J. Kolhoff
Commissioner
Credit Union Department
Filed: October 20, 2021

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Applications to Expand Field of Membership - Approved

Neighborhood Credit Union, Dallas, Texas - See *Texas Register* dated July 30, 2021.

FivePoint Credit Union, Nederland, Texas - See *Texas Register* dated July 30, 2021.

Merger or Consolidation - Approved

Fort Worth City Credit Union (Fort Worth) and All Saints Catholic Federal Credit Union (Fort Worth) - See *Texas Register* issue dated August 27, 2021.

TRD-202104213
John J. Kolhoff
Commissioner
Credit Union Department
Filed: October 20, 2021

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code, (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 2, 2021.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **December 2, 2021.** 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: ABN Construction, LLC; DOCKET NUMBER: 2021-0217-WQ-E; IDENTIFIER: RN109776179; LOCATION: Cuero, DeWitt County; TYPE OF FACILITY: aggregate production operation; RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the aggregate production operation registration annually as regulated activities continued; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(2) COMPANY: Afzal Shekhani; DOCKET NUMBER: 2021-0330-PWS-E; IDENTIFIER: RN101283448; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 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: $50; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2021-0619-UTL-E; IDENTIFIER: RN102683042; LOCATION:

Granbury, Hood County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §291.93(3)(A) and TWC, §13.139(d), by failing to provide a written planning report for a utility possessing a Certificate of Convenience and Necessity that has reached or exceeded 85% of all or part of its capacity; PENALTY: $1,070; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Circle M Group LLC; DOCKET NUMBER: 2021-1339-WR-E; IDENTIFIER: RN109470385; LOCATION: Texarkana, Bowie County; TYPE OF FACILITY: sludge transporter; RULES VIOLATED: TWC, §11.081 and §11.121, by failing to impound, divert, or use state water without a required permit; PENALTY: $350; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: City of Silsbee; DOCKET NUMBER: 2020-0052-MWD-E; IDENTIFIER: RN102179082; LOCATION: Silsbee, Hardin 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 WQ0010282001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $17,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $13,800; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: City of Smithville; DOCKET NUMBER: 2021-0803-MWD-E; IDENTIFIER: RN101919736; LOCATION: Smithville, Bastrop 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 WQ0010286001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(7) COMPANY: Flint Hills Resources Corpus Christi, LLC; DOCKET NUMBER: 2021-0223-AIR-E; IDENTIFIER: RN100235266; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Flexible Permit Numbers 8803A and PSDTX413M9, Special Conditions Number 1, Federal Operating Permit Number O1272, General Terms and Conditions and Special Terms and Conditions Numbers 31 and 32, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $12,563; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $5,025; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(8) COMPANY: H. D. Weaver Ditching Service, Incorporated; DOCKET NUMBER: 2021-1015-AIR-E; IDENTIFIER: RN109917658; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: concrete crusher; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Kate Dacy, (512) 239-4593; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(9) COMPANY: Harris County Fresh Water Supply District Number 51; DOCKET NUMBER: 2021-0618-MWD-E; IDENTIFIER: RN101612125; LOCATION: Houston, Harris County; TYPE OF FACILITY: wasterwater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010032001, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $9,375; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Jacobe Brothers Construction, Ltd.; DOCKET NUMBER: 2021-1335-WQ-E; IDENTIFIER: RN111304275; LOCATION: Flint, Smith County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: JAGAT INDIA INC dba Seven Oaks Food Mart; DOCKET NUMBER: 2021-0419-PST-E; IDENTIFIER: RN102718624; LOCATION: Livingston, Polk County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(g)(1)(A)(ii), by failing to test single-walled spill buckets at least once every three years to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing; 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to test corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; and 30 TAC §334.50(b)(1)(A) and (B), and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) installed prior to January 1, 2009, for releases at a frequency of at least once every 30 days, and failing to monitor the UST which was installed after January 1, 2009, for releases at a frequency of at least once every 30 days using interstitial monitoring; PENALTY: $7,517; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 756-3994; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(12) COMPANY: LOVE'S TRAVEL STOPS & COUNTRY STORES, INCORPORATED; DOCKET NUMBER: 2021-0834-MWD-E; IDENTIFIER: RN102452539; LOCATION: Amarillo, Potter County; TYPE OF FACILITY: travel center with a wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0015618001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; PENALTY: $36,250; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(13) COMPANY: Maiko Hessel Bouma dba Bouma Dairy Farm; DOCKET NUMBER: 2019-0814-AGR-E; IDENTIFIER: RN102334539; LOCATION: Winnsboro, Hopkins County; TYPE OF FACILITY: a concentrated animal feeding operation; RULES VIOLATED: 30 TAC §305.125(1) and (4), §321.37(d), and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXG920057, Part III.A.5(a)(2), by failing to design, construct, operate, and maintain retention control structures (RCSs) to contain all wastewater from the production area, including the runoff and direct precipitation from open lots; 30 TAC §§305.125(1) and (4), 321.37(d), and 321.39(e), TWC, §26.121(a)(1), and TPDES General Permit Number TXG920057, Part III.A.5(a)(2) and Part III.A.9(b), by failing to prevent the unauthorized discharge of agricultural waste

into or adjacent to any water in the state, and failing to properly store manure and sludge within the drainage area of the RCS or stored in a manner that otherwise prevents contaminated stormwater runoff from the storage area; 30 TAC §§305.125(1) and (4), 321.37(d), and 321.39(f) and (g)(3), TWC, §26.121(a)(1), and TPDES General Permit Number TXG920057, Part III.A.5(a)(2) and Part III.A.11(c), by failing to prevent the unauthorized discharge of agricultural waste into or adjacent to any water in the state, and failing to properly dispose of animal carcasses within three days of death; 30 TAC §305.125(1) and §321.38(b) and TPDES General Permit Number TXG920057, Part III.A.4(c), by failing to maintain a minimum buffer zone of 150 feet between a control facility of an animal feeding operation and a drinking water well used for private water supply; 30 TAC §305.125(1) and §321.38(e)(3) and (7)(A), and TPDES General Permit Number TXG920057, Part III.A.6(d)(1)(ii) and (iii), by failing to design and construct an RCS in accordance with the technical standard approved by the executive director; 30 TAC §§305.125(1), 321.38(g)(1)(F), and 321.39(b) and (c)(1), and TPDES General Permit Number TXG920057, Part III.A.6(f)(6), Part III.A.10(a)(1) and (2), and Part III.A.10(e), by failing to prevent the accumulation of sludge in a RCS from encroaching on the volumes reserved for minimum treatment, if necessary, and the design rainfall event, and failing to maintain a minimum of two vertical feet of freeboard in a RCS; 30 TAC §305.125(1) and §321.44(a), and TPDES General Permit Number TXG920057, Part IV.B.5, by failing to notify the TCEQ Regional Office within 24 hours of becoming aware of a discharge into water in the state; and 30 TAC §305.125(1) and §321.45(b) and TPDES General Permit Number TXG920057, Part III.C.2, by failing to attend at least eight hours of continuing education in animal waste management or its equivalent for each two-year period; PENALTY: $65,424; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(14) COMPANY: Maurice Jackson; DOCKET NUMBER: 2020-1389-MSW-E; IDENTIFIER: RN110943594; LOCATION: Caldwell, Burleson County; TYPE OF FACILITY: unauthorized municipal solid waste disposal site; RULE VIOLATED: 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste; PENALTY: $1,312; ENFORCEMENT COORDINATOR: Terrany Binford, (512) 567-3302; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: NAZS ENTERPRISES, INCORPORATED dba Honey Stop 2; DOCKET NUMBER: 2021-0860-PST-E; IDENTIFIER: RN101790947; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(c) and §334.50(b)(1)(A), and TWC, §26.3475(a) and (c)(1), by failing to conduct effective inventory control procedures for all underground storage tanks (USTs) involved in the retail sale of petroleum substances used as motor fuel, and failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(16) COMPANY: Renda Environmental, Incorporated and Trinity River Authority of Texas; DOCKET NUMBER: 2020-1278-AIR-E; IDENTIFIERS: RN110859709, RN110859691, and RN110859683; LOCATION: Lancaster, Dallas County; TYPE OF FACILITIES: biosolid land application sites; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent nuisance odor conditions; PENALTY: $19,688; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: SHERBANO VENTURE, INCORPORATED dba Brownies; DOCKET NUMBER: 2021-0722-PST-E; IDENTIFIER: RN102051794; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(d)(9)(A)(v) and §334.72, by failing to report a suspected release to the TCEQ within 72 hours of discovery; 30 TAC §334.74(1), by failing to investigate and confirm all suspected releases of regulated substances requiring reporting under 30 TAC §334.72 by conducting a system test within 30 days; and 30 TAC §334.74(3), by failing to file a report not later than 45 days after the first observation of a suspected release which contains a detailed description of the investigative procedures followed in addressing the suspected release; PENALTY: $13,375; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Stephen P. Krebs dba Timber Ridge Section 2; DOCKET NUMBER: 2021-0587-PWS-E; IDENTIFIER: RN104394317; LOCATION: Old River-Winfree, Chambers 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: $1,687; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: TRI-CON, INCORPORATED dba Exxpress Mart 29 and dba Royal Stop; DOCKET NUMBER: 2021-0685-PST-E; IDENTIFIERS: RN101905560 and RN101777258; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITIES: convenience stores with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; 30 TAC §334.48(g)(1)(A)(ii) and (B) and TWC, §26.3475(c)(2), by failing to test the spill prevention equipment and containment sumps used for interstitial monitoring of piping at least once every three years to ensure the equipment is liquid tight, and failing to inspect the overfill prevention equipment at least once every three years; and 30 TAC §334.606, by failing to maintain required operator training certification documentation on-site and make them available for inspection upon request by agency personnel; PENALTY: $1,750; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(20) COMPANY: VIR PRAMUKH, LLC dba Inwood Cleaners; DOCKET NUMBER: 2021-0492-DCL-E; IDENTIFIER: RN104088695; LOCATION: Houston, Harris County; TYPE OF FACILITY: dry cleaning facility; RULE VIOLATED: 30 TAC §337.21(c)(1), by failing to empty all dry cleaning machines within 30 days, after being temporarily removed from service for more than 180 days; PENALTY: $9,253; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202104090
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: October 15, 2021

