TEXAS REGISTER

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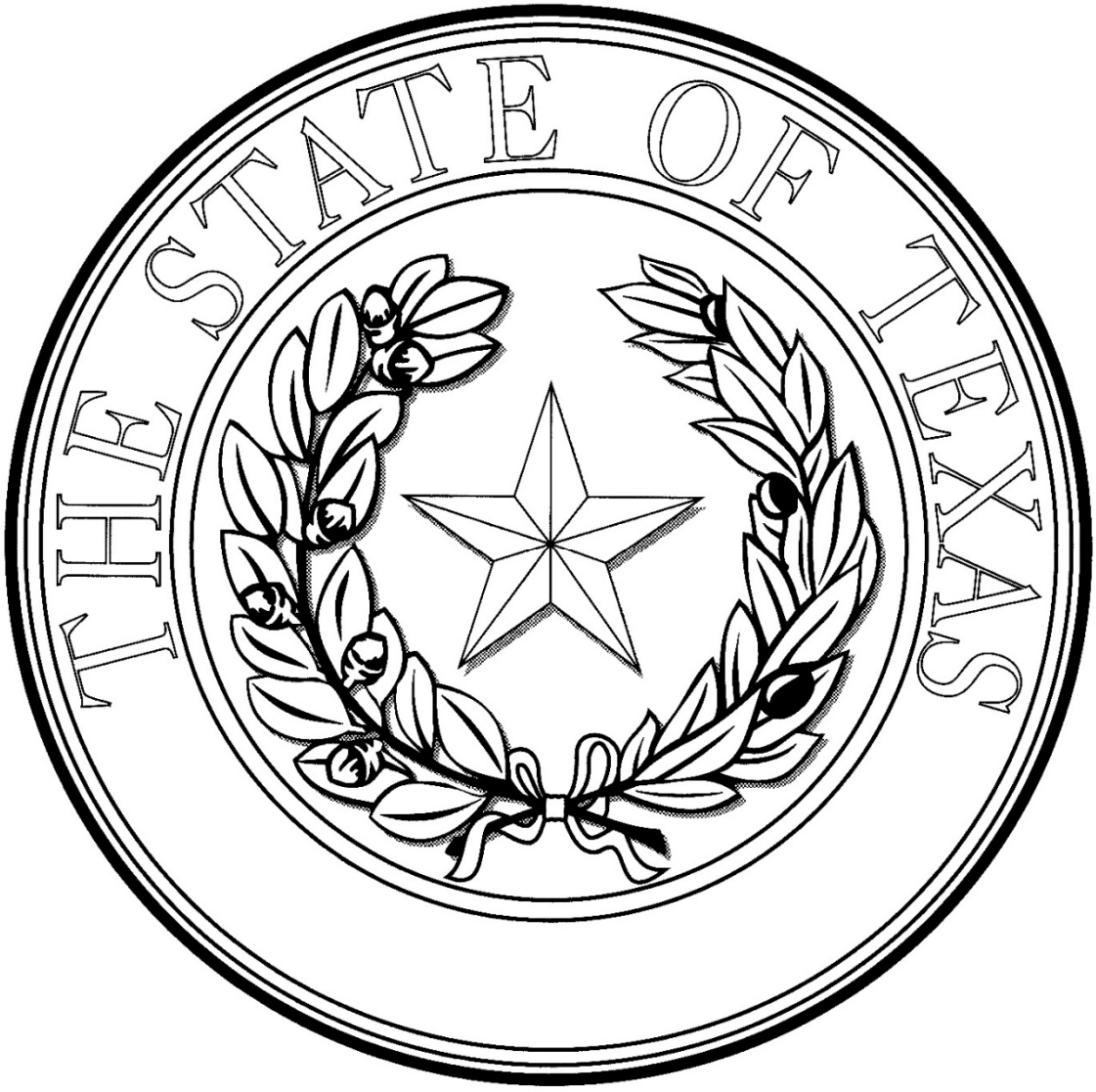

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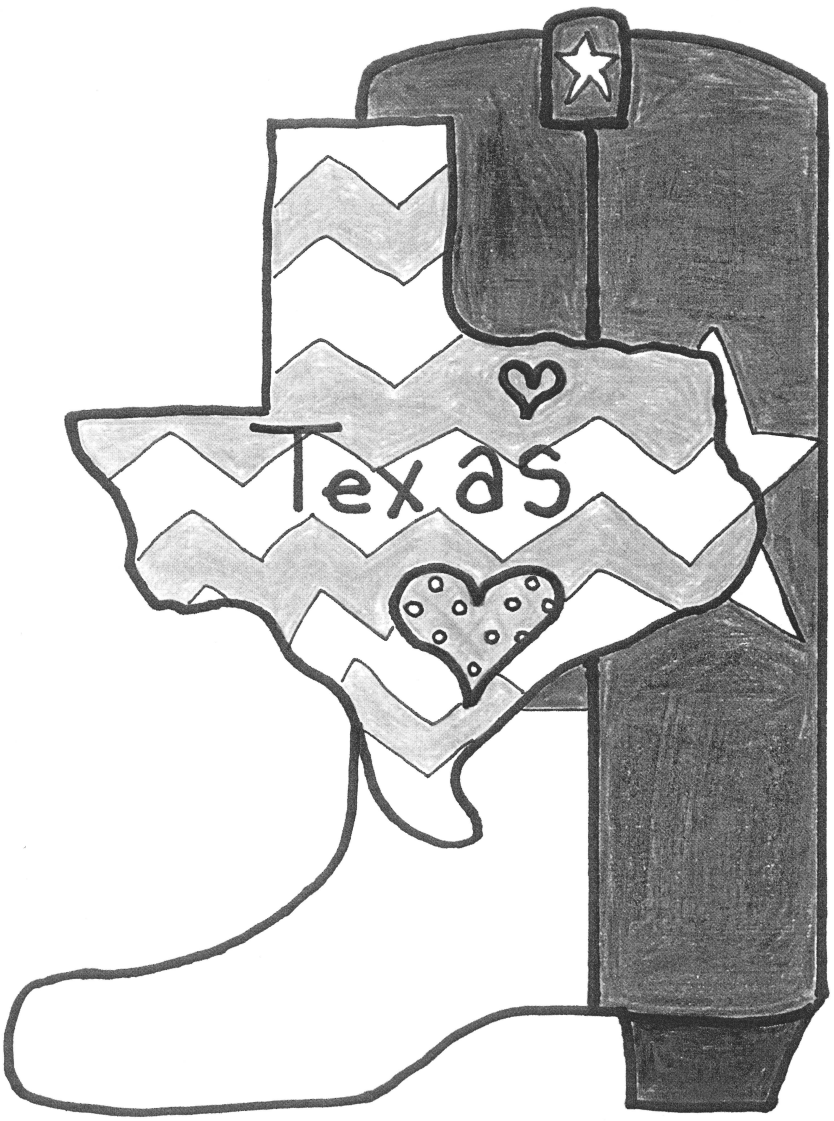

Texas

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 January 12, 2022

Appointed to the Governor's Broadband Development Council for a term to expire August 31, 2026, pursuant to HB 5, 87th Legislature, Regular Session, Schelana Myers Hock of Moscow, Texas.

Appointed to the Governor's Broadband Development Council for a term to expire August 31, 2026, pursuant to HB 5, 87th Legislature, Regular Session, Jerome A. "Jack" Kelanic of Dallas, Texas.

Appointed to the Governor's Broadband Development Council for a term to expire August 31, 2026, pursuant to HB 5, 87th Legislature, Regular Session, James R. "Ray" Scifres, Jr. of Levelland, Texas.

Appointed to the Specialty Courts Advisory Council for a term to expire February 1, 2023, Elizabeth N. Rainey of Midland, Texas (replacing Ruben G. Reyes of Lubbock, who is deceased).

Appointed to the Specialty Courts Advisory Council for a term to expire February 1, 2025, Leslie R. Robnett of Fort Worth, Texas (replacing Amy R. Granberry of Portland, who resigned).

Appointed to the Specialty Courts Advisory Council for a term to expire February 1, 2027, Constance "Diane" Bull Spjut of Boerne, Texas (replacing Alicia Franklin York of Houston, whose term expired).

Appointed to the Specialty Courts Advisory Council for a term to expire February 1, 2027, Brent A. Carr of Fort Worth, Texas (Judge Carr is being reappointed).

Appointed to the Specialty Courts Advisory Council for a term to expire February 1, 2027, Rebecca E. DePew of Holland, Texas (Judge DePew is being reappointed).

Appointments for January 13, 2022

Appointed to the Texas Board of Professional Engineers and Land Surveyors for a term to expire September 26, 2027, Albert L. Cheng of Houston, Texas (Mr. Cheng is being reappointed).

Appointed to the Texas Board of Professional Engineers and Land Surveyors for a term to expire September 26, 2027, Karen A. Friese of Austin, Texas (replacing Lamberto J. "Bobby" Balli of San Antonio, whose term expired).

Appointed to the Texas Board of Professional Engineers and Land Surveyors for a term to expire September 26, 2027, Catherine H. "Cathy" Norwood of Midland, Texas (Ms. Norwood is being reappointed).

Appointed to the Nursing Facility Administrators Advisory Committee for a term to expire February 1, 2027, Liam M. Fry, M.D. of Austin, Texas (Dr. Fry is being reappointed).

Appointed to the Nursing Facility Administrators Advisory Committee for a term to expire February 1, 2027, Abraham Mathew, D.B.A. of Pasadena, Texas (Dr. Mathew is being reappointed).

Appointed to the Nursing Facility Administrators Advisory Committee for a term to expire February 1, 2027, Ronald S. "Ron" Palomares, Ph.D. of Dallas, Texas (replacing Joel Alfred Arrigucci of El Paso, whose term expired).

Appointments for January 18, 2022

Appointed to the Texas Council for Developmental Disabilities for a term to expire February 1, 2025, Amanda A. Miles of Alvin, Texas (replacing Paul W. Cardarella of Abilene, who resigned).

Appointed to the Texas Council for Developmental Disabilities for a term to expire February 1, 2027, Deborah A. "Debbie" Carlisle of Austin, Texas (replacing Molly K. Spratt of Austin, whose term expired).

Appointed to the Texas Council for Developmental Disabilities for a term to expire February 1, 2027, Kyle D. Cox of College Station, Texas (replacing Kimberly Anne Blackmon of Fort Worth, whose term expired).

Appointed to the Texas Council for Developmental Disabilities for a term to expire February 1, 2027, Scott A. McAvoy of Cedar Park, Texas (Mr. McAvoy is being reappointed).

Appointed to the Texas Council for Developmental Disabilities for a term to expire February 1, 2027, Angela L. "Angie" Panzica of Houston, Texas (replacing Rebecca "Hunter" Adkins of Lakeway, whose term expired).

Appointed to the Texas Council for Developmental Disabilities for a term to expire February 1, 2027, Randell K. Resneder of Wolfforth, Texas (Mr. Resneder is being reappointed).

Appointed to the Texas Council for Developmental Disabilities for a term to expire February 1, 2027, Jaime L. Thomas of Abilene, Texas (replacing Kristen L. Cox of College Station, whose term expired).

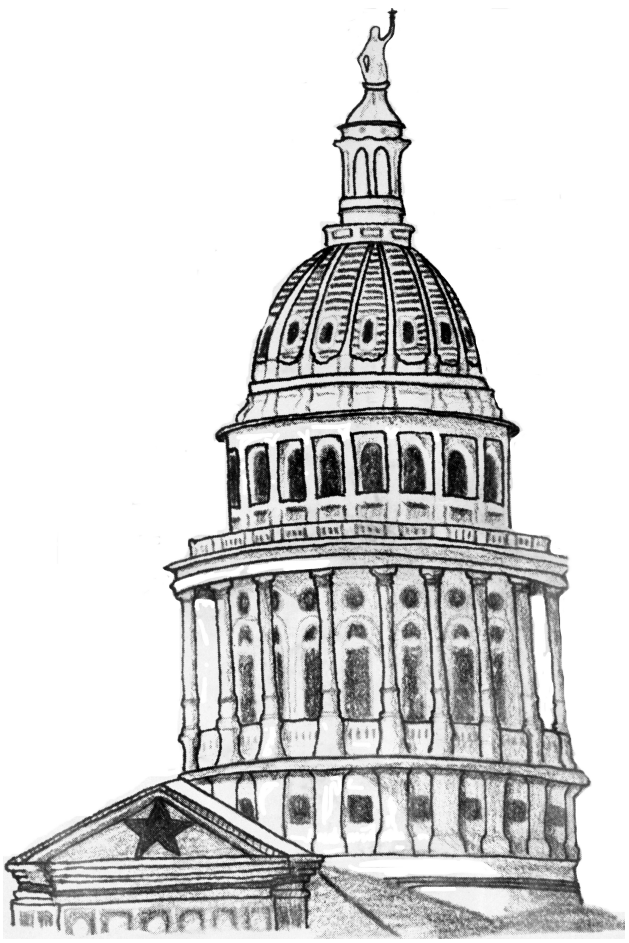
Appointed to the Texas Permanent School Fund Corporation Board of Directors for a term to be determined as set forth by law, Todd A. Williams of Dallas, Texas.

Appointed to the Texas Permanent School Fund Corporation Board of Directors for a term to be determined as set forth by law, Bradfield D. "Brad" Wright of Houston, Texas.

Greg Abbott, Governor

TRD-202200202

♦ ♦ ♦



THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0444-KP

Requestor:

The Honorable DeWayne Burns

Chair, House Committee on Agriculture and Livestock

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

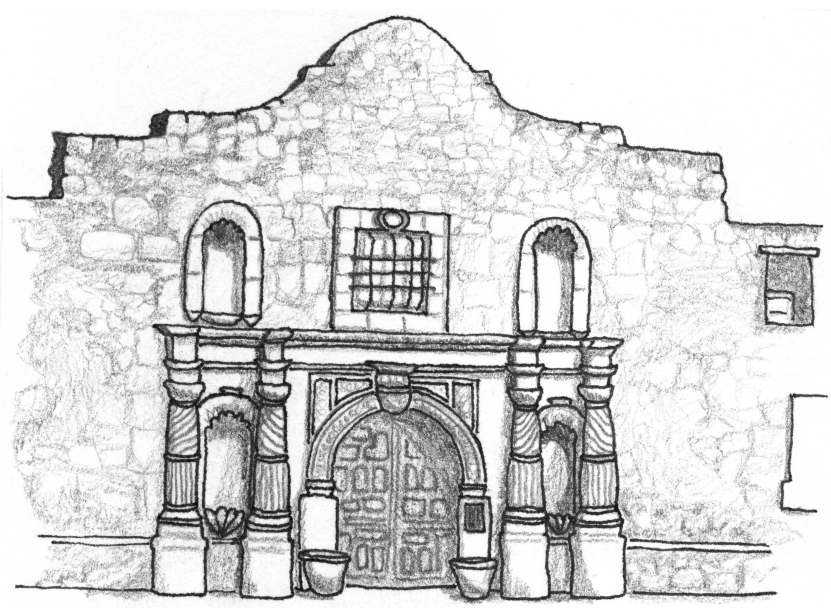
Re: Whether a merchant may offer a theft deterrent course in lieu of arrest and prosecution and whether doing so would expose a merchant or educational provider to civil or criminal liability (RQ-0444-KP)

Briefs requested by February 11, 2022

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

TRD-202200164
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: January 18, 2022

♦ ♦ ♦



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

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 94. ELECTRIC COOPERATIVE SECURITIZED PROPERTY NOTICE FILINGS

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §§94.1 - 94.7

The Office of the Secretary of State (SOS) adopts, on an emergency basis, new Chapter 94, Subchapter A, General Provisions, §§94.1 - 94.7, concerning electric cooperative securitized property notice filings filed with the SOS.

The SOS is adopting these emergency rules to implement the new filing responsibilities imposed on the SOS under the provisions of Senate Bill 1580, enacted by the 87th Legislature, Regular Session (codified at Texas Utilities Code §41.159).

In accordance with Texas Government Code §2001.034, the emergency rules will be in effect for up to 120 days and may be renewed once for not longer than 60 days. During this time, the SOS intends to propose these rules or similar rules for adoption on a permanent basis under the standard rulemaking process and will consider any additional action necessary in the event unforeseen issues arise with the adopted emergency rules.

Background and Justification for the emergency rulemaking

Senate Bill 1580 (87th Leg., R.S.) provides electric cooperatives with the option of using long-term securitized financing to recover the extraordinary costs and expenses incurred due to Winter Storm Uri, which impacted the State of Texas in February 2021. The bill took immediate effect on June 18, 2021, upon signing by the Governor.

As enacted by SB 1580, Texas Utilities Code §41.159 requires that the transfer, sale, assignment, or lien and security interest, as applicable, attach automatically from the time that value is received for the securitized bonds and, on perfection through the filing of a notice with the Secretary of State, be a continuously perfected transfer, sale, and assignment, or lien and security interest, as applicable, in the securitized property. Texas Utilities Code §41.159(d) requires the SOS to establish and maintain a system of records for the filing of securitized property notices and expressly authorizes the SOS to prescribe the rules for electric cooperative securitized property notice filings. The purpose of these emergency rules is to provide electric cooperatives and financing parties with the information needed to submit notice filings relating to a security interest in securitized property to the filing system established by the SOS.

Pursuant to Texas Government Code §2001.034, the new rules are adopted on an emergency basis and with an expedited effective date because state law requires adoption of these rules on fewer than 30 days' notice.

Section-by-Section Summary

Subchapter A contains general provisions relating to the filing of a securitized property notice. New §94.1 defines terms used within the chapter. New §94.2 provides address information and hours of operation of the filing office. New §94.3 relates to document delivery and date and time of filing. New §94.4 relates to approved forms. New §94.5 establishes the fees for securitized property notice filings, information requests, and copies. New §94.6 relates to accepted methods of payment. New §94.7 sets forth the policy regarding overpayment and underpayment of fees.

Statutory Authority

The emergency rules are adopted under Texas Utilities Code §41.159(d) and Texas Government Code §2001.034. Texas Utilities Code §41.159(d) directs the SOS to implement that section by prescribing the rules for electric cooperative securitized property notice filings. Texas Government Code §2001.034 authorizes a state agency to adopt emergency rules without prior notice or hearing if the agency finds that a requirement of state law requires adoption of a rule on fewer than 30 days' notice.

The statutory provisions affected by the emergency rules are those set forth in Chapter 41 of the Texas Utilities Code, as amended by SB 1580. No other statute, code, or article is affected by the emergency rules.

§94.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, except as the context otherwise clearly requires:

(1) "Assignee" has the meaning accorded to such term by §41.152 of the Texas Utilities Code.

(2) "Assignor" means an electric cooperative or other person who transfers an interest in securitized property to an assignee.