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Enforcement Orders

An agreed order was adopted regarding the City of Mart, Docket No. 2019-0338-MLM-E on October 6, 2021, assessing $30,925 in administrative penalties with $6,185 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of La Feria, Docket No. 2019-0372-MLM-E on October 6, 2021, assessing $12,500 in administrative penalties with $2,500 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding A & W Industries, Inc., Docket No. 2019-0695-AIR-E on October 6, 2021, assessing $24,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Benjamin Warms, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Pettus Municipal Utility District, Docket No. 2019-0774-MWD-E on October 6, 2021, assessing $64,675 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Riviera Water Control and Improvement District, Docket No. 2019-1494-MWD-E on October 6, 2021, assessing $38,688 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Douglas Utility Company, Docket No. 2019-1544-MWD-E on October 6, 2021, assessing $16,875 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Elkhart, Docket No. 2020-0475-MWD-E on October 6, 2021, assessing $7,625 in administrative penalties with $1,525 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SJWTX, Inc. dba Canyon Lake Water Service Company, Docket No. 2020-0514-MLM-E on October 6, 2021, assessing $46,000 in administrative penalties with $9,200 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KEP-RMA, LLC, Docket No. 2020-0684-IHW-E on October 6, 2021, assessing $10,125 in administrative penalties with $2,025 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding BENTON RAINEY, INC., Docket No. 2020-0709-PST-E on October 6, 2021, assessing $6,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Roslyn Dubberstein, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Mark Kenneth Stewart dba Green Hills Subdivision, Docket No. 2020-0739-PWS-E on October 6, 2021, assessing $5,206 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Julianne Matthews, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Bastrop Independent School District, Docket No. 2020-0853-MWD-E on October 6, 2021, assessing $9,775 in administrative penalties with $1,955 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NAAZ Trading Inc. dba Shell Coldspring, Docket No. 2020-0915-PST-E on October 6, 2021, assessing $9,030 in administrative penalties with $1,806 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Wills Point, Docket No. 2020-0936-PWS-E on October 6, 2021, assessing $5,625 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Enterprise Products Operating LLC, Docket No. 2020-1064-AIR-E on October 6, 2021, assessing $7,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SECURITY AIRPARK, INCORPORATED, Docket No. 2020-1250-PST-E on October 6, 2021, assessing $21,052 in administrative penalties with $4,210 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Enterprise Precast Concrete of Texas, LLC, Docket No. 2020-1464-WQ-E on October 6, 2021, assessing $13,509 in administrative penalties with $2,701 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding RIVER BEND WATER SERVICES, INC., Docket No. 2020-1468-PWS-E on October 6, 2021, assessing $1,050 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Parking Spot Irving, LLC, Docket No. 2020-1479-PST-E on October 6, 2021, assessing $19,177 in administrative penalties with $3,835 deferred. Information concern-

ing any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Munday, Docket No. 2020-1480-PWS-E on October 6, 2021, assessing $8,238 in administrative penalties with $1,647 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Justin B. Bownds, Docket No. 2018-1264-MLM-E on October 20, 2021, assessing $73,500 in administrative penalties with $69,900 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding William D. Kirshy, Docket No. 2018-1741-PST-E on October 20, 2021, assessing $20,661 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting John S. Merculief II, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding New Oasis Kingdom Assembly Church, Docket No. 2019-0214-PWS-E on October 20, 2021, assessing $675 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Casey Kurnath, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Pearsall, Docket No. 2019-0437-MLM-E on October 20, 2021, assessing $16,525 in administrative penalties with $3,305 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Hitchcock, Docket No. 2019-0880-MWD-E on October 20, 2021, assessing $48,376 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Rosebud, Docket No. 2019-1123-MWD-E on October 20, 2021, assessing $42,951 in administrative penalties with $8,590 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AUSTIN PRECISION PRODUCTS INCORPORATED, Docket No. 2019-1458-MLM-E on October 20, 2021, assessing $11,813 in administrative penalties with $2,362 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SOUTHERN FOREST PRODUCTS, L.L.C., Docket No. 2020-0398-IWD-E on October 20, 2021, assessing $15,854 in administrative penalties with $3,170 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Robstown, Docket No. 2020-0533-MWD-E on October 20, 2021, assessing $22,050 in administrative penalties with $4,410 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Tom Holloway, Docket No. 2020-0647-MSW-E on October 20, 2021, assessing $3,937 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Canyon Lake Estates Water Supply Corporation, Docket No. 2020-0697-PWS-E on October 20, 2021, assessing $7,900 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Capital Ridge Condominiums Association, Docket No. 2020-0769-MWD-E on October 20, 2021, assessing $7,875 in administrative penalties with $1,575 deferred. Information concerning any aspect of this order may be obtained by contacting Ellen Ojeda, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WestRock Texas, L.P., Docket No. 2020-0779-AIR-E on October 20, 2021, assessing $60,003 in administrative penalties with $12,000 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Rudy Ramos dba South Texas Collision Repair, Docket No. 2020-0999-AIR-E on October 20, 2021, assessing $1,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Judith Bohr, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Austin, Docket No. 2020-1053-EAQ-E on October 20, 2021, assessing $21,563 in administrative penalties with $4,312 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BASF Corporation, Docket No. 2020-1062-AIR-E on October 20, 2021, assessing $34,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lucia Flores dba Royal Oaks Apartments and Margarito Flores dba Royal Oaks Apartments, Docket No. 2020-1068-PWS-E on October 20, 2021, assessing $3,300 in administrative penalties with $3,300 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LAKESHORE UTILITY COMPANY, Docket No. 2020-1151-PWS-E on October 20, 2021, assessing $2,984 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Navarro Midstream Services, LLC, Docket No. 2020-1235-AIR-E on October 20, 2021, assessing $11,475 in administrative penalties with $2,295 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Motiva Chemicals LLC, Docket No. 2020-1275-AIR-E on October 20, 2021, assessing $22,125 in administrative penalties with $4,425 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Chevron Phillips Chemical Company LP, Docket No. 2020-1304-AIR-E on October 20, 2021, assessing $19,689 in administrative penalties with $3,937 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Knob Hill Water Supply Corporation, Docket No. 2020-1331-PWS-E on October 20, 2021, assessing $1,870 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Air Tractor, Inc., Docket No. 2020-1360-WQ-E on October 20, 2021, assessing $71,925 in administrative penalties with $14,385 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Devon Energy Production Company, L.P., Docket No. 2020-1409-AIR-E on October 20, 2021, assessing $97,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SAI JBA INC dba Saturn Fuel Center, Docket No. 2020-1412-PST-E on October 20, 2021, assessing $45,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding EL SAUZ Water Supply Corporation, Docket No. 2020-1445-PWS-E on October 20, 2021, assessing $3,532 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Wilson, Docket No. 2020-1453-PWS-E on October 20, 2021, assessing $3,210 in administrative penalties with $3,210 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Luna Road Recyclers, LLC, Docket No. 2020-1570-AIR-E on October 20, 2021, assessing $13,125 in administrative penalties with $2,625 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sekisui Specialty Chemicals America, LLC, Docket No. 2020-1580-AIR-E on October 20, 2021, assessing $7,580 in administrative penalties with $1,516 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Del Rio, Docket No. 2020-1605-PWS-E on October 20, 2021, assessing $8,250 in administrative penalties with $1,650 deferred. Information concerning any aspect of this order may be obtained by contacting Ecko Beggs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202104219
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 20, 2021

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Enforcement Orders

An agreed order was adopted regarding Harmen Waterlander dba Linquenda Dairy, Docket No. 2019-0633-AGR-E on October 5, 2021, assessing $4,275 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Clayton Smith, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Worthy Lee Williams dba Stewarts Tire Shop, Docket No. 2019-1422-MSW-E on October 5, 2021, assessing $5,250 in administrative penalties with $1,050 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Carl R. Bruce, Trustee of Joiner Liquidating Trust, Docket No. 2020-0287-IHW-E on October 5, 2021, assessing $1,250 in administrative penalties with $250 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ALICE STAR, LLC dba Kwik Pantry, Docket No. 2020-0393-PST-E on October 5, 2021, assessing $5,468 in administrative penalties with $1,093 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding COUNTRY AUTO MART, LLC, Docket No. 2020-0593-WQ-E on October 5, 2021, assessing $1,250 in administrative penalties with $250 deferred. Information

concerning any aspect of this order may be obtained by contacting Alyssa Loveday, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Hector S. de la Garza III and Coby Allen de la Garza, Docket No. 2020-0705-MLM-E on October 5, 2021, assessing $2,250 in administrative penalties with $450 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Francisco Espinosa dba FALL BRANCH ESTATES HOMEOWNERS ASSOCIATION, INC. and Jolene Craver dba FALL BRANCH ESTATES HOMEOWNERS ASSOCIATION, INC., Docket No. 2020-0816-PWS-E on October 5, 2021, assessing $50 in administrative penalties with $10 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding A & S MEMORIAL INVESTMENT, INC dba Fast & Easy, Docket No. 2020-0845-PST-E on October 5, 2021, assessing $3,756 in administrative penalties with $751 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Arnold Solis Rios dba A&A RV Park and Arnold Rios, Jr. dba A&A RV Park, Docket No. 2020-0965-PWS-E on October 5, 2021, assessing $4,039 in administrative penalties with $807 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ACME BRICK COMPANY, Docket No. 2020-1085-AIR-E on October 5, 2021, assessing $4,575 in administrative penalties with $915 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding UG OPERATIONS LLC dba U Mart 2, Docket No. 2020-1190-PST-E on October 5, 2021, assessing $3,375 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Barrett Hollingsworth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AHAM LLC dba SNACK N GO, Docket No. 2020-1197-PST-E on October 5, 2021, assessing $3,375 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Judith Bohr, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding White River Municipal Water District, Docket No. 2020-1252-PWS-E on October 5, 2021, assessing $2,558 in administrative penalties with $511 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jackie Reaves, Docket No. 2020-1433-AIR-E on October 5, 2021, assessing $3,750 in administrative penalties with $750 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PM Country Store LLC dba Circle M Country Store, Docket No. 2020-1458-PST-E on October 5, 2021, assessing $4,800 in administrative penalties with $960 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MDC Texas Operator LLC, Docket No. 2020-1552-AIR-E on October 5, 2021, assessing $1,875 in administrative penalties with $375 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Kiolbassa Provision Company, Docket No. 2020-1566-AIR-E on October 5, 2021, assessing $3,750 in administrative penalties with $750 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Three Community Water Supply Corporation, Docket No. 2020-1574-PWS-E on October 5, 2021, assessing $500 in administrative penalties with $100 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Floresville Independent School District, Docket No. 2021-0027-PST-E on October 5, 2021, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Accella Polyurethane Systems LLC, Docket No. 2021-0042-AIR-E on October 5, 2021, assessing $3,001 in administrative penalties with $600 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MA & MH INC. dba Mun Store and MUN PROPERTIES, INC. dba Mun Store, Docket No. 2021-0065-PST-E on October 5, 2021, assessing $4,624 in administrative penalties with $924 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ExxonMobil Pipeline Company, Docket No. 2021-0118-AIR-E on October 5, 2021, assessing $5,625 in administrative penalties with $1,125 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PAK NEPAL LLC dba Country Express Exxon, Docket No. 2021-0127-PST-E on October 5, 2021, assessing $3,874 in administrative penalties with $774 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding COLUMBIA MEDICAL CENTER OF LAS COLINAS, INC., Docket No. 2021-0136-PST-E on October 5, 2021, assessing $3,124 in administrative penalties with $624 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 2MORROW RENTALS, LLC dba B Happy Store, Docket No. 2021-0149-PST-E on October 5, 2021, assessing $3,251 in administrative penalties with $650 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202104220
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 20, 2021

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Notice of Availability and Request for Comments on the Draft Supplement to the 2015 Final Damage Assessment and Restoration Plan and Environmental Assessment for the Malone Service Company Superfund Site, Texas City, Galveston County, Texas

AGENCIES: The Texas Commission on Environmental Quality (TCEQ); Texas General Land Office; Texas Parks and Wildlife Department; National Oceanic and Atmospheric Administration, acting on behalf of the United States Department of Commerce; and United States Fish and Wildlife Service, acting on behalf of the United States Department of the Interior (collectively, the Trustees).

ACTION: Notice of availability of a Draft Supplement to the 2015 Final Damage Assessment and Restoration Plan and Environmental Assessment (Draft Supplement) for the Malone Service Company Superfund Site (the Facility), Texas City, Galveston County, Texas, and of a public comment on the Draft Supplement beginning on October 29, 2021, and concluding on November 28, 2021.

SUMMARY: This notice serves to inform the public that the Trustees have developed a Draft Supplement to the 2015 Final Damage Assessment and Restoration Plan and Environmental Assessment (Final DARP/EA) for the Facility. The Draft Supplement to the Final DARP/EA describes how the Trustees plan to implement the Swan Lake Marsh Restoration Alternative, using recovered funds to complete intertidal marsh creation activities at Swan Lake Marsh within the Lower Galveston Bay watershed, in addition to the restoration alternatives previously selected in the Final DARP/EA. These alternatives include the completed estuarine marsh restoration project at Pierce Marsh and the yet-to-be completed projects at Campbell Bayou and Virginia Point Peninsula Point Preserve located in Texas City, Texas.

Restoration is sought by the Trustees, as provided for under §107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 United States Code (USC) §907(f), and the opportunity for public review of and comment on the Draft Supplement announced in this notice is pursuant to 43 Code of Federal Regulations (CFR) §11.81(d).

ADDRESSES: Interested members of the public may obtain a copy of the Draft Supplement at https://darrp.noaa.gov/hazardous-waste/malone-service-company or by contacting Mike Cave at the TCEQ, Remediation Division, MC-136, P.O. Box 13087, Austin, Texas 78711-3087; by phone at (512) 239-4772; or by email at *michael.cave@tceq.texas.gov.*

DATES: Comments must be submitted in writing on or before November 29, 2021, to Mike Cave of the TCEQ at the address listed in the previous paragraph. The Trustees will consider all written comments received during the comment period prior to finalizing the Draft Supplement.

SUPPLEMENTARY INFORMATION: As described in the Final DARP/EA, and in accordance with natural resource damage assessment regulations, the Trustees evaluated a reasonable range of project alternatives that could be used to restore or enhance both freshwater and estuarine marsh habitat and terrestrial resources in the lower Galveston Bay area. The Trustees selected three restoration alternatives for implementation: construction of estuarine marsh habitat within nearby Pierce Marsh; enhancement of freshwater wetlands in Campbell Bayou in the Virginia Point Peninsula Preserve; and enhancement of terrestrial uplands in the Virginia Point Peninsula Point Preserve. The alternatives were considered carefully by the Trustees based on criteria outlined in the Final DARP/EA.

The Swan Lake Marsh Restoration Alternative was included in the reasonable range of alternatives for estuarine marsh habitat restoration considered by the Trustees. While the Swan Lake Marsh Restoration Alternative met the Trustees' restoration goals and criteria, the Trustees selected Pierce Marsh as the preferred alternative for estuarine marsh habitat restoration in the Final DARP/EA because it was determined to most cost effectively compensate the public for natural resource injuries related to hazardous substance releases at and from the Facility. The Final DARP/EA alternative evaluation concluded that, if future circumstances allowed, the Swan Lake Marsh Restoration Alternative could still be considered a viable project.

The Pierce Marsh Restoration project included design and transformation of open water area into shallow coastal wetlands using dredged material. Construction started in 2016. This process restored and created habitat for fish and wildlife, improved water quality, and increased needed storm buffers. Monitoring activities began in 2021 and will be concluded in 2023. Ultimately, the project was unable to provide all the necessary restoration credits for estuarine marsh habitat restoration required under the Final DARP/EA. The Trustees are therefore proposing to undertake additional estuarine marsh restoration in Swan Lake Marsh, located adjacent to the Facility in the lower Galveston Bay estuary, to provide the remaining required credits.

For further information, contact Mike Cave at (512) 239-4772 or via email at *michael.cave@tceq.texas.gov.*

TRD-202104211
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: October 19, 2021

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Notice of Correction to Agreed Order Number 14

In the June 4, 2021, issue of the *Texas Register* (46 TexReg 3564), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 14, for R & T KELLEY, LLC. dba Kelly's Chevron, Docket Number 2021-0063-PST-E. The error is as submitted by the commission.

The reference to the Company should be corrected to read: "R & T KELLEY, LLC dba Kelleys Chevron."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202104091
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: October 15, 2021

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Notice of District Petition

Notice issued October 14, 2021

TCEQ Internal Control No. D-04232021-036; Montgomery Estates, LLC, a Texas limited liability company submitted a revised petition for creation of Chambers County Municipal Utility District No. 4 (District) with the Texas Commission on Environmental Quality (TCEQ). The revised petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The revised petition states that: (1) the Petitioner holds title to a majority in value of the land in the proposed District and is owner of a majority in value of the Land; (2) there are two lienholders, Wynona Marie Montgomery and Donna Lynn Montgomery Britt, and Allegiance Bank, a Texas banking corporation, on the property to be included in the proposed District and the aforementioned entities have consented to the petition; (3) the proposed District will contain approximately 146.15 acres located within Chambers County, Texas; and (4) all of the land within the proposed District is wholly within the extraterritorial jurisdiction of the City of Cove, Texas. The revised petition further states that the general nature of the work proposed to be done by the District, as contemplated at the present time, is (1) purchase, construct, acquire, improve, extend, maintain, and operate a waterworks and sanitary sewer system for domestic and commercial purposes; (2) purchase, construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase interests in land and purchase, construct, acquire, improve, extend, maintain, and operate improvements, facilities, and equipment for the purpose of providing recreational facilities. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners, from the information available at this time, that the cost of said project will be approximately $14,355,423 ($9,988,923 for water, wastewater, and drainage facilities and $4,366,500 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202104056
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 14, 2021

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Notice of Opportunity to Comment on Shutdown/Default Orders of an Administrative Enforcement Action

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475, authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an 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. In accordance with 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 2, 2021.** The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/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 S/DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed S/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 S/DO shall be sent to the attorney designated for the S/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 2, 2021.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone number; however, comments on the S/DOs shall be submitted to the commission in **writing.**

(1) COMPANY: GOODEN PETROLEUM, INC.; DOCKET NUMBER: 2019-1496-PST-E; TCEQ ID NUMBER: RN101827541; LOCATION: 400 South Texas Street, De Leon, Comanche County; TYPE OF FACILITY: an out-of-service UST system; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(c)(4)(C) and §334.54(b)(3), by failing to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; and 30 TAC §334.7(e)(2), by failing to accurately complete the UST form; PENALTY: $4,830; STAFF ATTORNEY: Barrett Hollingsworth, Litigation, MC 175, (512) 239-0657; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(2) COMPANY: Thind General Stores LLC dba On The Road 110; DOCKET NUMBER: 2020-1501-PST-E; TCEQ ID NUMBER: RN109965426; LOCATION: 1580 North Temple Drive, near Diboll, Angelina County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(B) and (b)(2)(A)(iii), by failing to monitor the USTs and the associated pressurized piping in a manner that will detect a release at a frequency of at least once every 30 days by using interstitial monitoring for tanks and associated pressurized piping installed on or after January 1, 2009; 30 TAC §334.50(b)(2)(A)(i)(III), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel; 30 TAC §334.10(b)(2), by failing to assure that all recordkeeping requirements are met; and 30 TAC §334.606, by failing to maintain required operator training certification records and make them available for inspection upon request by agency personnel; PENALTY: $5,339; STAFF ATTORNEY: John S. Merculief II, Litigation, MC 175, (512) 239-6944; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202104158
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: October 19, 2021

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Notice of Public Meeting for a Water Use Permit: Application No. 13675

City of Corpus Christi (Applicant) seeks a water use permit to authorize the diversion and use of not to exceed 186,295 acre-feet of water per year, at a maximum diversion rate of 257 cfs (115,349.31 gpm), from a diversion reach on La Quinta Channel (Corpus Christi Bay), San Antonio-Nueces Coastal Basin, for municipal and industrial purposes in San Patricio, Nueces and Aransas counties. Applicant also seeks an exempt interbasin transfer to the portion of San Patricio County in the Nueces River Basin and the portion of Nueces County in the Nueces-Rio Grande Coastal Basin within the City's wholesale water service area. More information on the application and how to participate in the permitting process is given below.