(3) "Certificate" means a document establishing whether there is on file with the filing officer on the date and time stated a securitized property notice.

(4) "Combined Securitization Transaction" has the meaning accorded to such term by §41.152 of the Texas Utilities Code.

(5) "File Number" means the unique identifying information assigned to an initial securitized property notice filing by the filing officer for the purpose of identifying the securitized property notice and all documents relating to that securitized property notice in the filing officer's UCC information management system. The file number includes three segments: the year of filing expressed as a two-digit number, followed by a unique eight-digit number assigned to the securitized property notice by the filing office, and ending with a two-digit verification number assigned by the filing office but mathematically derived

from the numbers in the first two segments. The filing number bears no relation to the time of filing and is not an indicator of priority.

(6) "Filing" means the presentation of a securitized property notice or other document described in this chapter to the filing officer, which is evidenced by the indication of a file number and filing date and filing time.

(7) "Filing Date" means the date at which the filing officer receives a filing, as described by these rules.

(8) "Filing Officer" means the secretary of state, including an appointed successor entity or office.

(9) "Filing Party" means a person who makes a filing pursuant to this chapter.

(10) "Filing Time" means the time of day that a document is presented for filing at the filing office and is determined by the method of delivery.

(11) "Financing Order" has the meaning accorded to such term by §41.152 of the Texas Utilities Code.

(12) "Financing Party" has the meaning accorded to such term by §41.152 of the Texas Utilities Code.

(13) "Grantor" means an electric cooperative or other person who grants a security interest in securitized property to another person.

(14) "Person" means an individual, partnership, corporation, public authority or trust (including a business trust), unincorporated association, limited liability company, joint stock company or any other legal entity, whether public or private, existing under the laws of the State of Texas, another state, the United States, or a foreign country.

(15) "Release" means an amendment intended to indicate an action by a financing party to alter a right, duty, or obligation concerning the perfection of a security interest.

(16) "Remitter" means a person who tenders a securitized property notice document to the filing officer for filing, whether the person is a filer or an agent of a filer responsible for tendering the document for filing. "Remitter" does not include a person responsible merely for the delivery of the document to the filing office, such as the postal service or a delivery service but does include a service provider who acts as a filer's representative in the filing process.

(17) "Retransfer" means an amendment intended to indicate an action by an assignee to return to an assignor all or a portion of the interest of the assignee in securitized property.

(18) "Security Interest" means an interest in securitized property securing the payment or performance of an obligation.

(20) "Termination" means an amendment intended to indicate that the related securitized property notice has ceased to be effective with respect to the financing party or assignee authorizing the termination.

(21) "Securitized Property" has the meaning accorded to such term by §41.152 of the Texas Utilities Code.

(22) "Securitized Property Notice" means (as more fully described in §§94.61 - 94.65 of this chapter (relating to Filings)):

(A) a notice of a security interest in securitized property, and all amendments to such notice; or

(B) a notice of a transfer to an assignee of an interest in securitized property, and all amendments to such notice.

§94.2. Place of Filing and Filing Office Information.

(a) A securitized property notice, and each document filed pursuant to this chapter, shall be filed with the filing officer at the filing office by the filing party and be accompanied by the payment of any required fees. Acceptable methods of payment are the same as those identified in §94.6 of this subchapter (relating to Methods of Payment).

(b) Information on the procedures and forms for filing pursuant to this chapter, submittals, requests, and other information or instructions can be obtained upon request directed to the Office of the Secretary of State, Business and Public Filings Division, Uniform Commercial Code. The filing office will disseminate information of its location, mailing address, telephone and fax numbers, and its website and other electronic "addresses" through usual and customary means.

(c) The filing office is open to the public between the hours of 8:00 A.M. and 5:00 P.M. (CT), Monday through Friday, except for state holidays.

§94.3. Document Delivery.

A securitized property notice filing may be presented for filing at the filing office as follows:

(1) A filing may be delivered in person at the street address of the filing office during business hours. The file time for a securitized property notice delivered by this method when accompanied by a fee for expedited handling is when delivery of the securitized property notice document is accepted by the filing office (even though the securitized property notice document may not yet have been accepted for filing and may be subsequently rejected). The file time for a securitized property notice filing delivered by this method without the additional fee for expedited service is 5:00 P.M. CT on a day the filing office is open to the public (even though the securitized property notice document may not yet have been accepted for filing and may be subsequently rejected).

(2) A filing may be delivered by delivery service at the street address of the filing office. The file time for a securitized property notice delivered by delivery service is 5:00 P.M. CT on a day the filing office is open to the public (even though the securitized property notice document may not yet have been accepted for filing and may be subsequently rejected).

(3) A filing may be delivered by postal service delivery to the filing office's street or mailing address. The file time for a securitized property notice document delivered by this method is 5:00 P.M. CT on a day the filing office is open to the public (even though the securitized property notice document may not yet have been accepted for filing and may be subsequently rejected).

(4) A filing may be delivered by facsimile transmission to the filing office's fax filing telephone number. The file time for a securitized property notice document delivered by this method is when delivery of the securitized property notice is accepted by the filing office (even though the securitized property notice document may not yet have been accepted for filing and may be subsequently rejected and may indicate that the securitized property notice document was received at an earlier time). Filings delivered by facsimile transmission must be accompanied by payment of the filing fees by credit card.

§94.4. Approved Forms.

(a) Forms prescribed and disseminated by the filing officer for use in filing securitized property notices will be acceptable by the filing office.

(b) Forms prescribed and disseminated by the filing officer for use in requesting a search of the records maintained in the computer system used to index Uniform Commercial Code financing statement records and other lien records will be acceptable by the filing office

to request a search of securitized property notices and for obtaining certificates or copies of securitized property notices.

§94.5. Fees.

(a) The fee for filing and indexing a securitized property notice document of one or two pages communicated on paper or in a paper-based format (including faxes) is pursuant to §9.525(a)(1), Texas Business and Commerce Code. If there are additional pages, the fee is pursuant to §9.525(a)(2), Texas Business and Commerce Code.

(b) The fee for processing an information request which was communicated on paper or in a paper-based format is pursuant to §9.525(d)(1), Texas Business and Commerce Code. The fee for processing an information request which was communicated by XML is $3 and by SOSDirect is $15. The fee for responding to a web inquiry which was communicated by SOSDirect is $1.

(c) The fee for certified copies of securitized property notice filings made in connection with an information request is pursuant to §405.031, Texas Government Code.

(d) The fee for uncertified copies of records is pursuant to §552.261, Texas Government Code, and §71.8 of this title (relating to Fees for Copies of Public Information).

§94.6. Methods of Payment.

Filing fees and fees for public records services may be paid by the methods as described in §95.106 of this title (relating to Methods of Payment).

§94.7. Overpayment and Underpayment Policies.

(a) Overpayment. The filing officer shall refund the amount of an overpayment of $5 or more to the Remitter. The filing officer shall accrue the amount of the overpayment to the prepaid account if the overpayment is less than $5. This amount may be refunded only upon the written request of the Remitter.

(b) Underpayment. Upon receipt of a document with an insufficient fee, the filing officer shall return the document and fee to the Remitter as provided in §94.41 of this chapter (relating to Procedure upon Refusal).

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

Filed with the Office of the Secretary of State on January 14, 2022.

TRD-202200152
Adam Bitter
General Counsel
Office of the Secretary of State
Effective date: January 14, 2022
Expiration date: May 13, 2022
For further information, please call: (512) 463-5770

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SUBCHAPTER B. DUTIES OF FILING OFFICER

1 TAC §§94.20 - 94.22

The Office of the Secretary of State (SOS) adopts, on an emergency basis, new Chapter 94, Subchapter B, Duties of the Filing Officer, §§94.20 - 94.22, concerning electric cooperative securitized property notice filings filed with the SOS.

The SOS is adopting these emergency rules to implement the new filing responsibilities imposed on the SOS under the provisions of Senate Bill 1580, enacted by the 87th Legislature, Regular Session (codified at Texas Utilities Code §41.159).

In accordance with Texas Government Code §2001.034, the emergency rules will be in effect for up to 120 days and may be renewed once for not longer than 60 days. During this time, the SOS intends to propose these rules or similar rules for adoption on a permanent basis under the standard rulemaking process and will consider any additional action necessary in the event unforeseen issues arise with the adopted emergency rules.

Background and Justification for the emergency rulemaking

Senate Bill 1580 (87th Leg., R.S.) provides electric cooperatives with the option of using long-term securitized financing to recover the extraordinary costs and expenses incurred due to Winter Storm Uri, which impacted the State of Texas in February 2021. The bill took immediate effect on June 18, 2021, upon signing by the Governor.

As enacted by SB 1580, Texas Utilities Code §41.159 requires that the transfer, sale, assignment, or lien and security interest, as applicable, attach automatically from the time that value is received for the securitized bonds and, on perfection through the filing of a notice with the Secretary of State, be a continuously perfected transfer, sale, and assignment, or lien and security interest, as applicable, in the securitized property. Texas Utilities Code §41.159(d) requires the SOS to establish and maintain a system of records for the filing of securitized property notices and expressly authorizes the SOS to prescribe the rules for electric cooperative securitized property notice filings. The purpose of these emergency rules is to provide electric cooperatives and financing parties with the information needed to submit notice filings relating to a security interest in securitized property to the filing system established by the SOS.

Pursuant to Texas Government Code §2001.034, the new rules are adopted on an emergency basis and with an expedited effective date because state law requires adoption of these rules on fewer than 30 days' notice.

Section-by-Section Summary

Subchapter B contains general provisions relating to the duties and responsibilities of the filing officer with respect to the filing of a securitized property notice. New §94.20 describes the ministerial role of the filing officer with respect to securitized property notice filings. New §94.21 sets forth various duties of the filing officer. New §94.22 describes the types of forms the filing officer will prescribe and publicly disseminate.

Statutory Authority

The emergency rules are adopted under Texas Utilities Code §41.159(d) and Texas Government Code §2001.034. Texas Utilities Code §41.159(d) directs the SOS to implement that section by prescribing the rules for electric cooperative securitized property notice filings. Texas Government Code §2001.034 authorizes a state agency to adopt emergency rules without prior notice or hearing if the agency finds that a requirement of state law requires adoption of a rule on fewer than 30 days' notice.

The statutory provisions affected by the emergency rules are those set forth in Chapter 41 of the Texas Utilities Code, as amended by SB 1580. No other statute, code, or article is affected by the emergency rules.

§94.20. Role of Filing Officer.

The duties and responsibilities of the filing officer with respect to the administration of the filing officer's UCC information management system under §41.159 of the Texas Utilities Code are ministerial. In accepting for filing or refusing to file a securitized property notice pursuant to these rules, the filing officer does not determine the legal sufficiency or insufficiency of a document, determine that a security interest in the securitized property exists or does not exist, determine that information in the document is correct or incorrect, in whole or in part, or create a presumption that information in the document is correct or incorrect, in whole or in part.

§94.21. Duties of the Filing Officer.

(a) Provided that there is no ground to refuse acceptance of a securitized property notice under §94.40 of this chapter (relating to Grounds for Refusal of a Securitized Property Notice), a securitized property notice is filed upon receipt by the filing officer with the filing fee and the filing officer shall assign a file number to the securitized property notice document and index it in the UCC information management system.

(b) The filing officer will maintain a unique computer index of securitized property notices along with financing statements and other security interest notice filings by assignment of a unique identifying transaction code ("E").

(c) The filing officer will mark each securitized property notice with a file number as described in §94.1 of this chapter (relating to Definitions). Identification of the securitized property notice is stamped on written securitized property notice documents or otherwise permanently associated with the record maintained for securitized property notice documents in the UCC information management system. A record is created in the UCC information management system for each securitized property notice and all information comprising such record is maintained in such system. Such record is identified by the same information assigned to the securitized property notice. A document other than an initial securitized property notice is identified by a unique file number assigned by the filing officer. In the UCC information management system, records of all securitized property notices, other than initial securitized property notices, are linked to the record of their related initial securitized property notice.

(d) If the filing officer has received a duplicate copy of a securitized property notice for such purpose, the filing officer will mark the duplicate copy with the date and time of filing and return the duplicate copy to the remitter.

(e) The filing officer will make any securitized property notice and each subsequent related filing or microfilm or other photographic or electronic copy of such documents available for public inspection.

§94.22. Forms.

The filing officer will prescribe and disseminate forms to the public, which will include the following:

(1) SPN 1 for use in filing a securitized property notice;

(2) SPN 1 Ad for use as an addendum and only in conjunction with the filing of an SPN 1;

(3) SPN 3 for use in filing an amendment, assignment, release, retransfer, or termination of interest in a securitized property notice;

(4) Any established fee schedule; and

(5) Any other forms as may be necessary to effectively and efficiently administer the filing officer's duties under §41.159 of the Texas Utilities Code and these rules.

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

Filed with the Office of the Secretary of State on January 14, 2022.

TRD-202200153
Adam Bitter
General Counsel
Office of the Secretary of State
Effective date: January 14, 2022
Expiration date: May 13, 2022
For further information, please call: (512) 463-5770

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SUBCHAPTER C. STANDARDS OF REVIEW AND INDEXING

1 TAC §§94.40 - 94.44

The Office of the Secretary of State (SOS) adopts, on an emergency basis, new Chapter 94, Subchapter C, Standards of Review and Indexing, §§94.40 - 94.44, concerning electric cooperative securitized property notice filings filed with the SOS.

The SOS is adopting these emergency rules to implement the new filing responsibilities imposed on the SOS under the provisions of Senate Bill 1580, enacted by the 87th Legislature, Regular Session (codified at Texas Utilities Code §41.159).

In accordance with Texas Government Code §2001.034, the emergency rules will be in effect for up to 120 days and may be renewed once for not longer than 60 days. During this time, the SOS intends to propose these rules or similar rules for adoption on a permanent basis under the standard rulemaking process and will consider any additional action necessary in the event unforeseen issues arise with the adopted emergency rules.

Background and Justification for the emergency rulemaking

Senate Bill 1580 (87th Leg., R.S.) provides electric cooperatives with the option of using long-term securitized financing to recover the extraordinary costs and expenses incurred due to Winter Storm Uri, which impacted the State of Texas in February 2021. The bill took immediate effect on June 18, 2021, upon signing by the Governor.

As enacted by SB 1580, Texas Utilities Code §41.159 requires that the transfer, sale, assignment, or lien and security interest, as applicable, attach automatically from the time that value is received for the securitized bonds and, on perfection through the filing of a notice with the Secretary of State, be a continuously perfected transfer, sale, and assignment, or lien and security interest, as applicable, in the securitized property. Texas Utilities Code §41.159(d) requires the SOS to establish and maintain a system of records for the filing of securitized property notices and expressly authorizes the SOS to prescribe the rules for electric cooperative securitized property notice filings. The purpose of these emergency rules is to provide electric cooperatives and financing parties with the information needed to submit notice filings relating to a security interest in securitized property to the filing system established by the SOS.

Pursuant to Texas Government Code §2001.034, the new rules are adopted on an emergency basis and with an expedited effective date because state law requires adoption of these rules on fewer than 30 days' notice.

Section-by-Section Summary

Subchapter C contains provisions relating to the standards of review and indexing of a securitized property notice. New §94.40 sets forth the sole grounds for refusal of a securitized property notice filing. New §94.41 outlines the filing officer's procedure upon refusal of a securitized property notice filing. New §94.42 sets forth the minimal information needed for indexing a securitized property notice filing. New §94.43 clarifies that the name of a grantor or assignor who is not an individual should be the full legal name of the grantor or assignor of record. New §94.44 sets forth the terms used in the information management system of the filing officer to identify the parties named in a securitized property notice.

Statutory Authority

The emergency rules are adopted under Texas Utilities Code §41.159(d) and Texas Government Code §2001.034. Texas Utilities Code §41.159(d) directs the SOS to implement that section by prescribing the rules for electric cooperative securitized property notice filings. Texas Government Code §2001.034 authorizes a state agency to adopt emergency rules without prior notice or hearing if the agency finds that a requirement of state law requires adoption of a rule on fewer than 30 days notice.

The statutory provisions affected by the emergency rules are those set forth in Chapter 41 of the Texas Utilities Code, as amended by SB 1580. No other statute, code, or article is affected by the emergency rules.

§94.40. Grounds for Refusal of a Securitized Property Notice.

The following grounds are the sole grounds for the filing officer's refusal to accept a securitized property notice for filing. As used herein, the term "legible" is not limited to refer only to written expressions on paper: it requires a machine-readable transmission for electronic transmissions and an otherwise readily decipherable transmission in other cases.

(1) Grantor or Assignor Name and Address. An initial securitized property notice, or an amendment that purports to add a grantor or assignor under §94.42 of this subchapter (relating to Information Required for Indexing), shall be refused if the document fails to include a legible grantor or assignor name and address for a grantor, in the case of an initial securitized property notice, or for a grantor or assignor purporting to be added in the case of such an amendment. If the document contains more than one grantor or assignor name or address and some names or addresses are missing or illegible, the filing officer shall index the legible name and address pairings, and provide a notice to the submitter containing the file number of the document, identification of the grantor or assignor name(s) that was (were) indexed, and a statement that grantors or assignors with illegible or missing names or addresses were not indexed.

(2) Financing Party or Assignee Name and Address. An initial securitized property notice, an amendment purporting to add a financing party or assignee of record, or an assignment, that is required to name a financing party or assignee of record under §94.42 of this subchapter shall be refused if the document fails to include a legible financing party or assignee of record name and address if the document contains more than one financing party or assignee name or address and some names or addresses are missing or illegible, the filing officer shall refuse the securitized property notice document.

(3) Lack of Identification of Initial Securitized Property Notice Filing. A securitized property notice, other than an initial securitized property notice, shall be refused if the document does not provide a file number of a securitized property notice in the UCC information management system that has not lapsed.

(4) Other Required Information. A securitized property notice that does not identify itself as an original securitized property notice or another type of securitized property notice shall be refused.

(5) Fee. A document shall be refused if the document is accompanied by less than the full filing fee tendered by a method described in §94.6 of this chapter (relating to Methods of Payment).

§94.41. Procedure upon Refusal.

(a) If the filing officer finds grounds under §94.40 of this subchapter (relating to Grounds for Refusal of a Securitized Property Notice) to refuse acceptance of a securitized property notice, the filing officer shall return the document, if written, to the Remitter and may return or refund the filing fee. A refund may be delivered with the returned document or under separate cover.

(b) The document shall be accompanied by a notice that contains the date and time the document would have been filed had it been accepted for filing (unless such date and time are stamped on the document); and a brief description of the reason for refusal to accept the document for purposes of filing and that cites the provision of §94.40 of this subchapter that establishes the ground for refusal. The notice shall be sent to the Remitter, whether or not the document or another writing contains a request that an acknowledgment copy be sent to a financing party or another person. The notice shall be sent no later than the second business day after the filing office receives the document, unless circumstances beyond the filing officer's control create a delay in the operations of the filing office as described in §9.524 of the Texas Business and Commerce Code.

§94.42. Information Required for Indexing.

(a) Original Securitized Property Notice. An original securitized property notice must contain the following information for the purpose of maintaining an index of securitized property notice information:

(1) Identification of the document as a securitized property notice;

(2) The name and address of the grantor or assignor of record; and

(3) The name and address of the financing party or assignee of record.

(b) Notice of Amendment of a Securitized Property Notice. An amendment of a filed securitized property notice must contain the following information for the purpose of maintaining an index of securitized property notice information:

(1) Identification of the document as a notice of amendment to a securitized property notice;

(2) Identification of the initial securitized property notice to be amended by the notice; and

(3) The name and address of the financing party or assignee of record whose interest is affected by the notice of amendment.

(c) Notice of Assignment of Interest in Securitized Property. A notice of assignment of interest in securitized property must contain the following information for the purpose of maintaining an index of securitized property information.

(1) Identification of the document as a notice of assignment.

(2) A designation whether the assignment is a full or partial assignment of rights under the securitized property notice. The designation shall apply only to the financing party or assignee of record affected by the notice of assignment.

(3) Identification of the initial securitized property notice to which the notice of assignment relates.

(4) The name and address of each financing party or assignee of record whose interest is to be assigned.

(5) The name and address of each transferee.

(d) Termination Notice. A termination notice must contain the following information for the purpose of maintaining an index of securitized property information:

(1) Identification of the document as a termination notice;

(2) Identification of the initial securitized property notice to which the termination notice relates; and

(3) The name and address of the financing party whose interest is terminated.

(e) Notice of Release or Retransfer of Interest in Securitized Property. A notice of release or retransfer of interest in securitized property must contain the following information for the purpose of maintaining an index of securitized property notice information:

(1) Identification of the document as a notice of release or retransfer of securitized property;

(2) Identification of the initial securitized property notice to which the notice of release or retransfer relates; and

(3) The name and address of the financing party or assignee of record whose interest is affected by the release or retransfer.

(f) Other Amendments. A document intended to reflect an amendment to a filed securitized property notice must contain the following information for the purpose of maintaining an index of securitized property notice information:

(1) Identification of the document as an amendment to a filed securitized property notice;

(2) Identification of the initial securitized property notice to which the amendment relates; and

(3) The name and address of the financing party or assignee of record whose interest is affected by the amendment.

§94.43. Name of Grantor or Assignor.

(a) In the case of a grantor or assignor who is not an individual, the name of the grantor or assignor to be provided is:

(1) the entity name of the grantor or assignor, as such name is shown on the public records in the jurisdiction of organization in the case of persons who are required to register in the public records in order to organize; or

(2) the entity name of the grantor or assignor as such name is shown on the organizational documents of the person in the case of other persons formed under written agreements that are not required to register in the public records in order to organize.

(b) A securitized property notice that identifies the name of the grantor or assignor as provided by subsection (a) of this section does not need to include any trade name, assumed name, or other names, or names of partners, members, or associates of the grantor or the assignor.

§94.44. Identification and Indexing of Parties.

(a) The name and address of a grantor or assignor of record of a securitized property notice is identified, indexed, stored and retrieved by use of the term "debtor" in the UCC information management system maintained by the filing officer.

(b) The name and address of each financing party or assignee of record of a securitized property notice is identified, indexed, stored, and retrieved by use of the term "secured party" in the UCC information management system maintained by the filing officer.

(c) The nomenclature used in subsections (a) and (b) of this section is solely for the convenience of the filing officer and shall not be a factor in determining whether a particular assignment should be treated as a "true sale" or as a secured financing transaction.

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

Filed with the Office of the Secretary of State on January 14, 2022.

TRD-202200154
Adam Bitter
General Counsel
Office of the Secretary of State
Effective date: January 14, 2022
Expiration date: May 13, 2022
For further information, please call: (512) 463-5770

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SUBCHAPTER D. FILINGS

1 TAC §§94.60 - 94.66

The Office of the Secretary of State (SOS) adopts, on an emergency basis, new Chapter 94, Subchapter D, Filings, §§94.60 - 94.66, concerning electric cooperative securitized property notice filings filed with the SOS.

The SOS is adopting these emergency rules to implement the new filing responsibilities imposed on the SOS under the provisions of Senate Bill 1580, enacted by the 87th Legislature, Regular Session (codified at Texas Utilities Code §41.159).

In accordance with Texas Government Code §2001.034, the emergency rules will be in effect for up to 120 days and may be renewed once for not longer than 60 days. During this time, the SOS intends to propose these rules or similar rules for adoption on a permanent basis under the standard rulemaking process and will consider any additional action necessary in the event unforeseen issues arise with the adopted emergency rules.

Background and Justification for the emergency rulemaking

Senate Bill 1580 (87th Leg., R.S.) provides electric cooperatives with the option of using long-term securitized financing to recover the extraordinary costs and expenses incurred due to Winter Storm Uri, which impacted the State of Texas in February 2021. The bill took immediate effect on June 18, 2021, upon signing by the Governor.

As enacted by SB 1580, Texas Utilities Code §41.159 requires that the transfer, sale, assignment, or lien and security interest, as applicable, attach automatically from the time that value is received for the securitized bonds and, on perfection through the filing of a notice with the Secretary of State, be a continuously

perfected transfer, sale, and assignment, or lien and security interest, as applicable, in the securitized property. Texas Utilities Code §41.159(d) requires the SOS to establish and maintain a system of records for the filing of securitized property notices and expressly authorizes the SOS to prescribe the rules for electric cooperative securitized property notice filings. The purpose of these emergency rules is to provide electric cooperatives and financing parties with the information needed to submit notice filings relating to a security interest in securitized property to the filing system established by the SOS.

Pursuant to Texas Government Code §2001.034, the new rules are adopted on an emergency basis and with an expedited effective date because state law requires adoption of these rules on fewer than 30 days' notice.

Section-by-Section Summary

Subchapter D contains general provisions relating to the filing of a securitized property notice and all amendments to a securitized property notice. New §94.60 describes when a filing is made. New §94.61 sets forth the information contained in a securitized property notice. New §94.62 provides that a securitized property notice may be amended to reflect a change to information relating to such notice. New §94.63 relates to the assignment of all or a part of the rights of a financing party or assignee of record under a securitized property notice and sets forth the information to be contained in the notice of assignment. New §94.64 provides that a financing party may release or retransfer all or a part of its interest in securitized property and sets forth the information to be contained in the notice evidencing such release or retransfer. New §94.65 relates to the information to be contained in a notice of termination of interest in securitized property. New §94.66 provides that a securitized property notice is sufficient even if the notice contains minor errors that are not seriously misleading.

Statutory Authority

The emergency rules are adopted under Texas Utilities Code §41.159(d) and Texas Government Code §2001.034. Texas Utilities Code §41.159(d) directs the SOS to implement that section by prescribing the rules for electric cooperative securitized property notice filings. Texas Government Code §2001.034 authorizes a state agency to adopt emergency rules without prior notice or hearing if the agency finds that a requirement of state law requires adoption of a rule on fewer than 30 days' notice.

The statutory provisions affected by the emergency rules are those set forth in Chapter 41 of the Texas Utilities Code, as amended by SB 1580. No other statute, code, or article is affected by the emergency rules.

§94.60. What Constitutes a Filing, Duration, and Filing Sequence.

(a) A filing under §41.159 of the Texas Utilities Code is made when:

(1) a securitized property notice is presented to and received by the filing officer; and

(2) the filing officer indicates a file number and filing date and filing time thereon.

(b) Except to the extent amended, assigned, or released pursuant to §§94.62 - 94.65 of this subchapter (relating to Filings), a security interest remains effective until terminated pursuant to §94.65 of this subchapter.

(c) A securitized property notice may be filed before a security interest is made or a security interest otherwise attaches or before a transfer of an interest in securitized property to an assignee becomes effective.

§94.61. Securitized Property Notice.

(a) The filing officer has promulgated a form for the filing of a securitized property notice. A filing party may use the form or submit a document identified as a securitized property notice that contains:

(1) The name of the grantor or assignor;

(2) The address of the grantor or assignor;

(3) The name of the financing party or assignee;

(4) The address of the financing party or assignee from which information concerning the security interest or transfer of an interest in securitized property may be obtained;

(5) A statement setting forth whether all or a portion of the recovery permitted under the financing order (from which the securitized property is derived) is covered by the securitized property notice. If the portion covered by a securitized property notice relates to less than all of the financing order, the portion or the amount thereof to which the securitized property notice relates shall be stated; and

(6) A statement of whether the securitized property notice is intended to be filed to perfect a security interest in securitized property or to give notice of a transfer of an interest in securitized property to an assignee.

(b) Effect of Possible Recharacterization. If a filed securitized property notice is intended to give notice of a transfer of an interest in securitized property to an assignee, and the transfer is thereafter held for any reason or purpose to constitute the grant of a security interest in such securitized property, the filed securitized property notice will be considered a filing with respect to that security interest, for purposes of these regulations, from and as of the filing date of the original securitized property notice, without the necessity of any amendment or other action by the parties with respect thereto.

§94.62. Amendments to a Securitized Property Notice.

A securitized property notice may be amended to change information relating to a filed securitized property notice. An amendment to a securitized property notice includes an assignment, release, retransfer, or termination of interest in a securitized property notice. Except as more specifically provided in §§94.63 - 94.65 of this subchapter (relating to Filings), an amendment to a securitized property notice may be made on the form promulgated by the filing officer for evidencing a change to a securitized property notice or by a document that identifies itself as an amendment to a filed securitized property notice and contains:

(1) Identification of the document as a notice of amendment to a securitized property notice;

(2) Identification of the initial securitized property notice to be amended by the notice;

(3) The name and address of the financing party or assignee of record whose interest is affected by the amendment;

(4) The name and address of the grantor or assignor; and

(5) A description of the amendment to the securitized property notice.

§94.63. Assignment.

(a) Disclosed in Securitized Property Notice. An initial securitized property notice submitted by the financing party or assignee of record may disclose an assignment of a security interest of a financing party or of the interest of an assignee in the securitized property described in the securitized property notice by indicating the name and address of the transferee.

(b) Separate Notice of Assignment. A financing party or assignee of record may assign all or a part of its rights under a securitized property notice by submitting a form for evidencing an amendment to a securitized property notice or by submitting a copy of the assignment or a document identified as a notice of assignment that contains:

(1) The name and address of the financing party or assignee of record;

(2) The file number and the filing date of the securitized property notice;

(3) The name and address of the transferee; and

(4) A description of the interest in the securitized property being assigned and a statement whether the interest represents an assignment of all or part of the rights of the financing party or assignee of record under the securitized property notice.

(c) Status of Transferee. After the filing of an assignment under this section, the transferee becomes the financing party or assignee of record as to the interest assigned.

§94.64. Release or Retransfer of Interest in Securitized Property.

A financing party of record may release, and an assignee of record may retransfer, all or a part of its interest in securitized property described in a filed securitized property notice. The filing officer has promulgated a form for an amendment to a securitized property notice that may be used to indicate a release or retransfer of interest in securitized property. A filing party may use the form or submit a document identified as a notice of release or retransfer that contains:

(1) A description of the securitized property being released or retransfered;

(2) The name and address of the grantor or assignor;

(3) The name and address of the financing party or assignee of record; and

(4) The file number of the securitized property notice to which the release or retransfer relates.

§94.65. Termination Notice.

The filing officer has promulgated a form for an amendment to a securitized property notice that may be used to indicate a termination of a security interest of a financing party. A filing party may use the form or submit a document identified as a termination notice that contains:

(1) The file number of the securitized property notice issued by the filing officer;

(2) The name and address of the financing party of record whose interest is terminated; and

(3) A statement that the financing party of record no longer claims a security interest in the securitized property described in the original securitized property notice.

§94.66. Minor Errors.

A securitized property notice, substantially complying with the requirements of this chapter, will be sufficient even if it contains minor errors that are not seriously misleading.

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

Filed with the Office of the Secretary of State on January 14, 2022.

TRD-202200155
Adam Bitter
General Counsel
Office of the Secretary of State
Effective date: January 14, 2022
Expiration date: May 13, 2022
For further information, please call: (512) 463-5770

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SUBCHAPTER E. SEARCH AND INFORMATION REQUESTS

1 TAC §§94.80 - 94.82

The Office of the Secretary of State (SOS) adopts, on an emergency basis, new Chapter 94, Subchapter E, Search and Information Requests, §§94.80 - 94.82, concerning electric cooperative securitized property notice filings filed with the SOS.

The SOS is adopting these emergency rules to implement the new filing responsibilities imposed on the SOS under the provisions of Senate Bill 1580, enacted by the 87th Legislature, Regular Session (codified at Texas Utilities Code §41.159).

In accordance with Texas Government Code §2001.034, the emergency rules will be in effect for up to 120 days and may be renewed once for not longer than 60 days. During this time, the SOS intends to propose these rules or similar rules for adoption on a permanent basis under the standard rulemaking process and will consider any additional action necessary in the event unforeseen issues arise with the adopted emergency rules.

Background and Justification for the emergency rulemaking

Senate Bill 1580 (87th Leg., R.S.) provides electric cooperatives with the option of using long-term securitized financing to recover the extraordinary costs and expenses incurred due to Winter Storm Uri, which impacted the State of Texas in February 2021. The bill took immediate effect on June 18, 2021, upon signing by the Governor.

As enacted by SB 1580, Texas Utilities Code §41.159 requires that the transfer, sale, assignment, or lien and security interest, as applicable, attach automatically from the time that value is received for the securitized bonds and, on perfection through the filing of a notice with the Secretary of State, be a continuously perfected transfer, sale, and assignment, or lien and security interest, as applicable, in the securitized property. Texas Utilities Code §41.159(d) requires the SOS to establish and maintain a system of records for the filing of securitized property notices and expressly authorizes the SOS to prescribe the rules for electric cooperative securitized property notice filings. The purpose of these emergency rules is to provide electric cooperatives and financing parties with the information needed to submit notice filings relating to a security interest in securitized property to the filing system established by the SOS.

Pursuant to Texas Government Code §2001.034, the new rules are adopted on an emergency basis and with an expedited effective date because state law requires adoption of these rules on fewer than 30 days' notice.

Section-by-Section Summary

Subchapter E contains provisions relating to requests for electric cooperative securitized property notice information made to the SOS. New §94.80 sets forth the information to be contained

in a search request for securitized property notice information. New §94.81 provides that the filing officer will issue a certificate regarding the results of the search request and, upon request, will provide copies of the documents described. New §94.82 indicates that the standardized search logic applied to requests for information on Uniform Commercial Code documents will be applied to requests for information on securitized property notices.

Statutory Authority

The emergency rules are adopted under Texas Utilities Code §41.159(d) and Texas Government Code §2001.034. Texas Utilities Code §41.159(d) directs the SOS to implement that section by prescribing the rules for electric cooperative securitized property notice filings. Texas Government Code §2001.034 authorizes a state agency to adopt emergency rules without prior notice or hearing if the agency finds that a requirement of state law requires adoption of a rule on fewer than 30 days' notice.

The statutory provisions affected by the emergency rules are those set forth in Chapter 41 of the Texas Utilities Code, as amended by SB 1580. No other statute, code, or article is affected by the emergency rules.

§94.80. Search Requests.

(a) A search request for securitized property notice information may be made on a form promulgated by the filing officer for requesting information maintained in the UCC information management system or by submission of a request that contains:

(1) the full correct name of a grantor or assignor to be searched, or the name variant to be searched, and must specify whether the grantor or assignor is an individual or an organization;

(2) the name and address of the requesting party to whom the search report is to be sent; and

(3) the appropriate fee payable by a method described in §94.5 of this chapter (relating to Fees).

(b) A search request may also contain the following additional information.

(1) A request that copies of documents referred to in the report be included with the report sent to the requestor. The request may limit the copies requested by limiting them to the city of the grantor or assignor, the date of filing or the identity of the financing party of record on the securitized property notices located by the related search.

(2) Instructions on the mode of delivery requested, if other than by ordinary mail, will be honored if the requested mode is made available by the filing office.

§94.81. Furnishing Certificates and Copies.

(a) Upon receipt of a request in compliance with §94.80 of this subchapter (relating to Search Requests), the filing officer will issue a report showing whether there is on file, on the date and time stated therein, a securitized property notice naming a particular grantor or assignor and a notice of assignment, and if there is, giving the date and time of filing of each notice and the names and addresses of each financing party or assignee named therein.

(b) A report will also show whether there is on file on the date and time stated therein, a notice affecting securitized property of the grantor or assignor, and if there is, giving the date and time of filing of each notice.

(c) Upon request, the filing officer will furnish, upon payment of any requisite fees, a copy of a filed securitized property notice, or notice affecting securitized property of a grantor or assignor, or a termination notice, notice of assignment, notice of release, or notice of retransfer respecting a securitized property notice.

§94.82. Rules Applied to Search Requests.

A search request will be processed using the name in the exact form it is submitted. Search results are created by applying the standardized search logic described in §95.503 of this title (relating to Search Methodology) to the name presented to the filing officer by the person requesting the search.

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

Filed with the Office of the Secretary of State on January 14, 2022.

TRD-202200156
Adam Bitter
General Counsel
Office of the Secretary of State
Effective date: January 14, 2022
Expiration date: May 13, 2022
For further information, please call: (512) 463-5770

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

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

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.5

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

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

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

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

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

1. The repeal does not create or eliminate a government program but relates to the handling of waivers in the case of a declared disaster.

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

3. The repeal does not require additional future legislative appropriations.

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

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

6. The repeal will expand the applicability of an existing regulation. The current rule limits its applicability to federal waivers and federally declared disasters. The proposed rule expands this applicability to state waivers and state declared disasters as well.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability as the rule itself is not applicable to individuals, but to state rules and procedures.

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

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.

The proposed repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).

Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed and new sections would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT.

The public comment period will be held January 28, 2022, to February 28, 2022, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule

Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by email to bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, February 28, 2022.

STATUTORY AUTHORITY.

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

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

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

Filed with the Office of the Secretary of State on January 14, 2022.

TRD-202200119
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: February 27, 2022
For further information, please call: (512) 475-3959

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10 TAC §1.5

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

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

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

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

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

1. The new section does not create or eliminate a government program but relates to the handling of waivers in the case of a declared disaster.

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

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

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

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

6. The new section will expand the applicability of an existing regulation. The current rule limits its applicability to federal waivers and federally declared disasters. The proposed rule expands this applicability to state waivers and state declared disasters as well.