APPLICATION. City of Corpus Christi (Applicant), P.O. Box 9277, Corpus Christi, Texas 78469, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Water Use Permit pursuant to Texas Water Code (TWC) §11.121 and §11.085 and TCEQ Rule Title 30 Texas Administrative Code (TAC) §295.151, et seq. Notice of the application was previously published and mailed to the water rights holders of record in the San Antonio-Nueces Coastal Basin pursuant to Title 30 TAC §295.151.

City of Corpus Christi (Applicant) seeks a water use permit to authorize the diversion and use of not to exceed 186,295 acre-feet of water per year, at a maximum diversion rate of 257 cfs (115,349.31 gpm), from a diversion reach on La Quinta Channel (Corpus Christi Bay), San Antonio-Nueces Coastal Basin, for municipal and industrial purposes within the City's wholesale water service area in San Patricio, Nueces and Aransas counties.

Applicant also seeks an exempt interbasin transfer of up to 186,295 acre-feet of water per year to the portion of San Patricio County in the Nueces River Basin and the portion of Nueces County in the Nueces-Rio Grande Coastal Basin within the City's wholesale water service area.

The proposed diversion reach is located along La Quinta Channel (Corpus Christi Bay), San Antonio-Nueces Coastal Basin, in San Patricio County in ZIP Code 78374.

The upper limit of the diversion reach is located at Latitude 27.877731° N, Longitude 97.256667° W, and the lower limit of the diversion reach is located at Latitude 27.876264° N, Longitude 97.251111° W.

The application and fees were received on January 22, 2020. Additional information was received on March 16, 2020. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on May 5, 2020.

The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, installation of measuring devices. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the permit application and the Executive Director's recommendations, but the comments and questions submitted orally

during the Informal Discussion Period will not be considered by the Commissioners and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period, members of the public may state their formal comments orally into the official record. The Executive Director will subsequently summarize the formal comments and prepare a written response which will be considered by the Commissioners before they reach a decision on the application. The Executive Director's written response will be available to the public online or upon request. The public comment period on this application concludes at the close of the public meeting.

The Public Meeting is to be held:

Tuesday, November 16, 2021 at 7:00 p.m.

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: https://www.gotomeeting.com/webinar/join-webinar and entering Webinar ID 930-500-283. It is recommended that you join the webinar and register for the public meeting at least 15 minutes before the meeting begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access must call (512) 239-1201 **at least one day prior** to the meeting to register for the meeting and to obtain information for participating telephonically. Members of the public who wish to **only listen** to the meeting may call, toll free, (415) 655-0060 and enter access code 744-190-799.

Las personas que deseen escuchar o participar en la reunión en español pueden llamar al (844) 368-7161 e ingresar el código de acceso 904535#. Para obtener más información o asistencia, comuníquese con Jaime Fernández al (512) 239-2566.

Additional information will be available on the agency calendar of events at the following link: https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html.

INFORMATION. Citizens are encouraged to submit written comments anytime during the public meeting. Citizens may mail their comments to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or submit them electronically at https://www14.tceq.texas.gov/epic/eComment/ by entering ADJ 2026 in the search field before the public comment period closes. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040* o por el internet al http://www.tceq.texas.gov.

Persons with disabilities who need special accommodations at the public meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issued: October 15, 2021

TRD-202104124
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 18, 2021

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Notice of Water Quality Application

The following notices were issued September 15, 2021 thru October 13, 2021.

The following notices do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN 30 DAYS FROM THE DATE OF PUBLICATION OF THIS NOTICE IN THE *TEXAS REGISTER.*

INFORMATION SECTION

Valero Refining - Texas, L.P., which operates the Valero Texas City Refinery, a petroleum refining facility, has applied for a minor amendment without renewal to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0000449000 to remove the authorization to discharge treated domestic wastewater and the associated Enterococci effluent limits and monitoring requirements from Outfall 009 and remove Other Requirements No. 11 and 12. The draft permit authorizes the discharge of stormwater, exchanger filter backwash, steam condensate, water softener wastes, boiler blowdown, and hydrostatic test water on an intermittent and flow-variable basis via Outfall 002; hydrostatic test water, steam condensate, boiler blowdown, and stormwater (including Coker Unit stormwater) on an intermittent and flow-variable basis via Outfall 004; stormwater on an intermittent and flow-variable basis via Outfall 005; raw water clarifier water, steam condensate, water softener wastes, boiler blowdown, gravity filter backwash, reverse osmosis reject water, tank farm water, hydrostatic test water, and stormwater on an intermittent and flow-variable basis via Outfalls 006 and 007; and treated process wastewater, Purge Treatment Unit (PTU) effluent, utility wastewater, hydrostatic test water, laboratory wastewater, and stormwater at a daily average flow not to exceed 4,500,000 gallons per day via Outfall 009. The facility is located approximately 1,600 feet northeast of the intersection of Loop 197 South and Farm-to-Market Road 519, in the City of Texas City, Galveston County, Texas 77590. The TCEQ executive director reviewed this action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the General Land Office and has determined that the action is consistent with the applicable CMP goals and policies.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

Cal-Maine Foods, Inc. has applied for a Minor Amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0005196000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to add biosecurity disinfection barns to the pullets and layers production areas, update the recharge feature certification to change the well type for Well #8 from public water supply with a 500-foot buffer to domestic well with 150-foot buffer, and update the best management practices for Well #19. The authorized 4,000,000 laying hens and a total land application area of 359 acres will not change; and there is no proposed change to the list of alternative crops and yield goals. The facility is located at 21080 County Road 87 North, Chillicothe in Hardeman and Wilbarger Counties, Texas

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY has initiated a minor amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0005219000 issued to Gregory Power Partners LLC, which operates Gregory Power Plant, a combined-cycle, natural gas-fired electricity generation plant to add water quality-based monitoring and reporting requirements for free cyanide. The existing permit authorizes the discharge of previously monitored effluent (cooling tower blowdown, low-volume waste

sources, and treated domestic wastewater) at a daily average flow not to exceed 918,000 gallons per day via Outfall 001. The facility is located at 4633 Highway 361, near the City of Gregory, in San Patricio County, Texas 78359.

Fort Bend County Municipal Utility District No. 134A has applied for a minor amendment to the Texas Pollutant Discharge Elimination System Permit No. WQ0014715001 to authorize to change meeting the buffer zone requirements from ownership to a combination of ownership and odor abatement. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located at 1766 ½ Sauki Lane, in Fort Bend County, Texas 77407.

The Texas Commission on Environmental Quality has initiated a minor amendment of the Texas Pollutant Discharge Elimination System to add a 1.0 mg/l total phosphorus limit in the draft permit based on the Colorado River Watershed Rule 30 Texas Administrative Code (TAC) 311. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 288,000 gallons per day.

The Texas Commission on Environmental Quality has initiated an amendment for P. E. N. Joint Tenants and North Cameron Regional Water Supply Corporation to amend the Texas Pollutant Discharge Elimination System Permit No. WQ0004758000, which authorizes the discharge of membrane wastewater, wash water from raw waterline cleaning, and reverse osmosis reject water at a daily average flow not to exceed 2,000,000 gallons per day via Outfall 001. The draft permit restores the total dissolved solids limits in Outfall 001. The facility is located at 14995 State Highway 107, in the City of Harlingen, Cameron County, Texas 78552.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our website at www.TCEQ.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-202104206
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 19, 2021

♦ ♦ ♦

Notice of Water Rights Application

Notices Issued October 15, 2021

APPLICATION NO. 12607; Cibolo Creek Municipal Authority, P.O. Box 930, Schertz, Texas 78154, Applicant, seeks a water use permit to authorize the use of the bed and banks of Cibolo Creek, San Antonio River Basin to convey 14,572.38 acre-feet of surface water- and groundwater-based return flows per year for subsequent diversion and use for municipal, industrial and agricultural purposes in Atascosa, Bexar, Comal, Guadalupe, Medina and Wilson counties. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on June 21, 2010. Additional information and fees were received on October 25, 2010 and May 12, 2011. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on July 25, 2011. Additional information was received on July 16, 2015, February 8, 2016, and January 29, 2021. The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions, including, but not limited to, streamflow restrictions and maintaining an accounting plan. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at https://www.tceq.texas.gov/permitting /water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, by November 17, 2021. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by November 17, 2021. The Executive Director may approve the application unless a written request for a contested case hearing is filed by November 17, 2021. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[*I/we*] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/ by entering WRPERM 12607 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website atwww.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al http://www.tceq.texas.gov.

APPLICATION NO. 13748; McCarthy Building Companies, Inc., 6225 N. 24th Street, Suite 200, Phoenix, Arizona, 85016, Applicant, has applied for a Temporary Water Use Permit to divert and use not to exceed 100 acre-feet of water, within a period of two years, from a point on an unnamed tributary of Briar Creek, Trinity River Basin at a maximum diversion rate of 0.45 cfs (200 gpm) for industrial purposes in Navarro County. More information on the application and how to participate in the permitting process is given below. The application was received on February 11, 2021. Additional information was received on April 21, 2021, and fees were received on May 10, 2021. The application was declared administratively complete and filed with the Office of the Chief Clerk on May 11, 2021. Additional information was received on August 11, 2021.