7. The new section will not increase or decrease the number of individuals subject to the rule's applicability as the rule itself is not applicable to individuals, but to state rules and procedures.

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

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.

The proposed new section does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).

Mr. Wilkinson has determined that, for each year of the first five years the proposed new section is in effect, the public benefit anticipated as a result of the new section would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the new section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson also has determined that for each year of the first five years the proposed new section are in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT.

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

STATUTORY AUTHORITY.

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

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

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

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

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

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

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

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

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

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

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

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

Filed with the Office of the Secretary of State on January 14, 2022.

TRD-202200118
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: February 27, 2022
For further information, please call: (512) 475-3959

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CHAPTER 8. PROJECT RENTAL ASSISTANCE PROGRAM RULE

10 TAC §§8.1 - 8.7

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 8, Project Rental Assistance Program Rule, §§8.1 - 8.7. The purpose of the proposed repeal is to provide 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 Section 811 PRA 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 workload 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 Section 811 Program.

7. The proposed repeal will not increase or decrease the number of individuals subject to the rules' 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 811 Program. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held January 28, 2022, through February 28, 2022, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Spencer Duran, Director of Section 811 Program, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email spencer.duran@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time, February 28, 2022.

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

§8.1. Purpose.

§8.2. Definitions.

§8.3. Participation as a Proposed Development.

§8.4. Qualification Requirements for Existing Developments.

§8.5. List of Qualified Existing Developments.

§8.6. Disposition of Conflicts with other Department Rules.

§8.7. Program Regulations and 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 January 14, 2022.

TRD-202200124
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: February 27, 2022
For further information, please call: (512) 475-3959

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10 TAC §§8.1 - 8.6

The Texas Department of Housing and Community Affairs (the Department) proposed new 10 TAC Chapter 8, Project Rental Assistance Program Rule, §§8.1 - 8.6. The purpose of the proposed action is to provide clarification of the existing rules 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 new rules would be in effect, the rules do not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the Section 811 PRA Program.

2. The proposed new rules do not require a change in work that would require the creation of new employee positions, nor are the proposed new rules significant enough to reduce workload to a degree that any existing employee positions are eliminated.

3. The proposed new rules do not require additional future legislative appropriations.

4. The proposed new rules do not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The proposed new rules are not creating a new regulation, except that it is replacing the existing rules 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 Section 811 Program.

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

8. The new rules 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 new rules and determined that the new rules 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 rules do not contemplate nor authorize a taking by the Department; therefore no Takings Impact Assessment is required.

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

The Department has evaluated the new rules as to their possible effects on local economies and has determined that for the first five years the new rules 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 rules.

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 rules are in effect, the public benefit anticipated as a result of the new rules would be increased clarity and improved access to the 811 Program. There will not be economic costs to individuals required to comply with the new rules.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson also has determined that for each year of the first five years the new rules are in effect, enforcing or administering the rules does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held January 28, 2022, through February 28, 2022, to receive input on the proposed new rules. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Spencer Duran, Director of Section 811 Program, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email spencer.duran@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time February 28, 2022.

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

§8.1. Purpose.

The purpose of the Section 811 Project Rental Assistance Program ("Section 811 PRA Program") is to provide federally funded project-based rental assistance to participating multifamily properties on behalf of extremely low-income persons with disabilities linked with long term services provided through a formalized partnership and other state of Texas agencies that provide health and human services.

§8.2. Definitions.

Terms defined in this chapter apply to the 811 PRA Program administered by the Department. Any capitalized terms not specifically mentioned in this section or any section referenced in this document shall have the meaning ascribed to them in or for the purposes of the Program Requirements or in Chapters 1, 2, 10, or 11 of the Texas Administrative Code, as applicable.

(1) Assisted Units--rental units made available to or occupied by an Eligible Tenant in Eligible Multifamily Properties receiving assistance under 42 U.S.C. §8013(b)(3)(A).

(2) Contract Rent--the total amount of rent specified in the Rental Assistance Contract (RAC) as payable to the Owner for the Assisted Unit.

(3) Cooperative Agreement--the Section 811 Project Rental Assistance Program Cooperative Agreement including all exhibits and attachments thereto, by and between the Department as "Grantee" and HUD, entered into as a condition to and in consideration of the Department's participation in the Section 811 Project Rental Assistance Program.

(4) Eligible Applicant--an Extremely Low-Income Person with Disabilities, between the ages of 18 and 61 and who meets the requirements of the Target Population, and Extremely Low Income Families, which includes at least one Person with a Disability, who is between the ages of 18 and 61 and who meets the requirements of the Target Population, at the time of admission. The Person with a Disability must be eligible for community-based, long-term care services as provided through Medicaid waivers, Medicaid state plan options, comparable state funded services or other appropriate services related to the type of disability(ies) targeted under the Inter-Agency Partnership Agreement.

(5) Eligible Families or Eligible Family--shall have the same meaning as Eligible Tenant.

(6) Eligible Multifamily Property or Eligible Multifamily Properties--any new or existing property owned by a private or public nonprofit, or for-profit entity with at least five (5) housing units and as specifically identified in a Participation Agreement.

(7) Eligible Tenant--an Eligible Applicant, also referred to as an Eligible Family, who is being referred to available Assisted Units in accordance with the Inter-Agency Partnership Agreement and for whom community-based, long-term care services are available at time of referral. Such services are voluntary; referral shall not be based on willingness to accept such services. Eligible Tenant also means an Extremely Low-Income Person with a Disability, between the ages of 18 and 61 at the time of referral, who meets the requirements of the Target Population and Extremely Low-Income Families, which includes at least one Person with a Disability, who is between the ages of 18 and 61 at the time of referral and who meets the requirements of the Target Population.

(8) Enterprise Income Verification System (EIV)--a HUD web-based application which provides Owners with employment, unemployment and Social Security benefit information for tenants participating in U.S. Department of Housing and Urban Development assisted housing programs.

(9) Existing Development--for purposes of 811 PRA Program participation, a property within the Department's Multifamily Program Applicant's portfolio that is not actively applying for multifamily award at the time, and is being considered to serve as the Eligible Multifamily Property as part of an Applicant's or an Affiliate's current multifamily application. For full applications made on or after January 1, 2018, Existing Developments do not include properties for which the only Ownership interest is through the participation of a Historically Underutilized Business, which owns less than 50% of an Existing Development.

(10) Extremely Low-Income--a household whose annual income does not exceed thirty percent (30%) of the median income for the area, as determined by HUD's Extremely-Low Income Limit: families whose incomes do not exceed the higher of The Federal Poverty Level; or 30 percent of Area Median Income, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than thirty percent (30%) of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes. HUD's income exclusions, as defined under 24 CFR §5.609 (as amended), apply in determining income eligibility and Eligible Tenant's rent.

(11) HUD--the U. S. Department of Housing and Urban Development.

(12) Inter-Agency Partnership Agreement--the Inter-Agency Partnership Agreement between TDHCA and State Health and Human Services Medicaid Agency(ies) that provides a formal structure for collaboration to participate in TDHCA's Section 811 Project Rental Assistance Program to develop permanent supportive housing for Extremely Low-Income Persons with Disabilities.

(13) Multifamily Rules--Chapters 10, 11, and/or 13 of this Title, as applicable.

(14) Owner--the entity that owns the Eligible Multifamily Property. Additionally, Owner means the entity named as such in the Property Agreement, its successors, and assigns.

(15) Owner & Property Management Manual--a set of guidelines designed to be an implementation tool for the Program, which allows the Owner and the Owner's designated property manager to better administer the Program, which also includes adherence to the "Owner Occupancy Requirements" set forth in Section IV of HUD Notice H 2013-24.

(16) Participation Agreement--(also known as Property Agreement) agreement to be executed by the Owner and the Department reflecting the agreement of participation in the Section 811 Project Rental Assistance Program with regards to a given number of assisted housing units on a certain multifamily rental housing property.

(17) Persons with Disability or Persons with Disabilities--shall have the same meaning as defined under 42 U.S.C. §8013(k)(2) and 24 CFR §891.305.

(18) Program--The Department's Section 811 Project Rental Assistance Program under Section 811 of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. §8013(b)(3)(A)), as amended by the Frank Melville Supportive Housing Investment Act of 2010 (Public Law 111-374) designed to provide permanent supportive housing for Extremely Low-Income persons with disabilities receiving long term supports and services in the community.

(19) Program Requirements--means but is not limited to: the Participation Agreement; Tex. Gov't Code Ann. Chapter 2306; the applicable state program rules under Title 10, Chapters 1, 2, and 8 of the Texas Administrative Code; the Owner & Property Management Manual; the Cooperative Agreement; HUD Notice 2013-24 issued on August 23, 2013; Section 811 of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. §8013(b)(3)(A)), as amended by the Frank Melville Supportive Housing Act of 2010 (Public Law 111-374; Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55); Notice of Funding Availability (NOFA) for Fiscal Year 2012 Section 811 Project Rental Assistance Program published on May 15, 2012; (NOFA) for Fiscal Year 2013 Section 811 Project Rental Assistance Program published on March 4, 2014, for Fiscal Year 2019 Project Rental Assistance Section 811 Program for Persons with Disabilities published on October 8, 2019, and Technical Corrections to NOFA; and all laws applicable to the Program.

(20) Proposed Development--the Development proposes to be awarded funds or an allocation as part of a Multifamily application.

(21) Rental Assistance Contract (RAC)--the HUD contract (form HUD-92235-PRA and form HUD-92237-PRA) by and between the Department and the Owner of the Eligible Multifamily Property which sets forth additional terms, conditions and duties of the Parties with respect to the Eligible Multifamily Property and the Assisted Units.

(22) Rental Assistance Payments--the payment made by the Department to Owners as provided in the Rental Assistance Contract. Where the Assisted Units are leased to an Eligible Tenant, the payment is the difference between the Contract Rent and the Tenant Rent. An additional payment is made to the Eligible Tenant when the Utility Allowance is greater than the Total Tenant Payment. A vacancy payment may be made to the Owner when an Assisted Unit is vacant, in accordance with the RAC and other Program Requirements.

(23) Target Population--the specific group or groups of Eligible Applicants and Eligible Tenants described in the Department's Inter-Agency Partnership Agreement who are intended to be solely served or to be prioritized under the Department's Program.

(24) Tenant Rent--the rent as defined in 24 CFR Part 5.

(25) Total Tenant Payment--the payment as defined in 24 CFR Part 5.

(26) Use Agreement--an agreement by and between the Department and Owner in the form prescribed by HUD under Exhibit 10 of the Cooperative Agreement (form HUD-92238-PRA) encumbering the Eligible Multifamily Property with restrictions and guidelines under the Program for operating Assisted Units during a thirty (30) year period, to be recorded in the official public property records in the county where the Eligible Multifamily Property is located.

§8.3. Participation as a Proposed Development.

(a) To the extent that Applications under Department's rules or NOFAs allow for and/or require use of a Proposed Development to participate in the 811 PRA Program, the Proposed Development must satisfy the following criteria:

(1) Unless the Development is also proposing to use any federal funding or has received federal funding after 1978, the Development must not be originally constructed before 1978;

(2) The Development Site must be located in one of the following areas: Austin-Round Rock MSA, Brownsville-Harlingen MSA, Corpus Christi MSA; Dallas-Fort Worth-Arlington MSA; El Paso MSA; Houston-The Woodlands-Sugar Land MSA; McAllen-Edinburg-Mission MSA; or San Antonio-New Braunfels MSA; and

(3) No new construction of structures shall be located in the mapped 500-year floodplain or in the 100-year floodplain according to FEMA's Flood Insurance Rate Maps (FIRM). Rehabilitation Developments that have previously received HUD funding or obtained HUD insurance do not have to follow subparagraphs (A) - (C) of this paragraph. Except for sites located in coastal high hazard areas (V Zones) or regulatory floodways, existing structures are eligible in these areas, but must meet the following requirements:

(A) The existing structures must be flood-proofed or must have the lowest habitable floor and utilities elevated above both the 500-year floodplain and the 100-year floodplain.

(B) The project must have an early warning system and evacuation plan that includes evacuation routing to areas outside of the applicable floodplains.

(C) Existing structures in the 100-year floodplain must obtain flood insurance under the National Insurance Program. No activities or projects located within the 100-year floodplain may be assisted in a community that is not participating in or has been suspended from the National Flood Insurance Program.

(b) The following requirements must be satisfied for the Units that participate in the 811 PRA Program. Failure for a Unit to meet these requirements does not make the entire Development ineligible, rather only those Units.

(1) Units in the Development are not eligible for Section 811 assistance if they have an existing or proposed project-based or an operating housing subsidy attached to them or if they have received any form of long-term operating subsidy within six months prior to receiving Section 811 Rental Assistance Payments.

(2) Units with an existing or proposed 62 or up age restriction are not eligible.

(3) Units with an existing or proposed limitation for persons with disabilities are not eligible. A Development having a preference for Persons with Disabilities, or a use restriction for Special Needs Populations, which could include but is not limited to Persons with Disabilities, is not a Unit limitation for purposes of this item.

(4) Units with an existing or proposed occupancy restriction for households at 30% or below are not eligible, unless there are no other Units at the Development.

(c) Developments cannot exceed the integration requirements of the Department and HUD. Properties that are exempt from the Department's Integrated Housing Rule at §1.15 of this title (relating to Integrated Housing Rule) are not exempt from HUD's Integration Re-

quirement maximum of 25%. The maximum number of units a Development can exclusively set aside or have an occupancy preference for persons with disabilities, including Section 811 PRA units is 25% of the total units in the Eligible Multifamily Property.

(d) Section 811 PRA units must be dispersed throughout the Development.

§8.4. Qualification Requirements for Existing Developments.

Eligible Existing Developments must meet all of the requirements in §8.3 of this chapter (relating to Participation as a Proposed Development). In addition, the Existing Development must meet the following requirements:

(1) The Development received an award (tax credit, direct loan, etc.) under a Department administered program in or after 2002, or has been otherwise approved by the Department in writing;

(2) The Development has at least 5 housing units;

(3) For Developments that were placed in service on or before January 1, 2017, the most current vacancy report as reflected in CMTS evidences that the Development maintained at least 85% physical occupancy for a period of at least 3 consecutive months.;

(4) For Developments that have received a UPCS inspection, the Development received a UPCS score of at least 80 on its most recent Department REAC inspection and all compliance issues associated with that inspection have been resolved;

(5) The Development is operating in accordance with the accessibility requirements of Section 504, the Rehabilitation Act of 1973 (29 U.S.C. Section 794), as specified under 24 C.F.R. Part 8, Subpart C, or operating under the 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" *Federal Register* 79 FR 29671; and

(6) The Development is not Transitional Housing as defined in the 2018 Uniform Multifamily Rules.

§8.5. Disposition of Conflicts with other Department Rules.

To the extent that any conflicts arise between this rule and the rules provided in Chapter 1, Administration, Chapter 2 Enforcement, Chapter 10, Uniform Multifamily Rules, Chapter 11, Qualified Allocation Plan, and Chapter 13, Multifamily Direct Loan Rule, federal requirements will first prevail, after which the requirements of the other Multifamily Rules will take precedence.

§8.6. Program Regulations and Requirements.

(a) Participation in the 811 PRA Program is encouraged and may be incentivized through the Department's Rules and NOFAs. Once committed in the Multifamily Application, a Development must not accept a fund source that would prevent it from participating in the 811 PRA Program.

(b) An Existing Development that is already participating in the 811 PRA Program is eligible to have an additional commitment of 811 PRA Units as long as the integrated housing requirements as noted in §8.3(c) of this chapter (relating to Participation as a Proposed Development) are not violated.

(c) The types (e.g., accessible, one bedroom, first floor, etc.) and the specific number of Assisted Units (e.g., units 101, 201, etc.) will be "floating" (flexible) and dependent on the needs of the Department and the availability of the Assisted Units on the Eligible Multifamily Property.

(d) Occupancy Requirements. Owner is required to follow all applicable Program Requirements including but not limited to the following occupancy requirements found in HUD Handbook 4350.3 REV-1 and Housing Notices:

(1) H 2012-06, Enterprise Income Verification (EIV) System;

(2) H 2012-26, Extension of Housing Notice 2011-25, Enterprise Income Verification (EIV) & You Brochure-Requirements for Distribution and Use;

(3) H 2012-22, Further Encouragement for O/As to Adopt Optional Smoke-Free Housing Policies;

(4) H 2012-11, State Registered Lifetime Sex Offenders in Federally Assisted Housing;

(5) H 2012-09, Supplemental Information to Application for Assistance Regarding Identification of Family Member, Friend or Other Persons or Organization Supportive of a Tenant for Occupancy in HUD Assisted Housing;

(6) H 2017-05, Violence Against Women Act (VAWA) Reauthorization Act of 2013, Additional Guidance for Multifamily Owners and Management Agents; or

(7) H 2013-24, Section 811 Project Rental Assistance (PRA) Occupancy Interim Notice.

(e) Use Agreements. The Owner must execute the Use Agreement at the execution of the RAC and comply with the following:

(1) Use Agreement must be properly recorded according to local laws in the official public records on the Eligible Multifamily Property. The Owner shall provide to the Department within 30 days of its receipt of the recorded Use Agreement, a copy of the executed, recorded Use Agreement.

(2) From the date the Property Agreement is entered into, the Owner shall not enter into any future use agreements or other subsidy programs that would diminish the number of Assisted Units that can be placed on the Eligible Multifamily Property.

(3) The Department will enforce the provisions of the Use Agreement and RAC consistent with HUD's internal control and fraud monitoring requirements.

(f) TRACS & EIV, Reporting, Tenant Certifications and Compliance.

(1) TRACS & EIV Systems. The Owner shall have appropriate methods to access the Tenant Rental Assistance Certification System (TRACS) and the EIV System. The Owner shall be responsible for ensuring Program information is entered into these systems. TRACS is the only system by which an Eligible Multifamily Property can request Project Rental Assistance payments.

(2) EIV Policies and Procedures. Upon the execution of a RAC, the Owner must submit a copy of the property's EIV Policies and Procedures to the Department for review. If deficiencies are identified, the Owner will be required to correct and resubmit to the Department until all deficiencies have been properly corrected.

(3) Outside Vendors. The Owner has the right to refuse assistance from outside vendors hired by the Department, but is still required to satisfy the Program Requirements.

(4) Tenant Certification. The Owner shall transmit Eligible Tenant's certification and recertification data, transmit voucher data, and communicate errors electronically in a form consistent with HUD reporting requirements for HUD Secure Systems.

(5) Compliance Reviews. The Department's Compliance Division will conduct a monitoring review in conjunction with the review of any other Department administered housing program layered with the Development. If the Development is layered with Housing

Tax Credits and has exceeded the 15-year Federal Compliance Period, monitoring reviews of the Program will still be conducted at least every three years.