The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions, including, but not limited to, streamflow restrictions and the installation of a measuring device for diversions. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-per-

mitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by November 02, 2021. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by November 02, 2021. The Executive Director may approve the application unless a written request for a contested case hearing is filed by November 02, 2021. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[*I/we*] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/ by entering WRTP 13748 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al http://www.tceq.texas.gov.

TRD-202104125
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 18, 2021

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Texas Health and Human Services Commission

Notice of Proposed Implementation of Revenue Code Benefit Ending for End-Stage Renal Disease (ESRD) Facility Reimbursement

Hearing

The Health and Human Services Commission (HHSC) will conduct a public hearing to receive comments regarding the Medical Policy Review of End Stage Renal Dialysis (ESRD) Facilities. HHSC proposes that, effective March 1, 2022, revenue codes for the following services will no longer be a benefit of the Texas Medicaid Program: 634, 635, 636, 845, and 855. HHSC will hold the hearing on the proposal on November 19, 2021, at 1:00 p.m. HHSC will consider all concerns expressed at the hearing prior to final approval. This public hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires a public hearing on proposed payment adjustments. Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted both in-person and as an online event. To join the hearing from your computer, tablet, or smartphone, register for the hearing in advance using the following link:

https://attendee.gotowebinar.com/register/8422603633781796878

After registering, you will receive a confirmation email containing information about joining the hearing. You can also dial using your phone by calling (631) 992-3221, Access code: 899-844-783.

If you are new to GoToWebinar, please download the GoToMeeting app at https://global.gotomeeting.com/install/626873213 before the hearing starts.

Members of the public may attend the rate hearing in person, which will be held in Public Hearing Room 125 in the John H. Winters Building located at 701 W. 51st Street, Austin, Texas, or access a live stream of the meeting here. For the live stream, select the "Winters Live" tab.

A recording of the webinar will be archived and can be accessed after the hearing at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings

Summary

HHSC has realigned revenue codes to conform with medical policy for ESRD Facilities, effective March 1, 2022.

Methodology

The affected revenue codes were either end dated or designated "Not A Benefit" to comply with the associated ESRD medical policy, which requires provider notification.

Proposed Rate Adjustments

Implementation of discontinued revenue codes.

Written Comments. Written comments regarding the proposed implementation of payable revenue code changes may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail, overnight mail, special delivery mail, fax, or e-mail.

U.S. Mail

Health and Human Services Commission

Provider Finance Department, Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail or special delivery mail

Health and Human Services Commission

Provider Finance Department, Mail Code H-400

North Austin Complex

4601 W Guadalupe St.

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax

Attention: Provider Finance at (512) 730-7475

E-mail

PFD_Hospitals@hhsc.state.tx.us

This public rate hearing briefing packet presents proposed implementation of payable revenue code changes and is available on the HHSC website at https://pfd.hhs.texas.gov/proposed-rate-packets. Implementation is dependent on review of public comments and additional information received. Provider notification will be published on the Texas Medicaid and Healthcare Partnership (TMHP) website at http://www.tmhp.com in banner messages, bulletins and notices.

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For quickest response, please use email or phone, if possible, for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202104210
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 19, 2021

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Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medicaid Biennial Calendar Fee Review

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 19, 2021, at 1:00 p.m., to receive public comments on proposed Medicaid payment rates for the Medicaid Biennial Calendar Fee Review.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted both in-person and as an online event. To join the hearing from your computer, tablet, or smartphone, register for the hearing in advance using the following link:

Registration URL:

https://attendee.gotowebinar.com/register/8422603633781796878

Webinar ID: 519-279-099

After registering, you will receive a confirmation email containing information about joining the hearing. You can also dial in using your phone by calling:

Conference Number: (631) 992-3221

Phone Audio Passcode: 899-844-783

If you are new to GoToWebinar, please download the GoToMeeting app at https://global.gotomeeting.com/install/626873213 before the hearing starts.

The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements. A recording of the hearing will be archived and can be accessed on demand at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings.

Members of the public may attend the rate hearing in person, which will be held in the Public Hearing Room 125 in the John H Winters Building located at 701 W 51st Street, Austin, Texas or may access a live stream of the meeting by following the link above. For the live stream, select the "Winters Live" tab.

Proposal. The payment rates for the Medicaid Biennial Calendar Fee Review are proposed to be effective March 1, 2022, for the following services:

Allergy Tests

Auditory System Surgery

Autism Services

Cardiovascular Services plus Cardiography & Echocardiography

Cardiovascular Services (Hospitals)

Diagnostic Radiology (Hospitals)

Renal Dialysis

Ear, Nose, and Throat

Female Genital System Surgery

Gastroenterology (non-Hospital)

Gastroenterology (Hospitals)

IV Treatment Including Chemotherapy

Male Genital System Surgery

Medicine (Other)

Medicine (Other) Anesthesia

Noninvasive Vascular Diagnostic Studies (Acute Care)

Noninvasive Vascular Diagnostic Studies (Hospitals)

Outpatient Behavioral Health Services (includes Peer Support Specialists)

Pulmonary Services

Radiation Oncology

Radiopharmaceuticals

R Codes

Blood Products

Musculoskeletal System Surgery

Nuclear Medicine

Nuclear Medicine (Hospitals)

Physician Administered Drugs - Non-Oncology

Physician Administered Drugs - Oncology

Physician Administered Drugs - NDCX

Substance Abuse Disorder Services

Q Codes TOS 1, 4, I, T

Q Codes TOS 9, J

Q Codes Drugs

Q Codes Hospitals

Dialysis

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8021, which addresses the reimbursement methodology for home health services;

§355.8023, which addresses the reimbursement methodology for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS);

§355.8052, which addresses the reimbursement methodology for inpatient hospital services;

§355.8061, which addresses outpatient hospital reimbursement;

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

§355.8091, which addresses reimbursement methodology for licensed professional counselors, licensed clinical social workers, and licensed marriage and family therapists;

§355.8097, which addresses the reimbursement methodology for physical, occupational, and speech therapy services;

§355.8161, which addresses the reimbursement methodology for midwife services;

§355.8181, which addresses the reimbursement methodology for birthing center reimbursement;

§355.8221, which addresses the reimbursement methodology for a certified registered nurse anesthetist (CRNA) or an anesthesiologist assistant;

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps) and the THSteps Comprehensive Care Program (CCP);

§355.8610, which addresses the reimbursement methodology for clinical laboratory services; and

§355.8660, which addresses the reimbursement methodology for renal dialysis.

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be made available at https://pfd.hhs.texas.gov/rate-packets on or after November 9, 2021. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at PFDAcuteCare@hhs.texas.gov.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by e-mail to PFDAcuteCare@hhs.texas.gov. In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, North Austin Complex, 4601 Guadalupe St, Austin, Texas 78751.

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For quickest response, and to help curb the possible transmission of infection, please use e-mail or phone if possible, for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202104226

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 20, 2021

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Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of IV Therapy Equipment and Supplies

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 19, 2021, at 1:00 p.m., to receive public comments on proposed Medicaid payment rates for the Medical Policy Review of IV Therapy Equipment and Supplies.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted both in-person and as an online event. To join the hearing from your computer, tablet, or smartphone, register for the hearing in advance using the following link:

Registration URL:

https://attendee.gotowebinar.com/register/8422603633781796878

Webinar ID: 519-279-099

After registering, you will receive a confirmation email containing information about joining the hearing. You can also dial in using your phone by calling:

Conference Number: (631) 992-3221

Phone Audio Passcode: 899-844-783

If you are new to GoToWebinar, please download the GoToMeeting app at https://global.gotomeeting.com/install/626873213 before the hearing starts.

The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements. A recording of the hearing will be archived and can be accessed on demand at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings.

Members of the public may attend the rate hearing in person, which will be held in the Public Hearing Room 125 in the John H Winters Building located at 701 W 51st Street, Austin, Texas or may access a live stream of the meeting by following the link above. For the live stream, select the "Winters Live" tab.

Proposal. The payment rates for the Medicaid Medical Policy Review of IV Therapy Equipment and Supplies are proposed to be effective March 1, 2022.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

§355.8023, which addresses the reimbursement methodology for durable medical equipment, prosthetics, orthotics, and supplies; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps) and the THSteps Comprehensive Care Program (CCP).

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be made available at https://pfd.hhs.texas.gov/rate-packets on or after November 9, 2021. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider

Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at PFDAcuteCare@hhs.texas.gov.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by e-mail to PFDAcuteCare@hhs.texas.gov. In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, North Austin Complex, 4601 Guadalupe St, Austin, Texas 78751.

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For quickest response, and to help curb the possible transmission of infection, please use e-mail or phone if possible for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202104222
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 20, 2021

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Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Mobility Aids

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 19, 2021, at 1:00 p.m., to receive public comments on proposed Medicaid payment rates for the Medical Policy Review of Mobility Aids.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted both in-person and as an online event. To join the hearing from your computer, tablet, or smartphone, register for the hearing in advance using the following link:

Registration URL: https://attendee.gotowebinar.com/register/8422603633781796878 Webinar ID: 519-279-099

After registering, you will receive a confirmation email containing information about joining the hearing. You can also dial in using your phone by calling:

Conference Number: (631) 992-3221

Phone Audio Passcode: 899-844-783

If you are new to GoToWebinar, please download the GoToMeeting app at https://global.gotomeeting.com/install/626873213 before the hearing starts.

The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements. A recording of the hearing will be archived and can be accessed on demand at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings.

Members of the public may attend the rate hearing in person, which will be held in the Public Hearing Room 125 in the John H Winters Building located at 701 W 51st Street, Austin, Texas or may access a live stream of the meeting by following the link above. For the live stream, select the "Winters Live" tab.

Proposal. The payment rates for the Medicaid Medical Policy Review of Mobility Aids are proposed to be effective June 1, 2022.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8023, which addresses the reimbursement methodology for durable medical equipment, prosthetics, orthotics, and supplies; and

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be made available at https://pfd.hhs.texas.gov/rate-packets on or after November 9, 2021. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at PFDAcuteCare@hhs.texas.gov.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by e-mail to PFDAcuteCare@hhs.texas.gov. In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, North Austin Complex, 4601 Guadalupe St, Austin, Texas 78751.

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For quickest response, and to help curb the possible transmission of infection, please use e-mail or phone if possible, for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202104223
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 20, 2021

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Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Q Codes

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 19, 2021, at 1:00 p.m., to receive public comments on proposed Medicaid payment rates for the Medical Policy Review of Q Codes.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted both in-person and as an online event. To join the hearing from your computer, tablet, or smartphone, register for the hearing in advance using the following link:

Registration URL:

https://attendee.gotowebinar.com/register/8422603633781796878

Webinar ID: 519-279-099

After registering, you will receive a confirmation email containing information about joining the hearing. You can also dial in using your phone by calling:

Conference Number: (631) 992-3221

Phone Audio Passcode: 899-844-783

If you are new to GoToWebinar, please download the GoToMeeting app at https://global.gotomeeting.com/install/626873213 before the hearing starts.

The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements. A recording of the hearing will be archived and can be accessed on demand at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings.

Members of the public may attend the rate hearing in person, which will be held in the Public Hearing Room 125 in the John H Winters Building located at 701 W 51st Street, Austin, Texas or may access a live stream of the meeting by following the link above. For the live stream, select the "Winters Live" tab.

Proposal. The payment rates for the Medicaid Medical Policy Review of Q Codes are proposed to be effective March 1, 2022.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be made available at https://pfd.hhs.texas.gov/rate-packets on or after November 9, 2021. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at PFDAcuteCare@hhs.texas.gov.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by e-mail to PFDAcuteCare@hhs.texas.gov. In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, North Austin Complex, 4601 Guadalupe St, Austin, Texas 78751.

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For quickest response, and to help curb the possible transmission of infection, please use e-mail or phone if possible, for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202104224

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 20, 2021

♦ ♦ ♦

Notice of Public Hearing on Proposed Medicaid Payment Rates for the Quarterly Healthcare Common Procedure Coding System (HCPCS) Updates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 19, 2021, at 1:00 p.m., to receive public comments on proposed Medicaid payment rates for the Quarterly HCPCS Updates.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted both in-person and as an online event. To join the hearing from your computer, tablet, or smartphone, register for the hearing in advance using the following link:

Registration URL:

https://attendee.gotowebinar.com/register/8422603633781796878

Webinar ID: 519-279-099

After registering, you will receive a confirmation email containing information about joining the hearing. You can also dial in using your phone by calling:

Conference Number: (631) 992-3221

Phone Audio Passcode: 899-844-783

If you are new to GoToWebinar, please download the GoToMeeting app at https://global.gotomeeting.com/install/626873213 before the hearing starts.

The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements. A recording of the hearing will be archived and can be accessed on demand at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings.

Members of the public may attend the rate hearing in person, which will be held in the Public Hearing Room 125 in the John H Winters Building located at 701 W 51st Street, Austin, Texas or may access a live stream of the meeting by following the link above. For the live stream, select the "Winters Live" tab.

Proposal. The payment rates for the Quarterly HCPCS Updates are proposed to be effective March 1, 2022, for the following services:

Q1 HCPCS Drugs TOS 1

Q2 HCPCS Drugs TOS 1

Q1 HCPCS TOS 9

Q1 HCPCS TOS 4 Non-Hospitals

Q1 HCPCS TOS 4 Hospitals

Q2 HCPCS TOS 1 Non-Drugs

Q2 HCPCS TOS 2

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8023, which addresses the reimbursement methodology for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS);

§355.8052, Which addresses the reimbursement methodology for inpatient hospital services;

§355.8061, which addresses outpatient hospital reimbursement;

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps) and the THSteps Comprehensive Care Program (CCP).

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be made available at https://pfd.hhs.texas.gov/rate-packets on or after November 9, 2021. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at PFDAcuteCare@hhs.texas.gov.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by e-mail to PFDAcuteCare@hhs.texas.gov. In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, North Austin Complex, 4601 Guadalupe St, Austin, Texas 78751.

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For quickest response, and to help curb the possible transmission of infection, please use e-mail or phone if possible, for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202104221
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 20, 2021

♦ ♦ ♦

Notice of Public Hearing on Proposed Medicaid Payment Rates for the Special Fee Review of Cardiac Magnetic Resonance Imaging

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 19, 2021, at 1:00 p.m., to receive public comments on proposed Medicaid payment rates for the Special Fee Review of Cardiac Magnetic Resonance Imaging.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted both in-person and as an online event. To join the hearing from your computer, tablet, or smartphone, register for the hearing in advance using the following link:

Registration URL:

https://attendee.gotowebinar.com/register/8422603633781796878

Webinar ID: 519-279-099

After registering, you will receive a confirmation email containing information about joining the hearing. You can also dial in using your phone by calling:

Conference Number: (631) 992-3221

Phone Audio Passcode: 899-844-783

If you are new to GoToWebinar, please download the GoToMeeting app at https://global.gotomeeting.com/install/626873213 before the hearing starts.

The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements. A recording of the hearing will be archived and can be accessed on demand at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings.

Members of the public may attend the rate hearing in person, which will be held in the Public Hearing Room 125 in the John H Winters Building located at 701 W 51st Street, Austin, Texas or may access a live stream of the meeting by following the link above. For the live stream, select the "Winters Live" tab.

Proposal. The payment rates for the Medicaid Special Fee Review of Cardiac Magnetic Resonance Imaging are proposed to be effective March 1, 2022.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps) and the THSteps Comprehensive Care Program (CCP).

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be made available at https://pfd.hhs.texas.gov/rate-packets on or after November 9, 2021. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at PFDAcuteCare@hhs.texas.gov.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by e-mail to PFDAcuteCare@hhs.texas.gov. In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, North Austin Complex, 4601 Guadalupe St, Austin, Texas 78751.

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For quickest response, and to help curb the possible transmission of infection, please use e-mail or phone if possible, for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202104225

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 20, 2021

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Notice of Public Hearing on Proposed Payment Rates for FFY 2022 Medicaid Community Hospice, Personal Attendant Services, and the Biennial Fee Review

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 12, 2021, at 9:00 a.m. in the Public Hearing Room 125 of the John H. Winters Building, 701 W 51st St., Austin, Texas 78751, to receive public comments on the proposed payment rates for multiple long-term services and supports programs.

Increased payment rates are proposed for Medicaid Community Hospice; Personal Attendant Services in Community Living Assistance and Support Services (CLASS); and Community Attendant Services, Family Care, and Primary Home Care (CAS/FC/PHC). Increased payment rates are also proposed for the state fiscal year 2022-23 first quarter biennial fee review for Intervener Services in the Deaf-Blind with Multiple Disabilities Waiver (DBMD) program and Transportation Services in the Prescribed Pediatric Extended Care Centers (PPECC) program.

This hearing will also be available online. To join the hearing from your computer, tablet, or smartphone, register for the hearing in advance using the following link:

https://attendee.gotowebinar.com/register/1224682648494391053, webinar ID: 843-982-027. After registering, you will receive a confirmation e-mail containing information about joining the hearing. You can also dial in using your phone at (415) 655-0052, access code: 958-817-290.

If you are new to GoToWebinar, please download the GoToMeeting app at https://global.gotomeeting.com/install/626873213 before the hearing starts.

The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements. HHSC will archive the public hearing; the archive can be accessed on demand after the hearing at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings.

Proposal. HHSC proposes to increase payment rates for Medicaid Community Hospice for federal fiscal year 2022 for routine home, continuous home, inpatient respite, and general inpatient care services, effective retroactive to October 1, 2021.

HHSC proposes a correction to payment rates for personal attendant services in CLASS and CAS/FC/PHC to align with the 2020-21 General Appropriations Act, House Bill 1, 86th Legislature, Regular Session, 2019 (Article II, HHSC, Rider 45), effective January 1, 2022.

HHSC also proposes to increase the DBMD Intervener rates and the PPECC Transportation rates, effective March 1, 2022.

Methodology and Justification. The increased payment rates for Medicaid Community Hospice for routine home, continuous home, inpatient respite, and general inpatient care services were determined in accordance with the hospice reimbursement methodology located at the Code of Federal Regulations, Title 42, Part 418, Subpart G.

The proposed rates for CLASS and CAS/FC/PHC were calculated to align with the legislative intent of Rider 45.

The proposed payment rates for DBMD were guided by Title 1 of the Texas Administrative Code (1 TAC) §355.513, related to the Reimbursement Methodology for the Deaf-Blind with Multiple Disabilities Waiver Program. The proposed payment rate for PPECC was guided by 1 TAC §355.9080, related to the Reimbursement Methodology for Prescribed Pediatric Extended Care Centers.

Briefing Packet. A briefing packet describing the proposed payment rates will be available at https://pfd.hhs.texas.gov/rate-packets no later than November 2, 2021. Interested parties may also obtain a copy of the briefing packet prior to the hearing by contacting the HHSC Provider Finance Department by telephone at (512) 424-6637, by fax at (512) 730-7475, or by e-mail at PFD-LTSS@hhs.texas.gov.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by e-mail to PFD-LTSS@hhs.texas.gov. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, North Austin Complex Building, 4601 W Guadalupe St., Austin, Texas 78751.

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For the quickest response, please use e-mail or phone, if possible, for communication with HHSC related to this public hearing.

TRD-202104060
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 15, 2021

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Public Notice - Texas State Plan for Medical Assistance Amendment Effective December 1, 2021

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The amendment is proposed to be effective December 1, 2021.