(g) Tenant Selection and Screening.

(1) Target Population. The Department will screen Eligible Applicants for compliance with the Department's Program Target Population criteria and do an initial screening for Program Requirements. The Inter-Agency Partnership Agreement describes the specific Target Population eligible for the Department's Program. The Target Population may be revised, with HUD approval.

(2) Tenant Selection Plan. Upon the execution of the Participation Agreement, the Owner will submit the Eligible Multifamily Property's Tenant Selection Criteria, as defined by and in accordance with §10.8 of this chapter , to the Department for approval.

(3) Tenant Eligibility and Selection. The Owner is responsible for ultimate eligibility and selection of an Eligible Tenant and will comply with the following:

(A) The Owner must accept referrals of an Eligible Tenant from the Department and retain copies of all applications received. The Owner is responsible for notifying the prospective Eligible Tenant and the Department in writing regarding any denial of a prospective Eligible Tenant's application to an Eligible Multifamily Property and the reason for said denial. In the notice of denial, the Owner is responsible for notifying the Eligible Tenant of the right to dispute a denial, as outlined in HUD Handbook 4350.3. The results of the dispute must be sent to the Eligible Tenant and the Department in writing.

(B) The Owner is responsible for determining age of the qualifying member of the Eligible Families. Eligible Family member must be at least 18 years of age and under the age of 62.

(C) The Owner is responsible for criminal background screening as required by HUD Handbook 4350.3.

(D) Verification of Income, Assets, and Deductions. The Owner is responsible for determining income of Eligible Families. The Owner shall verify income through the Enterprise Income Verification (EIV) System per HUD Handbook 4350.3 and HUD Notices. The Owner must certify an Eligible Tenant and Eligible Families at least annually and verify their income. Use of the EIV system as third party verification is not acceptable for the Housing Tax Credit or Multifamily Direct Loan Program.

(h) Rental Assistance Contracts.

(1) Applicability. If requested by the Department, the Owner shall enter into a RAC. Not all properties with an Owner Participation Agreement will have a RAC, but when notified by the Department, the Eligible Multifamily Property must enter into a RAC(s) and begin serving Eligible Applicants.

(2) Notice. The Department will provide written notice to the Owner if and when it intends to enter into a RAC with the Owner.

(3) Assisted Units. The Department will determine the number of Units (up to the maximum listed in the Property Agreement) to place in the RAC(s) which may be fewer than the number of Units identified in the Property Agreement.

(4) The Department will designate the bedroom composition of the Assisted Units, as required by the RAC. However, based on an actual Eligible Tenant, this may fluctuate. It is possible that an Eligible Multifamily Property will have a RAC for fewer units than the number committed in the Participation Agreement.

(5) If no additional applicants are referred to the Development, the Department may begin a RAC amendment to reduce the number of Assisted Units. An Owner who has an amended, executed RAC must continue to notify the Department of units that become vacant that are committed under the Agreement.

(6) Amendments. The Owner agrees to amend the RAC(s) upon request of the Department. Some examples are amendments that may either increase or decrease the total number of Assisted Units or increase or decrease the associated bedroom sizes; multiple amendments to the RAC may occur over time. The total number of Assisted Units in the RAC will not exceed the number of Assisted Units committed in the Participation Agreement, unless by request of the Owner.

(7) Contract Term. The Department will specify the effective date of the RAC. During the first year of the RAC and with approval from HUD, the Owner may request to align the anniversary date of the RAC with existing federal or state housing programs layered on the Eligible Multifamily Property.

(8) Rent Increase. Owners must submit a written request to the Department 30 days prior to the anniversary date of the RAC to request an annual increase.

(9) Utility Allowance. The RAC will identify the Department approved Utility Allowance used for the Assisted Units for the Eligible Multifamily Property. The Owner must notify the Department if there are changes to the Utility Allowance calculation methodology being used.

(10) Termination. Although the Department has discretion to terminate a RAC due to good cause, an Owner cannot opt-out of a RAC. The RAC survives a foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property to the extent allowed by law.

(11) Foreclosure of Eligible Multifamily Property. Upon foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property to the extent allowed by law:

(A) The RAC shall be transferred to new owner by contractual agreement or by the new owner's consent to comply with the RAC, as applicable;

(B) Rental Assistance Payments will continue uninterrupted in accordance with the terms of the RAC; and

(C) Voluntary and involuntary transfers or conveyances of property must adhere to the ownership transfer process in §10.406 of this title (relating to Ownership Transfers (§2306.6713)).

(i) Advertising and Affirmative Marketing.

(1) Advertising Materials. Upon the execution of the Property Agreement, the Owner must provide materials for the purpose of advertising the Eligible Multifamily Property, including but not limited to:

(A) Depictions of the units including floor plans;

(B) Brochures;

(C) Tenant selection criteria;

(D) House rules;

(E) Number and size of available units;

(F) Number of units with accessible features (including, but not limited to units designed to meet Uniform Federal Accessibility Standards, the Fair Housing Act, or the Americans with Disabilities Act);

(G) Documentation on access to transportation and commercial facilities; and

(H) A description of onsite amenities.

(2) Affirmative Marketing. The Department and its service partners are responsible for affirmatively marketing the Program to Eligible Applicants.

(3) At any time, the Department may choose to advertise the Eligible Multifamily Property, even if the Eligible Multifamily Property has not yet entered into a RAC.

(j) Leasing Activities.

(1) Segregation of Assisted Units. The Owner must take actions or adopt procedures to ensure that the Assisted Units are not segregated to one area of a building (such as on a particular floor or part of a floor in a building) or in certain sections within the Eligible Multifamily Property.

(2) Form of Lease. The Owner will use the HUD Section 811 PRA Model Lease (HUD-92236-PRA), Exhibit 11 of the Cooperative Agreement and any Department approved Addendums, for all Eligible Families once a RAC is signed. The initial lease will be for not less than one year.

(3) Communication. Owners are required to document in writing all communication between the Eligible Tenant and the Owner, or Owner-designated agent regarding applications, notifications, evictions, complaints, non-renewals and move outs.

(4) Lease Renewals and Changes. The Owner must notify the Department of renewals of leases with Eligible Families and any changes to the terms of the lease.

(5) Development Policies. Upon the execution of the RAC, an Owner is required to submit a copy of the Development Policies (House Rules) to the Department for review. If deficiencies are noted, the Development will be required to correct and resubmit to the Department until all deficiencies have been properly corrected. The Owner is required to send a copy of amendments to the House Rules to the Department before implementing changes.

(k) Rent.

(1) Tenant Rent Payment.. The Owner will determine the Tenant Rent payment of the Eligible Tenant, based on HUD Handbook 4350.3 and HUD Notices, and is responsible for collecting the Tenant Rent payment.

(2) Utility Reimbursement. The Owner is responsible for remitting any Tenant Rent payment due to the Eligible Tenant if the Utility Allowance exceeds the Total Tenant Payment no later than the 5th day of each month, beginning 30 days after initial move in.

(3) Rent Increase. Owner must provide the Eligible Tenant with at least 30 days notice before increasing rent, in accordance with HUD Handbook 4350.3.

(4) Rent Restrictions. Owner will comply with the following rent restrictions:

(A) If a Unit at the Development has a Department enforced rent restriction that is equal to or lower than Fair Market Rent (FMR), the initial rent is the maximum Department enforced rent restriction for that Unit, not to exceed the 60% Area Median Family Income limit.

(B) If there is no existing Department enforced rent restriction on the Unit, or the existing Department enforced rent restriction is higher than FMR, the Department will work with the Owner to conduct a market analysis of the Eligible Multifamily Property to support that a rent higher than FMR is attainable.

(C) After the signing of the original RAC with the Department, the Owner may request a new anniversary date to be consistent with other rent restrictions on the Eligible Multifamily Property allowed by the Department.

(D) After the signing of the original RAC, upon request from the Owner to the Department, Rents may be adjusted on the anniversary date of the RAC.

(E) Adjustments may not result in higher rents charged for an Assisted Unit as compared to a non-assisted unit. The calculation or methodology used for the annual increase amount will be identified in the Eligible Multifamily Property's RAC.

(F) Owner can submit a request for a rent increase or to change the contract anniversary date using HUD Form 92458.

(l) Vacancy; Household Changes; Transfers; Eviction.

(1) Holding Assisted Units. Once an Owner signs a RAC, the Eligible Multifamily Property must hold an available Assisted Unit for 60 days while a qualified Eligible Applicant applies for and moves into the Assisted Unit.

(2) Notification. Owner will notify the Department of determination of ineligibility or the termination of any participating Eligible Families or any member of a participating Eligible Family.

(3) Initial Lease-up. Owners of a newly constructed, acquired and/or rehabilitated Eligible Multifamily Property must notify the Department no later than 180 days before the Eligible Multifamily Property will be available for initial move-in. Failure to reserve the agreed upon number of Assisted Units for Eligible Families will be cited as noncompliance, be referred for administrative penalties, and be considered possible grounds for Debarment.

(4) Vacancy. Upon execution of the RAC, the Owner must notify the Department of any vacancy of an Assisted Unit at the Eligible Multifamily Property as soon as possible, not to exceed seven calendar days from when the Owner becomes aware of the eligible Unit availability. Once the Department acknowledges receipt of the notice, the Department will notify the Owner within three business days if the Unit is acceptable and submit a referral. If the qualifying Eligible Tenant vacates the Assisted Unit, the Department will determine if the remaining family member(s) is eligible for continued assistance from the Program.

(5) Vacancy Payment. The Department may provide vacancy payments that cannot exceed 80% of the Contract Rent for up to 60 days from the effective date of the RAC. After the 60 days, the Owner may lease the Assisted Unit to a non-Eligible Tenant. Developments without an executed RAC are not eligible for vacancy payments.

(6) Household Changes. Owner will notify the Department of any changes in family composition in an Assisted Unit within three business days. If the change results in the Assisted Unit being smaller or larger than is appropriate for the Eligible Family size, the Owner must refer to the Department's written policies regarding family size, unit transfers and waitlist management. If the Department discovers the Eligible Family is ineligible for the size of the Assisted Unit, the Owner will be notified but Rental Assistance Payments will not be reduced or terminated until the Eligible Family can be transferred to an appropriate sized Assisted Unit.

(7) Transfers. Owner must notify the Department if the Eligible Family requests a transfer to another Assisted Unit within the Development. The Department will determine if the Eligible Family

qualifies for the unit transfer, if the new Unit is eligible as an Assisted Unit and then notify the Owner. If the Department determines the Eligible Family is ineligible for the size of the Assisted Unit, the Department will notify the Owner and Rental Assistance Payments will not be reduced or terminated until the Eligible Family can be transferred to an appropriate sized Assisted Unit.

(8) Notice to Vacate and Nonrenewal. Owners are required to notify the Department at least three calendar days prior to issuing a Notice to Vacate or a Notice of Non-Renewal to the Eligible Family. Notices must be compliance with HUD Handbook 4350.3 8-13(B)(2) and HUD Notices. A copy of the applicable Notice must be submitted via email to 811info@tdhca.state.tx.us.

(A) Owner is required to notify the Department within seven calendar days of when the Development is notified that the Eligible Family will vacate or in the event that the Eligible Family vacates without notice, upon discovery that the Assisted Unit is vacant. Notification of vacancy must be submitted to 811info@tdhca.state.tx.us.

(B) Upon move out, Owner must submit a move out disposition to the Department to ensure proper processing of the security deposit per HUD Handbook 4350.3 6-18.

(m) Construction Standards, Inspections, Repair and Maintenance, and Accessibility.

(1) Construction Standards. Upon execution of a RAC, the Eligible Multifamily Property shall be required to conform to Uniform Physical Conditions Standards (UPCS) which are uniform national standards established by HUD for housing that is decent, safe, sanitary, and in good repair. The site, building exterior, building systems, dwelling units and common areas of the Eligible Multifamily Property, as more specifically described in 24 CFR §5.703, must be inspected in any physical inspection of the property.

(2) Inspection. Prior to occupancy, the Eligible Tenant must be given the opportunity to be present for the move-in unit inspection.

(3) Repair and Maintenance. Owner will perform all repair and maintenance functions, including ordinary and extraordinary maintenance; will replace capital items; and will maintain the premises and equipment, appurtenant thereto, in good repair, safe and sanitary condition consistent with HUD and Department requirements.

(4) Accessibility. Owner must ensure that the Eligible Multifamily Property meets or exceeds the accessibility requirements under 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973; the Fair Housing Act Design Manual; Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131 - 12189), as implemented by the U.S. Department of Justice regulations at 28 CFR Parts 35 and 36; and the Federal Fair Housing Act as implemented by HUD at 24 CFR Part 100. However, Assisted Units can consist of a mix of accessible units for those persons with physical disabilities and non-accessible units for those persons without physical disabilities.

(n) Owner Training. The Owner is required to train all property management staff engaging with Eligible Families on the requirements of the Program. Owner training must include, but is not limited to the HUD Handbook 4350.3 and the Department's webpage at https://www.tdhca.state.tx.us/section-811-pra/index.htm.

(o) Reporting Requirements. Owner shall submit to the Department such reports on the operation and performance of the Program as required by the Participation Agreement and as may be required by the Department. Owner shall provide the Department with all reports necessary for the Department's compliance with 24 CFR Part 5, or any other federal or state law or regulation.

(p) Environmental Laws and Regulations.

(1) Compliance with Laws and Regulations. Owner must comply with, as applicable, any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Land or the Improvements, including without limitation, the following, as now or hereafter amended:

(A) Hazardous Materials Transportation Act (49 U.S.C.A. §1801 et seq.);

(B) Insecticide Fungicide and Rodenticide Act (7 U.S.C.A. §136 et seq.);

(C) National Environmental Policy Act (42 U.S.C. §4321 et seq.) (NEPA);

(D) Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C.A. §9601 et seq.) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. No. 99-499, 100 Stat. 1613, as amended Pub. L. No. 107-377) (Superfund or SARA);

(E) Resource, Conservation and Recovery Act (24 U.S.C.A. §6901 et seq.) (RCRA);

(F) Toxic Substances Control Act, (15 U.S.C.A. §2601 et seq.);

(G) Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C.A. §1101 et seq.);

(H) Clean Air Act (42 U.S.C.A. §7401 et seq.) (CAA);

(I) Federal Water Pollution Control Act and amendments (33 U.S.C.A. §1251 et seq.) (Clean Water Act or CWA);

(J) Any corresponding state laws or ordinances including but not limited to Chapter 26 of the Texas Water Code regarding Water Quality Control;

(K) Texas Solid Waste Disposal Act (Chapter 361 of the Texas Health & Safety Code, formerly Tex. Rev. Civ. Stat. Ann. Art. 4477-7);

(L) Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363 of the Texas Health & Safety Code);

(M) County Solid Waste Control Act (Chapter 364 of the Texas Health & Safety Code);

(N) Texas Clean Air Act (Chapter 382 of the Texas Health & Safety Code);

(O) Hazardous Communication Act (Chapter 502 of the Texas Health & Safety Code); and

(P) Regulations, rules, guidelines, or standards promulgated pursuant to such laws, statute and regulations, as such statutes, regulations, rules, guidelines, and standards, as amended from time to time.

(2) Environmental Review. The environmental effects of each activity carried out with funds provided under this Agreement must be assessed in accordance with the provisions of the Program Requirements, National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. §432 et seq.). Each such activity must have an environmental review completed and support documentation prepared in accordance with §11.305 of this title (relating to complying with the NEPA, includ-

ing screening for vapor encroachment following American Society for Testing and Materials (ASTM) 2600-10.

(q) Labor Standards.

(1) Owner understands and acknowledges that every contract for the construction (rehabilitation, adaptive reuse, or new construction) of housing that includes 12 or more units assisted with Program funds must contain provisions in accordance with Davis-Bacon Regulations.

(2) Owner understands and acknowledges that every contract involving the employment of mechanics and laborers of said construction shall be subject to the provisions, as applicable, of the Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§3701 to 3708), Copeland (Anti-Kickback) Act (40 U.S.C. §3145), the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §201, et seq.) and Davis-Bacon and Related Acts (40 U.S.C. §§3141 - 3148).

(3) Owner further acknowledges that if more housing units are constructed than the anticipated 11 or fewer housing units, it is the Owner's responsibility to ensure that all the housing units will comply with these federal labor standards and requirements under the Davis-Bacon Act as supplemented by the U.S. Department of Labor regulations ("Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5).

(4) Owner also understands that structuring the proposed assistance for the rehabilitation or construction of housing under this Agreement to avoid the applicability of the Davis-Bacon Act is prohibited.

(5) Construction contractors and subcontractors must comply with regulations issued under these federal acts described herein, with other federal laws, regulations pertaining to labor standards, including but not limited to "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5, HUD Federal Labor Provisions (HUD form 4010).

(r) Lead-Based Paint. Housing assisted with Program funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4821 - 4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851 - 4856), and implementing regulations Title X of the 1992 Housing and Community Development Act at 24 CFR Part 35, (including subparts A, B, J, K, M and R). Owner shall also comply with the Lead: Renovation, Repair, and Painting Program Final Rule, 40 CFR Part 745 and Response to Children with Environmental Intervention Blood Lead Levels. Failure to comply with the lead-based paint requirements may be subject to sanctions and penalties pursuant to 24 CFR §35.170.

(s) Limited English Proficiency. Owner shall comply with the requirements in Executive Order 13166 of August 11, 2000, reprinted at 65 FR 50121, August 16, 2000, Improving Access to Services for Persons with Limited English Proficiency and 67 FR 41455. To ensure compliance the Owner must take reasonable steps to insure that LEP persons have meaningful access to the program and activities. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary.

(t) Procurement of Recovered Materials. Owner, its subrecipients, and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(u) Drug-Free Workplace. Owner will follow the Drug-Free Workplace Act of 1988 (41 U.S.C §701, et seq.) and HUD's implementing regulations at 2 CFR Part 2429. Owner affirms by executing the Certification Regarding Drug-Free Workplace Requirements attached hereto as Addendum B, that it is implementing the Drug-Free Workplace Act of 1988.

(v) Equal Opportunity, Fair Housing, Nondiscrimination, and Equal Access.

(1) Equal Opportunity. The Owner agrees to carry out an Equal Employment Opportunity Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965, as amended, and its implementing regulations at 41 CFR Part 60.

(2) Fair Housing Poster. The Owner is required to place a fair housing poster (HUD-928.1 and HUD-9281.A) provided by the Department in the leasing office, online, or anywhere else rental activities occur pursuant to 24 CFR §200.620(e). A copy of the poster in Spanish and in English can be found at http://www.tdhca.state.tx.us/section-811-pra/participating-agents.htm.