The proposed amendment will ensure that the Texas Medicaid State Plan is in compliance with the Bipartisan Budget Act (BBA) of 2018 and the Medicaid Services Investment and Accountability Act (MSIAA) of 2019, affecting the BBA of 2013, that modified third party liability (TPL) requirements related to special treatment of certain types of care and payment.

As this proposal represents compliance with current TPL laws rather than rates, there is no estimated fiscal impact.

Copy of Proposed Amendment. Interested parties may obtain a copy of the proposed amendment and/or additional information about the amendment by contacting Holly Freed, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 963-6205; by facsimile at (512) 730-7472; or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendment will be available for review at the local county offices of the Texas Health and Human Services Commission (which were formerly the local offices of the Department of Aging and Disability Services).

Written Comments. Written comments and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax or email:

U.S. Mail:

Office of the Inspector General

Attention: Third Party Recoveries, Mail Code 1354

P.O. Box 85200

Austin, Texas 78708

Overnight mail, special delivery mail, or hand delivery:

Office of the Inspector General

Attention: Third Party Recoveries, Mail Code 1354

11501 Burnet Rd., Bldg. 902

Austin, Texas 78758

Phone number for package delivery: (512) 491-2000

Fax: Attention: Third Party Recoveries at (512) 833-6523

Email: deborah.keyser@hhs.texas.gov

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For quickest response, and to help curb the possible transmission of infection, please use e-mail or phone, if possible, for communication with HHSC related to these amendments.

TRD-202104116
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 18, 2021

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Texas Department of Housing and Community Affairs

2022 HOME Amy Young Barrier Removal Program Notice of Funding Availability

The Texas Department of Housing and Community Affairs (the Department) announces a Notice of Funding Availability (NOFA) of approximately $1,427,204.00 for the 2022 Amy Young Barrier Removal (AYBR) Program funded through the Texas Housing Trust Fund (Texas HTF). $1,297,458.18 is available for Project Costs, and $129,745.82 (ten percent) is available for Administration. Eligible Administrators may begin reserving funds starting Thursday, December 9, 2021, at 10:00 a.m. Austin local time.

The availability of these funds are subject to the AYBR Program rules, including, but not limited to the following Texas Administrative Code (TAC) rules in effect at the time of submission of a Reservation, Title 10, Part 1, Chapter 1, Administration; Chapter 2, Enforcement; Chapter 20, the Single Family Programs Umbrella Rule; Chapter 21, the Minimum Energy Efficiency Requirements for Single Family Construction Activities; Chapter 26, the Texas Housing Trust Fund Rule; and Tex. Gov't Code §2306; and the Uniform Grant Management Standards (UGMS) or the Texas Grant Management Standards (TXGMS) as outlined in Chapter 783 of the Texas Local Government Code. Administrators should familiarize themselves with all rules governing the AYBR Program, and must follow the processes and procedures as required by the Department's reservation agreement, Program Manual, forms, and this NOFA.

The AYBR Program provides one-time grants of up to $22,500 to Persons with Disabilities in a Household qualified as Low-Income. Grants are for home modifications that increase accessibility and eliminate life-threatening hazards, and correct substandard conditions. Specific program guidelines can be found at 10 TAC Chapter 26, Texas Housing Trust Fund Rule, Subchapter B, Amy Young Barrier Removal Program.

Eligible Applicants include Units of General Local Government, Nonprofit Organizations, Public Housing Authorities, Local Mental Health Authorities, and Councils of Government.

Additional Information

The NOFA is available on the Department's website at http://www.tdhca.state.tx.us/nofa.htm.

All Application materials are available on the Department's website at https://www.tdhca.state.tx.us/htf/single-family/amy-young.htm

For questions regarding this NOFA, please contact Diana Velez, Administrator of the Amy Young Barrier Removal Program, at (512) 475-4828 or via email at HTF@tdhca.state.tx.us.

TRD-202104201
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 19, 2021

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2022 HOME Contract for Deed NOFA

Summary

The Texas Department of Housing and Community Affairs (the Department) announces a NOFA of approximately $1,000,000 in HOME funds for single family housing programs under the Contract for Deed (CFD) set-aside under a Reservation System. These funds will be made available to HOME Reservation System Participants with a current Reservation System Participation (RSP) Agreement.

The availability and use of these funds are subject to the HOME rules including, but not limited to the following Texas Administrative Code (TAC) rules in effect at the time of contract execution, Title 10, Part 1, Chapter 1, Administration; Chapter 2, Enforcement; Chapter 20, the Single Family Programs Umbrella Rule; Chapter 21, the Minimum Energy Efficiency Requirements for Single Family Construction Activities; Chapter 23, the Single Family HOME Program, (State HOME Rules); and Tex. Gov't Code Chapter 2306. Other federal and state regulations include, but are not limited to, 24 CFR Part 58 for environmental requirements, 2 CFR Part 200 for Uniform Administrative Requirements (including the amendments effective July 30, 2021), 24 CFR §135.38 for Section 3 requirements, 24 CFR Part 5, Subpart A for fair housing, (Federal HOME Rules), the Uniform Grant and Contract Management requirements as outlined in Chapter 783 in the Texas Local Government (UGMS or TxGMS, as applicable). Applicants must familiarize themselves with all of the applicable state and federal rules that govern the HOME Program.

CFD provides funds for the acquisition or refinance, in combination New Construction, of single family housing occupied by the purchaser as shown on an executory contract for conveyance. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter D, Contract for Deed Program, §§23.40 - 23.42.

Eligible Applicants include Units of General Local Government, nonprofit organizations, Public Housing Authorities, Local Mental Health Authorities, and Councils of Government.

Additional Information

The NOFA is available on the Department's website at http://www.tdhca.state.tx.us/nofa.htm.

All Application materials are available on the Department's website at http://www.tdhca.state.tx.us/home-division/applications.htm.

For questions regarding this NOFA, please contact Charles "T.C." Day, HOME Production Coordinator for the Single Family and Homeless Programs Division, at (512) 475-2975 or via email at HOME@tdhca.state.tx.us.

TRD-202104202
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 19, 2021

♦ ♦ ♦

2022 HOME Persons with Disabilities Notice of Funding Availability

The Texas Department of Housing and Community Affairs (the Department) announces a Notice of Funding Availability (NOFA) of approximately $1,792,947 in HOME funds for single-family housing programs under the Persons with Disabilities (PWD) set-aside under a Reservation System. These funds will be made available to HOME Reservation System Participants with a current Reservation System Participation (RSP) Agreement.

The availability and use of these funds are subject to the HOME rules including, but not limited to the following Texas Administrative Code (TAC) rules in effect at the time of contract execution: Title 10, Part 1, Chapter 1, Administration; Chapter 2, Enforcement; Chapter 20, the Single Family Programs Umbrella Rule; Chapter 21, the Minimum Energy Efficiency Requirements for Single Family Construction Activities; Chapter 23, the Single Family HOME Program (State HOME Rules), and Tex. Gov't Code Chapter 2306. Other federal and state regulations include but are not limited to: 24 CFR Part 58 for environmental requirements, 2 CFR Part 200 for Uniform Administrative Requirements (including the amendments effective July 30, 2021), 24 CFR §135.38 for Section 3 requirements, 24 CFR Part 5, Subpart A for fair housing, (Federal HOME Rules), and for units of government, the Uniform Grant and Contract Management requirements as outlined in Chapter 783 in the Texas Local Government (UGMS or TxGMS, as applicable). Applicants must familiarize themselves with all of the applicable state and federal rules that govern the HOME Program.

Eligible Activities

Homeowner Reconstruction Assistance (HRA). HRA provides funds for the rehabilitation, reconstruction, or new construction of a single-family residence owned and occupied by eligible low-income Households. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter C, Homeowner Reconstruction Assistance Program, §§23.30 - 23.32.

Tenant-Based Rental Assistance (TBRA). TBRA provides rental subsidies to eligible low-income Households. Assistance may include rental, security, and utility deposits. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter F, Tenant-Based Rental Assistance Program, §§23.50 - 23.52.

Eligible Applicants include Units of General Local Government, nonprofit organizations, Public Housing Authorities, Local Mental Health Authorities, and Councils of Government.

Additional Information

The NOFA is available on the Department's website at http://www.tdhca.state.tx.us/nofa.htm.

All Application materials are available on the Department's website at http://www.tdhca.state.tx.us/home-division/applications.htm.

For questions regarding this NOFA, please contact Charles "T.C." Day, HOME Production Coordinator for the Single Family and Homeless Programs Division, at (512) 475-2975 or via email at HOME@tdhca.state.tx.us.

TRD-202104203
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 19, 2021

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2022 HOME Single Family General Set-Aside NOFA

Summary

The Texas Department of Housing and Community Affairs (TDHCA or the Department) announces a NOFA of approximately $19,951,258 in HOME funds for single family housing programs under the general set-aside utilizing a reservation system. These funds will be made available to HOME Reservation System Participants after a Reservation System Participation ("RSP") Agreement has been ratified.

The availability and use of these funds are subject to the HOME rules including, but not limited to the following Texas Administrative Code (TAC) rules in effect at the time of application review or contract execution (as applicable): Title 10, Part 1, Chapter 1, Administration; Chapter 2, Enforcement; Chapter 20, the Single Family Programs Umbrella Rule; Chapter 21, the Minimum Energy Efficiency Requirements for Single Family Construction Activities; Chapter 23, the Single Family HOME Program, (State HOME Rules); and Tex. Gov't Code §2306. Other federal and state regulations include but are not limited to: 24 CFR Part 58 for environmental requirements, 2 CFR Part 200 for Uniform Administrative Requirements (including the amendments effective August 13, 2020), 24 CFR §135.38 for Section 3 requirements, 24 CFR Part 5, Subpart A for fair housing, (Federal HOME Rules), and for units of government, the Uniform Grant and Contract Management requirements as outlined in Chapter 783 in the Texas Local Government (UGMS or TxGMS, as applicable). Applicants must familiarize themselves with all of the applicable state and federal rules that govern the HOME Program.