(3) Nondiscrimination Laws. Owner shall ensure that no person shall, on the grounds of race, color, religion, sex, disability, familial status, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any Program or activity funded in whole or in part with funds provided under this Agreement. Owner shall follow Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d et seq.), the Age Discrimination Act of 1975 (42 U.S.C. §6101 et seq.) and its implementing regulations at 24 CFR Part 146, Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131 - 12189; 47 U.S.C. §§155, 201, 218 and 255) as implemented by U.S. Department of Justice at 28 CFR Parts 35 and 36, Section 527 of the National Housing Act (12 U.S.C. §1701z-22), the Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.), the Equal Opportunity in Housing (Executive Order 11063 as amended by Executive Order 12259) and its implementing regulations at 24 CFR Part 107 and The Fair Housing Act (42 U.S.C. §3601 et seq.), as implemented by HUD at 24 CFR Part 100-115.

(4) Affirmatively Furthering Fair Housing. By Owner's execution of the Agreement and pursuant to Section 808(e)(5) of the Fair Housing Act, Owner agrees to use funds in a manner that follows the State of Texas' "Analysis of Impediments" or "Assessment of Fair Housing", as applicable and as amended, and will maintain records in this regard.

(5) Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking. Subpart L of 24 CFR part 5 shall apply to the Assisted Units in Eligible Multifamily Properties.

(w) Security of Confidential Information.

(1) Systems Confidentiality Protocols. Owner must undertake customary and industry standard efforts to ensure that the systems developed and utilized under this Agreement protect the confidentiality of every Eligible Applicant's and Eligible Tenant's personal and financial information, both electronic and paper, including credit reports, whether the information is received from the Eligible Applicants, Tenants or from another source. Owner must undertake customary and industry standard efforts so that neither they nor their systems vendors disclose any Eligible Applicant's or Tenant's personal or financial in-

formation to any third party, except for authorized personnel in accordance with this Agreement.

(2) Protected Health Information. If Owner collects or receives documentation for disability, medical records or any other medical information in the course of administering the Program, Owner shall comply with the Protected Health Information state and federal laws and regulations, as applicable, under §1.24 of this title (relating to Protected Health Information), Chapter 181 of the Texas Health and Safety Code, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104-191, 110 Stat. 1936, enacted August 21, 1996), and the HIPAA Privacy Rules (45 CFR Part 160 and Subparts A and E of 45 CFR Part 164).

(x) Real Property Acquisition and Relocation. Except as otherwise provided by federal statute, HUD-assisted programs or projects are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) (42 U.S.C. §4601), and the government wide implementing regulations issued by the U.S. Department of Transportation at 49 CFR Part 24. The Uniform Act's protections and assistance apply to acquisitions of real property and displacements resulting from the acquisition, rehabilitation, or demolition of real property for federal or federally assisted programs or projects. With certain limited exceptions, real property acquisitions for a HUD-assisted program or project must comply with 49 CFR Part 24, Subpart B. To be exempt from the URA's acquisition policies, real property acquisitions conducted without the threat or use of eminent domain, commonly referred to as voluntary acquisitions, the Owner must satisfy the applicable requirements of 49 CFR §24.101(b)(1) - (5). Evidence of compliance with these requirements must be maintained by the recipient. The URA's relocation requirements remain applicable to any tenant who is displaced by an acquisition that meets the requirements of 49 CFR §24.101(b)(1) - (5). The relocation requirements of the Uniform Act, and its implementing regulations at 49 CFR Part 24, cover any person who moves permanently from real property or moves personal property from real property as a direct result of acquisition, rehabilitation, or demolition for a program or project receiving HUD assistance. While there are no statutory provisions for temporary relocation under the URA, the URA regulations recognize that there are circumstances where a person will not be permanently displaced but may need to be moved from a project for a short period of time. Appendix A of the URA regulation (49 CFR §24.2(a)(9)(ii)(D)) explains that any tenant who has been temporarily relocated for a period beyond one year must be contacted by the displacing agency and offered URA relocation assistance.

(y) Dispute Resolution; Conflict Management.

(1) Eligible Tenant Disputes. The Owner or Owner's representative is required to participate in a Dispute Resolution process, as required by HUD, to resolve an appeal of an Eligible Tenant dispute with the Owner.

(2) Agreement Disputes. In accordance with Tex. Gov't Code 2306.082, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures (ADR) under the Governmental Dispute Resolution Act and the Negotiated Rulemaking Act (Chapters 2009 and 2006 respectively, Tex. Gov't Code), to assist in the fair and expeditious resolution of internal and external disputes involving the Department and the use of negotiated rulemaking procedures for the adoption of Department rules. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and the Owner, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time the Owner would like to engage the Department in an ADR procedure, the Owner may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR policy, see the Department's Alternative Dispute Resolution and Negotiated Rulemaking at §1.17 of this title (relating to Alternative Dispute Resolution).

(3) Conflict Management. The purpose of the Conflict Management process is to address any concerns that Owner or Owner's agent or representative may have with an Eligible Family. At any time, an Eligible Family may choose to give consent to their Section 811 service coordinator to work directly with the property manager of the Eligible Multifamily Property. However, such consent cannot be made a condition of tenancy.

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

Filed with the Office of the Secretary of State on January 14, 2022.

TRD-202200125
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: February 27, 2022
For further information, please call: (512) 475-3959

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT
SUBCHAPTER K. LICENSING PROVISIONS RELATED TO MILITARY SERVICE MEMBERS, MILITARY VETERANS, AND MILITARY SPOUSES

16 TAC §§60.501, 60.510, 60.512, 60.514, 60.518, 60.519

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter K, §§60.501, 60.510, 60.512, 60.514 and 60.518; and also proposes new §60.519, concerning Procedural Rules of the Commission and the Department. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The proposed rules under 16 TAC, Chapter 60, Subchapter K, implement Texas Occupations Code, Chapter 51, General Provisions Related to Licensing, and Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses.

The proposed rules are necessary to implement House Bill (HB) 139, 87th Legislature, Regular Session (2021) by updating current definitions in Chapter 55, Occupations Code, and provide for a mandated procedure in rule to allow a non-resident military spouse to obtain license eligibility for occupational licenses that

have an in-state residency prerequisite; and to update and remove obsolete references to past bills no longer needed in the current rule subchapter due to subsequent redesignations and reenactments that corrected duplicative statutes passed over the years in separate bills.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §60.501, Definitions, to include "Space Force" as one of the military service branches noted in the "Armed Forces of the United States".

The proposed rules amend §60.510, License Requirements for Applicants with Military Experience, Service, Training, or Education, to delete obsolete legislative bill references.

The proposed rules amend §60.512, Expedited Alternative Licensing Requirements--Substantially Equivalent License, to delete obsolete legislative bill references, and renumbered the subsections accordingly.

The proposed rules amend §60.514, Expedited Alternative Licensing Requirements--Previously Held Texas License, to delete obsolete legislative bill references, and renumbered the subsections accordingly.

The proposed rules amend §60.518, Recognition of Out-of-State License of Military Spouse, to delete obsolete legislative bill references, and clarify rule references.

The proposed rules add new §60.519, License Eligibility-Establishing License Residency Requirement for Out-of-State Military Spouses, which provides an administrative process to establish residency, as required by HB 139, by which a non-resident military spouse could obtain an occupational license that requires in-state residency as a prerequisite for eligibility.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

The proposed rules will allow out-of-state military spouse applicants to establish in-state residency for licenses which have a residency requirement. Currently, only three license types associated with the Property Tax Professionals Program issued by TDLR have a residency requirement. It is not expected that enough out-of-state military spouses will now apply for those three license types to have an impact on local employment. Additionally, there are currently no Space Force locations in Texas, so it is not anticipated that many of its military members or their spouses will obtain employment in Texas in the next five years.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be the establishment of a process to allow out-of-state military spouses to establish in-state residency and allowing those spouses to apply for any of the three Property Tax Professional licenses which may have previously unavailable to them because of the residency requirement. Moreover, the addition of Space Force as a branch of the United States armed forces will allow any of its military service members, veterans, or their spouses to avail themselves the licensing provisions afforded them in Subchapter K of the Chapter 60 rules in the Texas Administrative Code.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

There will be no fee or charge for out-of-state military spouses to establish in-state residency so there will be no economic cost to them to obtain a license with a residency requirement. Space Force military service members, veterans, and spouses who obtain an occupational license from TDLR will be required to eventually pay renewal fees for those licenses. However, those fees are no different than fees paid by other TDLR license holders and cover the agency's costs for processing renewal applications and issuing licenses.

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

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Since the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

5. The proposed rules do create a new regulation. The proposed rules create a new regulation by requiring a process that allows an out-of-state military spouse to establish in-state residency for the purpose of obtaining a license which has a residency requirement.

6. The proposed rules do expand, limit, or repeal an existing regulation. The proposed rules expand a regulation by including the Space Force as a branch of the United States armed forces.

7. The proposed rules do increase or decrease the number of individuals subject to the rules' applicability. The proposed rules increase the number of individuals subject to its applicability by now including out-of-state military spouse applicants who previously could not obtain a Property Tax Professional license, and all spouses of the Space Force military service members, veterans, and their spouses who apply for TDLR-issued license.

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

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

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 55, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 55. No other statutes, articles, or codes are affected by the proposed rules.

§60.501. Military Definitions.

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

(1) Active duty--Current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by §437.001, Government Code, or similar military service of another state. The term does not include service performed exclusively for training, such as basic combat training, advanced individual training, annual training, inactive duty training, and special training periodically made available to service members.

(2) Apprenticeship or apprenticeship program--This term has the same meaning as defined by statute or rule for a specific license.

(3) Armed forces of the United States--The Army, Navy, Air Force, Space Force, Coast Guard, or Marine Corps of the United States or a reserve unit of one of those branches of the armed forces.

(4) Military service member--A person who is on active duty.

(5) Military spouse--A person who is married to a military service member.

(6) Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(7) Reserve unit of the armed forces of the United States--The Army National Guard of the United States, the Air National Guard of the United States, the Army Reserve, the Navy Reserve, the Air Force Reserve, the Coast Guard Reserve, and the Marine Corps Reserve.

(8) Similar military service of another state--The state Army National Guard, state Air National Guard, or state guard.

§60.510. License Requirements for Applicants with Military Experience, Service, Training, or Education.

(a) This section implements Texas Occupations Code §§51.4013, 55.007, 55.008 [~~(as redesignated by Senate Bill 1307 and Senate Bill 1296, 84th Legislature, Regular Session (2015))~~], 55.009 [~~(as added by Senate Bill 807, 84th Legislature, Regular Session (2015))~~], and 1305.1645(a).

(b) This section applies to a "military service member" and a "military veteran" as defined under §60.501.

(c) An applicant under this section will be eligible to receive credit for verified military experience, service, training, or education in meeting the licensing requirements, other than an examination requirement, for a specific license issued by the department.

(d) If an apprenticeship is required for a license issued by the department, the department will credit verified military experience, service, training, or education that is relevant to the occupation toward the apprenticeship requirements for the license.

(e) An applicant who seeks to receive credit for verified military experience, service, training, or education must submit the following documentation:

(1) completed license application and any supporting documents associated with the specific department license; and

(2) completed Military Service Member, Military Veteran, or Military Spouse Supplemental Application and supporting documents including;

(A) copy of the military orders or documents showing proof of active duty status (for military service members);

(B) copy of the military orders or documents showing proof of veteran status (for military veterans); and

(C) copy of the military orders or documents showing the type and amount of related military experience, service, training, or education applicable to a specific license.

(f) The amount of military experience, service, training, or education, which an applicant submits for purposes of meeting the licensing requirements of a specific license, will be determined in accordance with §60.502.

(g) The applicant under this section must still take and pass any applicable examination required for obtaining a specific license.

(h) The initial license application fee and any examination fees paid to the department are waived for an applicant who meets the requirements under this section. The applicant is still responsible for paying any examination fees that are charged by a third-party examination vendor.

(i) The applicant under this section must undergo and successfully pass a criminal history background check.

(j) A military service member or military veteran who obtains a license under this section must comply with all of the license renewal requirements including fees for the specific license obtained.

§60.512. Expedited Alternative Licensing Requirements--Substantially Equivalent License.

(a) This section implements Texas Occupations Code §§55.004, 55.005, 55.006, and 55.009 [~~(as added by Senate Bill 807, 84th Legislature, Regular Session (2015))~~], as they relate to an applicant who holds a "substantially equivalent" license.

(b) This section applies to a military service member, a military veteran, and a military spouse, as defined under §60.501.

(c) An applicant under this section is eligible to obtain a license issued by the department if the applicant holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the Texas licensing requirements.

(d) The department will determine whether the licensing requirements of the other jurisdiction are substantially equivalent to the Texas requirements as prescribed under §60.34.

(e) The following documentation must be submitted to apply for a license under this section:

(1) completed license application and any supporting documents associated with the specific department license;

(2) completed Military Service Member, Military Veteran, or Military Spouse Supplemental Application and supporting documents including;

(A) copy of the military orders or documents showing proof of active duty status (for military service member and military spouse);

(B) copy of the military orders or documents showing proof of veteran status (for military veteran); and

(C) copy of document showing proof of status as a military spouse (for military spouse); and

(3) copy of the applicant's current occupational license from another jurisdiction.

(f) The applicant who qualifies for a license under this section is not required to take and pass any applicable examination required for obtaining that specific license.

(g) The initial license application fees paid to the department are waived for an applicant under this section.

(h) The applicant under this section must undergo and successfully pass a criminal history background check.

(i) An application under this section shall be expedited in accordance with Texas Occupations Code §55.005.

(j) Pursuant to Texas Occupations Code §55.004(b) [~~(as amended by Senate Bill 1307, 84th Legislature, Regular Session (2015))~~], the executive director may waive any prerequisite to obtaining a license for an applicant under this section after reviewing the applicant's credentials.

[~~(k) Pursuant to Texas Occupations Code §55.004(c) (as amended by House Bill 3742, 84th Legislature, Regular Session (2015)), the executive director may issue a license by endorsement to an applicant under this section.~~]

(k) [~~(l)~~] A military service member, military veteran, or military spouse who obtains a license under this section must comply with all of the license renewal requirements including fees for the specific license obtained.

§60.514. Expedited Alternative Licensing Requirements--Previously Held Texas License.

(a) This section implements Texas Occupations Code §§55.004, 55.005, and 55.006, as they relate to an applicant who held the same Texas license within the last five years.

(b) This section applies to a military service member, a military veteran, and a military spouse, as defined under §60.501.

(c) An applicant under this section is eligible to obtain a license issued by the department if the applicant within the five years preceding the application date held the same license in Texas.

(d) The following documentation must be submitted to apply for a license under this section:

(1) completed license application and any supporting documents associated with the specific department license; and

(2) completed Military Service Member, Military Veteran, or Military Spouse Supplemental Application and supporting documents including;

(A) copy of the military orders showing proof of active duty status (for military service member and military spouse);

(B) copy of the military orders or documents showing proof of veteran status (for military veteran); and

(C) copy of document showing proof of status as a military spouse (for military spouse).

(e) The applicant who qualifies for a license under this section is not required to take and pass any applicable examination required for obtaining that specific license.

(f) An applicant under this section must pay the license application fees associated with obtaining that specific license.

(g) The applicant under this section must undergo and successfully pass a criminal history background check.

(h) An application under this section shall be expedited in accordance with Texas Occupations Code §55.005.

(i) Pursuant to Texas Occupations Code §55.004(b) [~~(as amended by Senate Bill 1307, 84th Legislature, Regular Session (2015))~~], the executive director may waive any prerequisite to obtaining a license for an applicant under this section after reviewing the applicant's credentials.

[~~(j) Pursuant to Texas Occupations Code §55.004(c) (as amended by House Bill 3742, 84th Legislature, Regular Session (2015)), the executive director may issue a license by endorsement to an applicant under this section.~~]

(j) [~~(k)~~] A military service member, military veteran, or military spouse, who obtains a license under this section, must comply with all of the license renewal requirements including fees for the specific license obtained.

§60.518. Recognition of Out-of-State License of Military Spouse.

(a) This section implements Texas Occupations Code §55.0041 [~~(as added by Senate Bill 1200, 86th Legislature, Regular Session (2019))~~].

(b) This section applies to a military spouse, as defined under §60.501, who meets the requirements of Texas Occupations Code §55.0041.

(c) The notice required by Texas Occupations Code §55.0041(b)(1) must be provided by submitting the notice to the department on a completed department-approved form.

(d) The department will determine whether the licensing requirements of another jurisdiction are substantially equivalent to the licensing requirements of Texas as prescribed under §60.34.

(e) To be eligible for the confirmation described in Texas Occupations Code §55.0041(b)(3), a military spouse must provide the department with sufficient documentation to verify that the military spouse is currently licensed in another jurisdiction and has no restrictions, pending enforcement actions, or unpaid fees or penalties relating to the license.

(f) The department may not charge a fee for the authority to engage in a business or occupation, or for a three-year license, as set forth in subsections (g) and (h) [~~below~~].

(g) Authority to engage in business or occupation.

(1) An individual who receives from the department the confirmation described in Texas Occupations Code §55.0041(b)(3):

(A) may engage in the authorized business or occupation only for the period during which the individual meets the requirements of Texas Occupations Code §55.0041(d); and

(B) must immediately notify the department if the individual no longer meets the requirements of Texas Occupations Code §55.0041(d).

(2) An individual is not required to undergo a criminal history background check to be eligible for the authority granted under this subsection.

(h) Three-year license.

(1) An individual who receives from the department the confirmation described in Texas Occupations Code §55.0041(b)(3) is eligible to receive a license issued by the department if the individual:

(A) submits a completed application on a department-approved form; and

(B) undergoes and successfully passes a criminal history background check.

(2) A license issued under this subsection expires on the third anniversary of the date the department provided the confirmation described in Texas Occupations Code §55.0041(b)(3) and may not be renewed.

(i) An individual who engages in a business or occupation under the authority or license established by this section is subject to the enforcement authority granted under Texas Occupations Code, Chapter 51, this chapter, and the laws and regulations applicable to the business or occupation in Texas.

§60.519. License Eligibility--Establishing License Residency Requirement for Out-of-State Military Spouses.

(a) This section implements Texas Occupations Code §55.004(d) as it relates to a non-resident military spouse applicant to the department for a license with a residency requirement for license eligibility.

(b) This section applies to a military spouse, as defined under §60.501, that is not a resident of the State of Texas at the time of the filing of an application with the department for a license that requires residency status.

(c) A non-resident military spouse applicant under this section is eligible to obtain a license issued by the department if the applicant provides documentation sufficient to establish residency within the State of Texas.

(d) A non-resident military spouse applicant seeking to establish in-state residency to demonstrate eligibility to apply for a specific license under this section must submit the following documentation:

(1) a completed license application and supporting documents associated with the specific department license;

(2) documents sufficient to establish residency, including but not limited to, a copy of the permanent change of station order for the military service member to whom the spouse is married;

(3) documents showing proof of active duty status for the military service member; and

(4) a copy of a document showing proof of status as a military spouse.