Eligible Activities

Homeowner Reconstruction Assistance (HRA). HRA provides funds for the reconstruction or new construction of a single family residence owned and occupied by eligible low-income Households. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter C, Homeowner Reconstruction Assistance Program, §§23.30 - 23.32.

Tenant-Based Rental Assistance (TBRA). TBRA provides rental subsidies to eligible low-income Households. Assistance may include rental, security, and utility deposits. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter F, Tenant-Based Rental Assistance Program, §§23.50 - 23.52.

Homebuyer Assistance with New Construction (HANC). HANC provides funds for mortgage financing to low-income homebuyers for acquisition and/or new construction of site-built housing, as well as acquisition and/or placement of a new Manufactured Housing Unit (MHU) to be occupied by the homebuyer. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program,

Subchapter H, Homebuyer Assistance with New Construction Program, §§23.70 - 23.72.

Eligible Applicants include Units of General Local Government, Nonprofit Organizations, Public Housing Authorities, Local Mental Health Authorities, and Councils of Government

Additional Information

The NOFA is available on the Department's website at http://www.tdhca.state.tx.us/nofa.htm.

All Application materials are available on the Department's website at http://www.tdhca.state.tx.us/home-division/applications.htm.

For questions regarding this NOFA, please contact Charles "T.C". Day, HOME Production Coordinator for the Single Family and Homeless Programs Division, at (512) 475-2975 or via email at HOME@tdhca.state.tx.us.

TRD-202104204
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 19, 2021

♦ ♦ ♦

Announcement of Public Comment Period for State of Texas 2021 CAPER, Reporting on PY 2020

The Texas Department of Housing and Community Affairs (TDHCA) announces the opening of a 15-day public comment period for the *State of Texas Draft 2021 Consolidated Plan Annual Performance Report - Reporting on Program Year 2020 (the Report)* as required by the U.S. Department of Housing and Urban Development (HUD). The Report is required as part of the overall requirements governing the State's consolidated planning process. The Report is submitted in compliance with 24 CFR §91.520, Consolidated Plan Submissions for Community Planning and Development Programs. The 15-day public comment period begins Monday, November 1, 2021, and continues until 5:00 p.m. Austin Local Time on Monday, November 15, 2021.

The Report gives the public an opportunity to evaluate the performance of the past program year for five HUD programs: the Community Development Block Grant Program (CDBG) administered by the Texas Department of Agriculture (TDA), the Housing Opportunities for Persons with AIDS Program (HOPWA) administered by the Texas Department of State Health Services (DSHS), and the Emergency Solutions Grants (ESG), HOME Investment Partnerships, and National Housing Trust Fund programs, administered by TDHCA. The following information is provided for each of the programs covered in the Report: a summary of program resources and programmatic accomplishments; a series of narrative statements on program performance over the past year; a qualitative analysis of program actions and experiences; and a discussion of program successes in meeting program goals and objectives.

In addition, the report provides a summary and analysis of three new HUD funded programs created in response to and to recover from the COVID-19 Pandemic. These new programs are CDBG-CV and ESG-CV, administered by TDHCA and HOPWA-CV administered by DSHS.

Beginning November 1, 2021, the Report will be available on the Department's website at http://www.tdhca.state.tx.us/public-comment.htm. A hard copy can be requested by contacting the Housing Resource Center at P.O. Box 13941, Austin, Texas 78711-3941 or by calling (512) 475-3976.

Written comment should be sent by mail to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941, by email to info@tdhca.state.tx.us, or by fax to (512) 475-0070.

TRD-202104200
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 19, 2021

♦ ♦ ♦

Second Amendment to the 2021-3 Multifamily Direct Loan Annual Notice of Funding Availability

This Amendment extends the period for accepting Applications to November 11, 2021, and provides that the Department will reserve funds for Applications proposing FHA-insured financing in the permanent structure until March 31, 2022, by amending Sections 1, 2, 5 and 7.

II. Sources of Multifamily Direct Loan Funds

Multifamily Direct Loan funds are made available in this Annual Notice of Funding Availability through National Housing Trust Fund (NHTF) and HOME Investment Partnerships Program allocations. These funds have been programmed for multifamily activities including acquisition, new construction, and/or rehabilitation.

III. Notice of Funding Availability (NOFA)

The Texas Department of Housing and Community Affairs (the Department) announces the availability of $48,875,662 for the development of affordable multifamily rental housing for low-income Texans. Applicants in the General or HOME Set-Aside must have received a Low Income Housing Tax Credit allocation in 2019 or 2020, or have received an NHTF award under a 2019 or 2020 NOFA. The maximum Application request is $5,000,000, unless the Application qualifies for the Supportive Housing Set-Aside, in which case the maximum request is $6,000,000.

IV. Application Deadline and Availability

Applications under this NOFA will be accepted through 5:00 p.m. Austin local time November 11, 2021 (if sufficient funds remain). The "2021-3 Multifamily Direct Loan Annual NOFA" is posted on the Department's website: http://www.tdhca.state.tx.us/multifamily/nofas-rules.htm. Subscribers to the Department's LISTSERV will receive notification that the NOFA is posted. Subscription to the Department's LISTSERV is available at http://maillist.tdhca.state.tx.us/list/subscribe.html?lui=f9mu0g2g&mContainer=2&mOwner=G382s2w2r2p.

The Multifamily Direct Loan program provides loans to for-profit and nonprofit entities to develop affordable housing for low-income Texans qualified earning 80 percent or less of the applicable Area Median Family Income.

Questions regarding the 2021-3 Multifamily Direct Loan Annual NOFA may be addressed to Charlotte Flickinger at (512) 475-0538 or charlotte.flickinger@tdhca.state.tx.us.

TRD-202104205
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 19, 2021

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Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for Bestow Life Insurance Company, a foreign life, accident and/or health company. The home office is in Des Moines, Iowa.

Application to do business in the state of Texas for Palmetto Surety Corporation, a foreign fire and/or casualty company. The home office is in Mount Pleasant, South Carolina.

Application for Genworth Financial Assurance Corporation, a foreign fire and/or casualty company, to change its name to Enact Financial Assurance Corporation. The home office is in Raleigh, North Carolina.

Application for Genworth Mortgage Insurance Corporation of North Carolina, a foreign fire and/or casualty company, to change its name to Enact Mortgage Insurance Corporation of North Carolina. The home office is in Raleigh, North Carolina.

Application for Genworth Mortgage Insurance Corporation, a foreign fire and/or casualty company, to change its name to Enact Mortgage Insurance Corporation. The home office is in Raleigh, North Carolina.

Application for ManhattanLife Assurance Company of America, a foreign life, accident and/or health company, to change its name to ManhattanLife Insurance & Casualty Company. The home office is in Little Rock, Arkansas.

Application for NORCAL Mutual Insurance Company, a foreign fire and/or casualty company, to change its name to NORCAL Insurance Company. The home office is in San Francisco, California.

Application for incorporation in the state of Texas for Alignment Health Insurance Company of Arizona, Inc., a foreign life, accident and/or health insurance company, to add the assumed name FCSU Financial. The home office is in Independence, Ohio.

Application by First Catholic Slovak Union of the USA & Canada, a domestic life, accident and/or health company with HMO authority, to add DBA (doing business as) FAMILY HEALTH PLAN in connection with their managed care business. 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 Amy Garcia, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-202104217
James Person
General Counsel
Texas Department of Insurance
Filed: October 20, 2021

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Teacher Retirement System of Texas

Correction of Error

The Teacher Retirement System of Texas (TRS) published proposed new 34 TAC §41.16 in the August 13, 2021, issue of the *Texas Register* (46 TexReg 4988). The proposed rulemaking placed the new rule in Subchapter A of Chapter 41. TRS published the adoption of the new rule in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6944). Due to a codification error, the new rule should not have been proposed using this rule number as 34 TAC §41.16 already exists in Subchapter B of Chapter 41.

Due to the codification error, the Texas Register is rejecting both the proposed rulemaking as well as the adopted rulemaking for new 34 TAC §41.16. The new rule is being proposed as 34 TAC §41.13 in the Proposed Rules section of this issue of the *Texas Register.*

TRD-202104157

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Texas Department of Transportation

Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Wednesday, November 17, 2021 at 10:00 a.m. Central Standard Time (CST) to receive public comments on the November 2021 Quarterly Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2021-2024. The hearing will be conducted via electronic means due to the public health precautions surrounding COVID-19. Instructions for accessing the hearing will be published on the department's website at: https://www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html

The STIP reflects the federally funded transportation projects in the FY 2021-2024 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Dallas-Fort Worth, El Paso, Houston and San Antonio. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 134 requires an MPO to develop its TIP in cooperation with the state and affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section 135 requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

A copy of the proposed November 2021 Quarterly Revisions to the FY 2021-2024 STIP will be available for review, at the time the notice of hearing is published, on the department's website at: https://www.txdot.gov/inside-txdot/division/transportation-planning/stips.html

Persons wishing to speak at the hearing may register in advance by notifying Angela Erwin, Transportation Planning and Programming Division, at (512) 416-2187 no later than 12:00 p.m. CST on Monday, November 15, 2021. Speakers will be taken in the order registered and will be limited to three minutes. Speakers who do not register in advance will be taken at the end of the hearing. Any interested person may offer comments or testimony; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony.

The public hearing will be conducted in English. Persons who have special communication or accommodation needs and who plan to participate in the hearing are encouraged to contact the Transportation Planning and Programming Division, at (512) 416-2187. Requests should be made at least three working days prior to the public hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to participate in the hearing may submit comments regarding the proposed November 2021 Quarterly Revisions to the FY 2021-2024 STIP to Jessica Butler, P.E., Director of the Transportation Planning and Programming Division, P.O. Box 149217, Austin, Texas 78714-9217. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by 4:00 p.m. CST on Monday, November 29, 2021.

TRD-202104059
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: October 14, 2021

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TEXAS

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 46 (2021) is cited as follows: 46 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 "46 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 46 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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