(e) An applicant under this section must comply with all of the license requirements for the specific license obtained.

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

Filed with the Office of the Secretary of State on January 13, 2022.

TRD-202200108
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Earliest possible date of adoption: February 27, 2022
For further information, please call: (512) 475-4879

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CHAPTER 100. GENERAL PROVISIONS FOR HEALTH-RELATED PROGRAMS

The Texas Department of Licensing and Regulation (Department) proposes new rules at 16 Texas Administrative Code (TAC) Chapter 100, §§100.1 - 100.3, 100.11, 100.60 - 100.65, and 100.70 - 100.73; the repeal of existing rules at §§100.1, 100.10, 100.31 and 100.50; amendments to existing rules at §§100.20, 100.30, and 100.40; and the addition of subchapter titles to an existing chapter, regarding General Provisions for Health-Related Programs. These proposed changes are referred to as the "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 100 implement Texas Occupations Code Chapter 51, General Provisions.

The proposed rules implement the provisions of Senate Bill (SB) 40, 87th Legislature, Regular Session (2021) and the provisions

of Texas Occupations Code §51.501, as well as changes identified by the Department as a result of the four-year rule review process conducted under Texas Government Code §2001.39. The proposed rules are necessary to provide guidelines to health professionals for the use of telehealth and remote continuing education, update rule provisions to reflect current Department procedures, amend outdated rule language, and relocate certain podiatry-specific provisions required by Texas Occupations Code §51.2032 to the podiatry chapter. This rulemaking is accompanied by another rulemaking related to 16 TAC Chapter 130, regarding the Podiatry program.

SECTION-BY-SECTION SUMMARY

The proposed rules create new Subchapter A, General Provisions.

The proposed rules repeal §100.1, Applicability, and replace it with a new §100.1. The proposed new rule amends the text of this rule to reflect the applicability of Chapter 100 as revised by this rulemaking.

The proposed rules adopt new §100.2, Definitions. The proposed rules adopt this rule text as a relocation of the existing §100.10, which is being repealed. The text is identical to the current §100.10.

The proposed rules adopt new §100.3, Administrative Penalties and Sanctions, outlining the enforcement authority of the Department for violations of the chapter.

The proposed rules repeal §100.10, Definitions, as the text is being relocated to the proposed §100.2 discussed above.

The proposed rules create new Subchapter B, Certain Health-Related Advisory Boards.

The proposed rules adopt new §100.11, Applicability, outlining the applicability of Subchapter B to certain health-related programs administered by the Department.

The proposed rules amend existing §100.20, Providing Information to Advisory Boards for Certain Health-Related Programs, to update language regarding citations to the Occupations Code and health "programs" instead of "professions."

The proposed rules amend existing §100.30, Rules Regarding Certain Health-Related Programs, to update language regarding citations to the Occupations Code and remove references to an expiration date which is no longer in effect.

The proposed rules repeal existing §100.31, Rules Regarding the Podiatric Medicine Program. The provisions of this rule are being relocated to Chapter 130 of the Department's rules in a concurrent rulemaking.

The proposed rules amend existing §100.40, Enforcement Procedures for Certain Health-Related Programs. The proposed rules add a citation for the rule's authority, remove references to employees of the Department of State Health Services, add subsection (g) regarding the immunity of expert reviewers, and make clarifying changes to the structure of the rule.

The proposed rules repeal existing §100.50, Continuing Education Procedures for the Podiatric Medicine Program. The provisions of this rule are being relocated to Chapter 130 of the Department's rules in a concurrent rulemaking.

The proposed rules create new Subsection C, Telehealth.

The proposed rules adopt new §100.60, Applicability, outlining the applicability of Subchapter C to the health-related programs administered by the Department under Title 3, Occupations Code.

The proposed rules adopt new §100.61, Definitions, providing definitions relevant for the provisions of Subchapter C.

The proposed rules adopt new §100.62, License Requirement, specifying the requirement for a license issued by the Department unless an exemption under other applicable law or rule applies.

The proposed rules adopt new §100.63, Standard of Care, establishing that a telehealth service is subject to the same standard of care as an in-person service and nothing in Subchapter C requires a higher standard of care or otherwise alters the applicable standard of care governing the treatment provided.

The proposed rules adopt new §100.64, Appropriate Client Care and Fraud Prevention, providing guidelines for health professionals providing telehealth services to ensure appropriate client care and fraud prevention.

The proposed rules adopt new §100.65, Client Privacy, requiring health professionals providing telehealth services to protect client privacy as required by federal and state law.

The proposed rules create new Subchapter D, Remote Continuing Education for Health Professionals.

The proposed rules adopt new §100.70, Applicability, outlining the applicability of Subchapter D to the health-related programs administered by the Department under Title 3, Occupations Code.

The proposed rules adopt new §100.71, Definitions, providing definitions relevant for the provisions of Subchapter D.

The proposed rules adopt new §100.72, Remote Continuing Education for Health Professionals, permitting use of remote continuing education if allowed by federal and state law and the Department rules governing the health professional's licensure.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefits will be as follows: for those health services which may be performed through telehealth, there may be a decrease or elimination of travel costs for the client associated with an in-person office visit versus receiving that same service without the need to travel to a physical office location. The proposed telehealth rules also provide guidelines for appropriate client care, privacy,

and fraud prevention, which will benefit consumers of telehealth services.

For those services which may be provided at the same level of quality via telehealth as in-person, a provider could provide services to a larger number of rural clients or mobility-impaired clients, who may not currently have access to services due to the distance to the nearest provider or difficulty getting to a nearby provider's office. The proposed telehealth rules are intended to outline responsibilities of providers for these clients, to ensure they receive appropriate, quality care with privacy and security safeguards.

Licensees who choose to earn continuing education credits remotely may see an elimination of travel costs associated with traveling to in-person continuing education courses. Licensees may also be able to utilize additional sources of continuing education which were previously cost-prohibitive or inaccessible.

Continuing education course providers who offer remote continuing education courses may see a reduction in costs associated with providing large classrooms to accommodate all course attendees and a reduction in costs for course instructors through the elimination of costs associated with traveling to provide an in-person continuing education course. The ability to offer remote continuing education could also increase attendance numbers and revenue for providers who offer it.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. The proposed rules have no significant economic costs to persons that are licensees, businesses, or the general public in Texas. The rules do not impose additional fees upon licensees, nor do they create requirements that would cause licensees to expend funds for equipment, technology, staff, supplies or infrastructure. A provider who wishes to expand services through the use of telehealth might need new or additional telecommunications technology if it has not already been obtained but this would be a discretionary cost and not required by the rule changes. A continuing education course provider that wishes to expand services to include remote continuing education courses might need new or additional telecommunications technology if it has not already been obtained but this would be a discretionary cost and not required by the rule changes.

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

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Since the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

5. The proposed rules do create a new regulation. The proposed rules create a new regulation by providing guidelines for the provision of services through telehealth.

6. The proposed rules do expand, limit, or repeal an existing regulation. The proposed rules expand an existing regulation by authorizing continuing education to now be completed remotely, in addition to in-person, and expand an existing regulation by reinstating the requirement for the Texas Commission of Licensing and Regulation (Commission) to adopt new rules relating to scope of practice only when they have been proposed by the appropriate advisory board, which had expired by the terms of the existing rule in September 2019, although this requirement remained in statute. The proposed rules also expand regulations for enforcement procedures for certain health-related programs by referencing the statutory immunity from suit to individuals assisting the Department with reviewing or investigating complaints. The proposed rules repeal an existing regulation by removing rules specific to podiatry.

7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

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

16 TAC §§100.1, 100.10, 100.31, 100.50

STATUTORY AUTHORITY

The proposed repeals are proposed under Texas Occupations Code, Chapters 51, 202, 203, 401, 402, 403, 451, 455, 506, 605, and 701, 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 proposed repeals are those set forth in Texas Occupations Code, Chapters 51, 202, 203, 401, 402, 403, 451, 455, 506, 605, and 701. No other statutes, articles, or codes are affected by the proposed repeals.

§100.1. Applicability.

§100.10. Definitions.

§100.31. Rules Regarding the Podiatric Medicine Program.

§100.50. Continuing Education Procedures for the Podiatric Medicine Program.

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

Filed with the Office of the Secretary of State on January 13, 2022.

TRD-202200098
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Earliest possible date of adoption: February 27, 2022
For further information, please call: (512) 475-4879

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SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §§100.1 - 100.3

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 202, 203, 401, 402, 403, 451, 455, 506, 605, and 701, 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 proposed rules are those set forth in Texas Occupations Code, Chapters 51, 202, 203, 401, 402, 403, 451, 455, 506, 605, and 701. No other statutes, articles, or codes are affected by the proposed rules.

§100.1. Applicability.

This chapter applies to the health-related programs regulated by the department, as specified in each of the subchapters in this chapter. The provisions of this chapter are in addition to all other statutes and rules that apply to the health-related programs, as specified in each subchapter. This chapter applies except in the event of a conflict with specific program statutes and rules.

§100.2. Definitions.

The following terms have the following meanings when used in this chapter:

(1) Advisory Board--A board, committee, council, or other body that is established by law to advise the commission or department on rules, policies, and/or technical matters.

(2) Commission--Texas Commission of Licensing and Regulation.

(3) Department--Texas Department of Licensing and Regulation.

(4) Executive Director--The head administrative official of the department.

(5) License--A license, certificate, registration, title, commission, or permit issued by the department.

(6) Penalty or Administrative Penalty--A monetary fine imposed by the commission or the executive director on a licensee or other person who has violated this chapter or a statute or rule governing a program regulated by the department.

(7) Rule--Any commission statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the department or commission.

(8) Sanction--An action by the commission or executive director against a license holder or another person, including the denial, suspension, or revocation of a license, the reprimand of a license holder, the placement of a license holder on probation, or refusal to renew.

§100.3. Administrative Penalties and Sanctions.

(a) The department may bring an enforcement action to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Occupations Code, Chapter 51 and any associated rules if a person or entity violates any provision of Occupations Code, Chapter 51 or this chapter, or any rule or order of the executive director or commission.

(b) The department may bring an enforcement action for violation of this chapter in combination with an action for violation of any other applicable law or rule governing a program administered by the department or governing the practice of a person or entity regulated by the department.

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

Filed with the Office of the Secretary of State on January 13, 2022.

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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 475-4879

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SUBCHAPTER B. CERTAIN HEALTH-RELATED ADVISORY BOARDS

16 TAC §§100.11, 100.20, 100.30, 100.40

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 202, 203, 401, 402, 403, 451, 455, 506, 605, and 701, 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 proposed rules are those set forth in Texas Occupations Code, Chapters 51, 202, 203, 401, 402, 403, 451, 455, 506, 605, and 701. No other statutes, articles, or codes are affected by the proposed rules.

§100.11. Applicability.

(a) This subchapter applies to programs administered by the department under the following chapters of Title 3, Occupations Code:

(1) Chapter 203 (Midwives);

(2) Chapter 401 (Speech-Language Pathologists and Audiologists);

(3) Chapter 402 (Hearing Instrument Fitters and Dispensers);

(4) Chapter 451 (Athletic Trainers);

(5) Chapter 506 (Behavior Analysts);

(6) Chapter 605 (Orthotists and Prosthetists); and

(7) Chapter 701 (Dietitians).

(b) The provisions of this subchapter are in addition to all other provisions of law or commission rules that apply to the programs in subsection (a).

§100.20. Providing Information to Advisory Boards for Certain Health-Related Programs.

(a) This section is promulgated under Occupations Code §51.2031(b) [~~Section 51.2031(b), Occupations Code~~].

(b) The department will present the following documents, including any updates or revisions, to the advisory board for its input and recommendation:

(1) The penalty matrix for the program [~~profession~~] to be included in the department's Enforcement Plan; and

(2) Criminal Conviction Guidelines (Guidelines for Applicants with Criminal Convictions) for the program [~~profession~~].

(c) The department will provide information regarding the general investigative, enforcement, or disciplinary procedures of the department or commission to the advisory board in the following manner:

(1) At advisory board meetings, the department will provide a report on recent enforcement activities, including:

(A) a brief description of final orders entered in enforcement cases; and

(B) statistics on complaints received, disposition of cases, and any sanctions or administrative penalties assessed;

(2) On request of the advisory board, the department will provide additional information:

(A) during the staff report portion of the advisory board meeting; or

(B) by placing a discussion item on the agenda for a future advisory board meeting; or

(3) The department may provide information directly to an individual member of the advisory board in response to a request from that member.

§100.30. Rules Regarding Certain Health-Related Programs.

(a) This section is promulgated under Occupations Code §51.2031(a-1) and (a-2) [~~Section 51.2031(a-1) and (a-2), Occupations Code~~].

(b) The commission may not adopt a new rule relating to the scope of practice of or a health-related standard of care for a program [~~profession~~] to which this section applies unless the rule has been proposed by the advisory board established for that program [~~profession~~].

(c) Under Occupations Code §51.2031(a-1) and (a-2) [~~Section 51.2031(a-1) and (a-2), Occupations Code~~], the advisory board may propose a rule described by subsection (b) according to the following procedure:

(1) The advisory board, by a majority vote of the members present and voting at a meeting at which a quorum is present, shall either:

(A) recommend that the rule be published in the *Texas Register* for public comment; or

(B) if the rule has been published and after considering the public comments, make a recommendation to the commission concerning adoption of the rule;

(2) The rule must be within the commission's legal authority to adopt; and

(3) The department may make non-substantive, editorial changes to the rule as necessary.

(d) The commission shall either adopt the rule as proposed by the advisory board under subsection (c), with any non-substantive, editorial changes made by the department under subsection (c)(3), or return the rule to the advisory board for revision.

[~~(e) This section expires September 1, 2019.~~]

§100.40. Enforcement Procedures for Certain Health-Related Programs.

(a) This section is promulgated under Occupations Code §51.2031(b).

(b) [~~(a)~~] The department will develop procedures to incorporate health-related expertise into the department's investigation and resolution of complaints.

(c) [~~(b)~~] The department will seek input regarding the procedures developed under this section from each advisory board.

(d) [~~(c)~~] The procedures developed under this section may include obtaining health-related expertise from one or more of the following sources:

(1) A current or former member of the advisory board for the profession;

(2) A department staff expert;

(3) An outside expert with relevant education, training, or experience;

[~~(4) A former member of an enforcement, enforcement review, complaints, or complaint review committee for the profession at the Department of State Health Services;~~] or

(4) [~~(5)~~] A panel consisting of any combination of the individuals listed in paragraphs (1) - (3) [~~(4)~~].

(e) [~~(d)~~] Opinions or recommendations obtained under subsection (d) [~~(c)~~] are not binding on the department or commission.

(f) [~~(e)~~] The procedures developed under this section must include provisions to protect information that is confidential by law.

(g) Individuals assisting with reviewing or investigating complaints filed with the department are entitled to the immunity from suit provided in Occupations Code §51.252(e).

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

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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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SUBCHAPTER C. TELEHEALTH

16 TAC §§100.60 - 100.65

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 202, 203, 401, 402, 403, 451, 455, 506, 605, and 701, 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 proposed rules are those set forth in Texas Occupations Code, Chapters 51, 202, 203, 401, 402, 403, 451, 455, 506, 605, and 701. No other statutes, articles, or codes are affected by the proposed rules.

§100.60. Applicability.

(a) This subchapter applies to programs administered by the department under the following chapters of Title 3, Occupations Code:

(1) Chapter 202 (Podiatrists);

(2) Chapter 203 (Midwives);

(3) Chapter 401 (Speech-Language Pathologists and Audiologists);

(4) Chapter 402 (Hearing Instrument Fitters and Dispensers);

(5) Chapter 403 (Licensed Dyslexia Practitioners and Therapists);

(6) Chapter 451 (Athletic Trainers);

(7) Chapter 455 (Massage Therapy);

(8) Chapter 506 (Behavior Analysts);

(9) Chapter 605 (Orthotists and Prosthetists); and

(10) Chapter 701 (Dietitians).

(b) This subchapter is promulgated under Occupations Code §51.501.

(c) The provisions of this subchapter are in addition to all other provisions of law or commission rules that apply to the programs in subsection (a).

(d) To the extent that any provision of this subchapter conflicts with any provision of the laws or rules governing a program in subsection (a), the specific provision governing a program will prevail over this subchapter.

§100.61. Definitions.

The following terms have the following meanings when used in this subchapter, unless the context clearly indicates otherwise:

(1) Client--A patient, consumer, or any other person receiving care or services from a health professional.

(2) Health professional--A person holding a license issued by the department in a program listed in §100.60(a) of this chapter.

(3) In-person--The health professional is physically present with the client while performing an act or service within the health professional's scope of practice.

(4) Telehealth service--A health service delivered by a health professional acting within the scope of the health professional's license to a client at a different physical location than the health professional using telecommunications or information technology.

§100.62. License Requirement.

Unless otherwise permitted to practice under applicable law or commission rule, a person providing a telehealth service to a client located in Texas at the time the service is provided must possess the valid license type required by the department for the delivery of the applicable telehealth service, regardless of the location of the provider when delivering the telehealth service.

§100.63. Standard of Care.

A health professional providing a telehealth service is subject to the standard of care that would apply to the provision of the same health care service or procedure in an in-person setting. Nothing in this subchapter shall be interpreted to require a higher standard of care or otherwise alter the applicable standard of care governing the treatment provided by the health professional.

§100.64. Appropriate Client Care and Fraud Prevention.

(a) A health professional providing a telehealth service to a client shall ensure that the telecommunications or information technology used to provide the telehealth service is of sufficient quality to allow the health professional to meet the applicable standard of care.

(b) It is the health professional's duty to ensure the client or the client's authorized representative can provide all necessary diagnostic information and understand all communication provided during the telehealth service to meet the applicable standard of care.

(c) To ensure appropriate client care, a health professional providing a telehealth service shall:

(1) inform the client or the client's authorized representative about the capabilities and limitations of any telehealth service to be provided;

(2) ensure that informed consent is obtained if it would be required for an in-person service of the same type;

(3) allow the client or the client's authorized representative to refuse delivery of telehealth services at any time; and

(4) provide the client or the client's authorized representative with information about follow-up care if indicated by the applicable standard of care for the service provided.

(d) To prevent fraud and abuse when providing a telehealth service, a health professional shall:

(1) take reasonable steps to verify the identity of the client matches the person who is scheduled to receive the telehealth service;

(2) document a telehealth service to the same extent as would be required for an in-person service;

(3) ensure that any additional required telehealth-related documentation is maintained in accordance with the applicable laws and rules governing the practice of the health professional; and

(4) ensure appropriate protocols are in place to prevent unauthorized access to client communications and claim information.

§100.65. Client Privacy.

(a) When providing a telehealth service, a health professional shall take appropriate measures to ensure that client communications, recordings, and records are protected as required by federal and state privacy laws.

(b) A health professional is responsible for ensuring all persons acting under the supervision, direction, or delegated authority of the health professional observe federal and state privacy laws when providing a telehealth service.

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

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Brad Bowman
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SUBCHAPTER D. REMOTE CONTINUING EDUCATION FOR HEALTH PROFESSIONALS

16 TAC §§100.70 - 100.72

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 202, 203, 401, 402, 403, 451, 455, 506, 605, and 701, 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 proposed rules are those set forth in Texas Occupations Code, Chapters 51, 202, 203, 401, 402, 403, 451, 455, 506, 605, and 701. No other statutes, articles, or codes are affected by the proposed rules.

§100.70. Applicability.

(a) This subchapter applies to programs administered by the department under the following chapters of Title 3, Occupations Code:

(1) Chapter 202 (Podiatrists);

(2) Chapter 203 (Midwives);

(3) Chapter 401 (Speech-Language Pathologists and Audiologists);

(4) Chapter 402 (Hearing Instrument Fitters and Dispensers);

(5) Chapter 403 (Licensed Dyslexia Practitioners and Therapists);

(6) Chapter 451 (Athletic Trainers);

(7) Chapter 455 (Massage Therapy);

(8) Chapter 506 (Behavior Analysts);

(9) Chapter 605 (Orthotists and Prosthetists); and

(10) Chapter 701 (Dietitians).

(b) This subchapter is promulgated under Occupations Code §51.501.

(c) The provisions of this subchapter are in addition to all other provisions of law or commission rules that apply to the programs in subsection (a).

(d) To the extent that any provision of this subchapter conflicts with any provision of the laws or rules governing a program in subsection (a), the specific provision governing a program will prevail over this subchapter.

§100.71. Definitions.

The following terms have the following meanings when used in this subchapter, unless the context clearly indicates otherwise:

(1) Health professional--A person holding a license issued by the department in a program listed in §100.70(a) of this chapter.

(2) Remote continuing education--The provision of continuing education to a health professional through the use of telecommunications or information technology.

§100.72. Remote Continuing Education for Health Professionals.

(a) A health professional may complete any continuing education requirements through remote continuing education, if permitted by applicable federal and state law and the department rules governing the health professional's licensure.

(b) A health professional who uses remote continuing education in a manner intended to falsely represent the completion of licensure requirements may be subject to disciplinary sanction, including denial or revocation of licensure.

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

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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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CHAPTER 130. PODIATRIC MEDICINE PROGRAM

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 130, Subchapter B, §130.27, and a new rule at Subchapter G, §130.75, regarding the Podiatry Program. These proposed changes are referred to as the "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 130 implement Texas Occupations Code Chapter 202, Podiatrists.

The proposed rules implement certain podiatry-specific provisions required by Texas Occupations Code §51.2032. The proposed rules are necessary to relocate these provisions from their existing locations to the chapter of Department rules specifically regulating podiatry. This rulemaking is accompanied by another rulemaking related to 16 TAC Chapter 100, regarding General Provisions for Health-Related Programs, and the reorganization of that chapter has resulted in the need for the proposed rules.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §130.27, Meetings. The proposed rules amend the title of the rule to "Advisory Board Meetings and Duties of Department." The proposed rules duplicate the provisions of existing 16 TAC §100.20, Providing Information to Advisory Boards for Certain Health-Related Programs, with minor changes to the text making it podiatry-specific. The proposed rules also relocate 16 TAC §100.31, Rules Regarding the Podiatric Medicine Program, and §100.50, Continuing Education Procedures for the Podiatric Medicine Program, to this rule section, creating new subsections and re-lettering the existing rule text accordingly. The Department's rules in Chapter 100 are being amended to remove podiatry references and §100.31 and §100.50 are being repealed in a concurrent rulemaking.

The proposed rules adopt new §130.75, Establishment of Enforcement Procedures. This new rule creates a podiatry-specific version of the text of existing 16 TAC §100.40, Enforcement Procedures for Certain Health-Related Programs.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be that the proposed rules require the Texas Commission of Licensing and Regulation (Commission) and the Department to seek out and rely on the expertise and professional knowledge of the Podiatric Medical Examiners Advisory Board members when developing the program's penalty matrix, criminal conviction guidelines and continuing education requirements, and when adopting rules relating to the scope of practice of, a health-related standard of care for, or the ethical practice of the podiatry profession. This will result in better decisions made by the Commission and Department and better policies and rules to protect the public. The proposed rules also require the Department to develop procedures to incorporate podiatry-related expertise into the Department's investigation and resolution of complaints. This will allow experts to help the Department better resolve podiatry-related complaints that could be complex, sharing their knowledge to better safeguard the public and provide proper complaint resolution for respondents.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. The proposed rules have no economic costs to persons that are licensees, businesses, or the general public in Texas. The rules do not impose additional fees upon licensees, nor do they create requirements that could cause licensees to expend funds for equipment, technology, staff, supplies or infrastructure. All requirements of the proposed rules are applicable only to the Commission, the Department, and the Podiatric Medical Examiners Advisory Board.

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

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Since the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

5. The proposed rules do create a new regulation. The proposed rules create a new regulation by adopting §130.75, Establishment of Enforcement Procedures, requiring the Department to develop procedures to incorporate podiatry-related expertise into the Department's investigation and resolution of complaints.

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

amending §130.27, regarding the Podiatric Medical Examiners Advisory Board meetings to require the Department to present policies and guidelines for podiatry to the podiatry advisory board for input and recommendation, and present investigative, enforcement or disciplinary procedure information and statistics to the advisory board at its meetings. The amendments to §130.27 implement statutory requirements applicable to the Commission, preventing adoption of a new podiatry rule relating to scope of practice, health-related standard of care, or the ethical practice of the podiatry profession unless the rule has first been proposed by the advisory board. The amended text of §130.27 also requires the Department to establish an advisory board work group to review and make recommendations regarding continuing education requirements, and to present opinions or recommendations to the full advisory board for discussion.

7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

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

SUBCHAPTER B. ADVISORY BOARD

16 TAC §130.27

STATUTORY AUTHORITY

The proposed rule is proposed under Texas Occupations Code, Chapters 51 and 202, 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 proposed rule are those set forth in Texas Occupations Code, Chapters 51 and 202. No other statutes, articles, or codes are affected by the proposed rule.

§130.27. Advisory Board Meetings and Duties of Department. [~~Meetings.~~]

(a) The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

(b) The department will present the following documents, including any updates or revisions, to the advisory board for its input and recommendation:

(1) The penalty matrix for podiatry to be included in the department's Enforcement Plan; and

(2) Criminal Conviction Guidelines (Guidelines for Applicants with Criminal Convictions) for podiatry.

(c) The department will provide information regarding the general investigative, enforcement, or disciplinary procedures of the department or commission to the advisory board in the following manner:

(1) At advisory board meetings, the department will provide a report on recent enforcement activities, including:

(A) a brief description of final orders entered in enforcement cases; and

(B) statistics on complaints received, disposition of cases, and any sanctions or administrative penalties assessed;

(2) On request of the advisory board, the department will provide additional information:

(A) during the staff report portion of the advisory board meeting; or

(B) by placing a discussion item on the agenda for a future advisory board meeting; or

(3) The department may provide information directly to an individual member of the advisory board in response to a request from that member.

(d) The commission may not adopt a new rule relating to the scope of practice of, a health-related standard of care for, or the ethical practice of the profession of podiatry unless the rule has been proposed by the advisory board.

(e) Under Occupations Code §51.2032(b) and (c), the advisory board may propose a rule described by subsection (d) according to the following procedure:

(1) The advisory board, by a majority vote of the members present and voting at a meeting at which a quorum is present, shall either:

(A) recommend that the rule be published in the *Texas Register* for public comment; or

(B) if the rule has been published and after considering the public comments, make a recommendation to the commission concerning adoption of the rule;

(2) The rule must be within the commission's legal authority to adopt; and

(3) The department may make non-substantive, editorial changes to the rule as necessary.

(f) The commission shall either adopt the rule as proposed by the advisory board under subsection (e), with any non-substantive, editorial changes made by the department under subsection (e)(3), or return the rule to the advisory board for revision.

(g) The department will establish an advisory board work group to review and make recommendations regarding continuing education requirements.

(h) The department may obtain additional expertise from one or more of the following sources:

(1) a former member of the advisory board;

(2) a department staff expert; or

(3) an outside expert with relevant education, training, or experience.

(i) Opinions or recommendations made under subsection (g) will be presented to the full advisory board for discussion.

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

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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 475-4879

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SUBCHAPTER G. ENFORCEMENT

16 TAC §130.75

STATUTORY AUTHORITY

The proposed rule is proposed under Texas Occupations Code, Chapters 51 and 202, 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 proposed rule are those set forth in Texas Occupations Code, Chapters 51 and 202. No other statutes, articles, or codes are affected by the proposed rule.

§130.75. Establishment of Enforcement Procedures.

(a) The department will develop procedures to incorporate podiatry-related expertise into the department's investigation and resolution of complaints.

(b) The department will seek input regarding the procedures developed under this section from the advisory board.

(c) The procedures developed under this section may include obtaining podiatry-related expertise from one or more of the following sources:

(1) A current or former member of the advisory board;

(2) A department staff expert;

(3) An outside expert with relevant education, training, or experience; or

(4) A panel consisting of any combination of the individuals listed in paragraphs (1) - (3).

(d) Opinions or recommendations obtained under subsection (c) are not binding on the department or commission.

(e) The procedures developed under this section must include provisions to protect information that is confidential by law.

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

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Brad Bowman
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For further information, please call: (512) 475-4879

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.16

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §1.16, concerning Contracts, Including Grants, for Materials and/or Services, in Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter A. The rule will be replaced with a concurrently proposed new §1.16 that revises the agency's contracting process.

The repeal of the rule is part of the agency's proposed adoption of a new §1.16 that increases the dollar thresholds of contracting delegated to the Commissioner of Higher Education. The repeal and new rule will streamline the agency's process while maintaining clarity about authority to contract. The repeal will not affect the general population or any regulated party as it strictly governs internal agency processes.

Nichole Bunker-Henderson, General Counsel, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rulemaking. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rulemaking. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rulemaking.

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

Nichole Bunker-Henderson, General Counsel, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of implementing the rulemaking will be increased clarity and efficiency in the agency contracting process. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the repeal will not require the creation or elimination of employee positions;

(3) implementation of the repeal will not require an increase or decrease in future legislative appropriations to the agency;

(4) the repeal will not require an increase or decrease in fees paid to the agency;

(5) the repeal will result in the creation of a new rule;

(6) the repeal will not limit an existing rule;

(7) the repeal will not change the number of individuals subject to the rule; and

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

Comments on the proposal may be submitted to Nichole Bunker-Henderson, P.O. Box 12788, Austin, Texas 78711-2788, or via email at Nichole.Bunker-Henderson@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The repeal is proposed under Texas Education Code 61.028(a), Section which provides the Coordinating Board with the authority to delegate authority to the Commissioner of Higher Education; Texas Government Code §2261.254, which requires the Board to execute contracts and authorizes the Board to delegate authority to the Commissioner and Deputy Commissioner to execute contracts.

The proposed repeal does not affect any other statute or rule.

§1.16. Contracts, Including Grants, for Materials and/or Services.

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

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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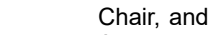
For further information, please call: (512) 427-6297



19 TAC §1.16

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §1.16, concerning Contracts, Including Grants, for Materials and/or Services, in Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter A. In a separate rulemaking elsewhere in this issue of the *Texas Register,* the agency proposes to repeal current §1.16, concerning Contracts, Including Grants, for Materials and/or Services. The repeal of and new §1.16 will clarify and streamline the agency's contracting process by doing the following:

Subsection (a):

Increases the authority of the Commissioner of Higher Education to execute contracts up to $5 million.

Clarifies that the Commissioner will provide written notification to the Board Chair, Board Vice Chair, and Chair of the Agency Operations Committee prior to execution of the contract (or other Agreement) that totals more than $1 million, including all amendments.

Sets out the reporting requirements that the Director of Contracts and Procurement will comply with, as required by law.

Subsection (b):

Provides that an Agreement that exceeds $5 million requires Board approval, except those that the agency is required by law to execute, e.g. non-discretionary pass through funding.

Sets out the reporting requirements that the Director of Contracts and Procurement will comply with, as required by law, for contracts exceeding $5 million.

Subsection (c):

Provides that a Deputy Commissioner has authority to enter into an Agreement that totals $100,000 or less.

Provides that an Assistant Commissioner has authority to enter into an Agreement that totals $10,000 or less.

Subsection (d):

Requires the Commissioner to provide a quarterly report to the Board listing all Agreement entered into by the Board that are $10,000 or greater.

Subsection (e):

Sets out the statutory requirement for the Board to approve in an Open Meeting certain changes to contracts for goods or services, as set out in Government Code Chapter 2155.

Subsection (f):

Requires the agency to use the procedures set out in its Procurement and Contract Management and Grant Management Handbooks to ensure adequate contract and grant management and monitoring

None of the revisions adopted in new §1.16 affect the general population or regulated community. These are agency procedures governing the internal processes of the agency; they are adopted in §1.16, solely for the purpose of clarity. The Board's increase in delegation of authority to the Commissioner of Higher Education reflects the current landscape of agency operations and the high volume of contracts, interagency contracts, and grant agreements that require swift execution. The Board will receive quarterly notification of all Agreements over $10,000. The Commissioner, via agency staff, will notify the Board Chair, Vice Chair, and Chair of the Agency Operations Committee of each Agreement that will exceed $1 million prior to execution of the Agreement. This will allow any of the Board leadership to notify the Commissioner of any concerns with the contract prior to execution of the contract.

The increase in authority to execute contracts up to $10,000 for Assistant Commissioners, and up to $100,000 for Deputy Commissioners, provides greater efficiency in the contracting process for smaller dollar contracts that once properly procured do not require additional approvals.

Nichole Bunker-Henderson, General Counsel, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

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

Nichole Bunker-Henderson, General Counsel, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be greater clarity and efficiency in the agency contracting process. There are no anticipated economic costs

to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will create a new rule;

(6) the rules will not limit an existing rule;

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

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

Comments on the proposal may be submitted to Nichole Bunker-Henderson, P.O. Box 12788, Austin, Texas 78711-2788, or via email at Nichole.Bunker-Henderson@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new rule is proposed under Texas Education Code 61.028(a), which provides the Coordinating Board with the authority to delegate authority to the Commissioner of Higher Education. Texas Government Code §2261.254, which requires the Board to execute contracts over $1 million, and authorizes the Board to delegate authority to the Commissioner and Deputy Commissioner to execute such contracts. And Texas Government Code §2261.255 governing requirements for contracts exceeding $5 million.

This rule does not affect any other statute or rule.

§1.16. Contracts, Including Grants, for Materials and/or Services.

(a) The Board delegates to the Commissioner authority to approve and enter into all payable and receivable Agreements, including, contracts, grants, and other agreements, and interagency contracts for which the Agreement, inclusive of all amendments, totals $5 million or less.

(1) The Commissioner is authorized to approve and sign all Agreements that total up to $5 million, inclusive of all amendments subject to the notification requirements in paragraph (2) of this subsection.

(2) The Commissioner shall provide written notification to the Board Chair, Board Vice Chair and Chair of the Agency Operations committee of any Agreement that totals $1 million or more, inclusive of all amendments, prior to execution of the Agreement.

(3) For each contract for the purchase of goods or services that has a value exceeding $1 million, there must be contract reporting requirements that provide information on the following:

(A) compliance with financial provisions and delivery schedules under the contract;

(B) corrective action plans required under the contract and the status of any active corrective action plan; and

(C) any liquidated damages assessed or collected under the contract.

(D) Verification is required of:

(i) the accuracy of any information reported under this subsection that is based on information provided by a contractor; and

(ii) the delivery time of goods or services scheduled for delivery under the contract.

(b) Any Agreement exceeding $5 million, inclusive of all amendments, requires Board approval prior to execution of the contract or other Agreement, except those described in paragraph (1) of this subsection. The Commissioner is authorized to sign an Agreement or amendment that totals more than $5 million that has been approved by the Board.

(1) Agreements exceeding $5 million that the agency is required by law to enter into, i.e. those that are appropriated to the agency as non-discretionary funding to a third party, do not require Board approval and are delegated to the Commissioner for approval and signature.

(2) For each contract for the purchase of goods or services that has a value totaling $5 million or more, the procurement director must:

(A) verify in writing that the solicitation and purchasing methods and contractor selection process comply with state law and agency policy; and

(B) submit to the Board information on any potential significant issue that may arise in the solicitation, purchasing, or contractor selection process.

(c) In addition to the Commissioner, the following employees have authority to approve an Agreement:

(1) A Deputy Commissioner if the Agreement, inclusive of all amendments, totals $100,000 or less.

(2) An Assistant Commissioner, in addition to a Deputy Commissioner, with primary oversight of a particular Agreement if the Agreement, inclusive of all amendments, totals $10,000 or less.

(d) The Commissioner shall provide a report to the Board, at least quarterly, describing all Agreements entered into by the agency during the preceding quarter, the total of which, inclusive of all amendments, is $10,000 or greater.

(e) The Board shall, in an open meeting, consider any material change to all contracts for goods or services awarded under Texas Government Code, Chapter 2155. A material change to a contract includes extending the length or postponing the completion of a contract for six months or more; or increasing the total consideration to be paid under a contract by at least 10 percent, including by substituting certain goods, materials, products, or services. Goods are supplies, materials, or equipment. Services are the furnishing of skilled or unskilled labor or professional work but do not include a professional service subject to Subchapter A, Chapter 2254, Texas Government Code, service of a state employee, consulting service or service of a consultant as defined by Subchapter B, Chapter 2254, or the service of a public utility.

(f) Agency staff shall utilize THECB's Procurement and Contract Management Handbook or Grant Management guidelines and the THECB's Risk Assessment tool to determine which Agreements require enhanced contract or grant monitoring.

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

Filed with the Office of the Secretary of State on January 12, 2022.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: February 27, 2022
For further information, please call: (512) 427-6297

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CHAPTER 6. HEALTH EDUCATION, TRAINING, AND RESEARCH FUNDS
SUBCHAPTER F. PLANNING GRANTS FOR GRADUATE MEDICAL EDUCATION

19 TAC §6.107, §6.110

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 6, Subchapter F, §6.107, concerning the definition of a Graduate Medical Education Program, and §6.110, concerning return of funds. Specifically, the amendments will align Texas Administrative Code rule with statutory changes regarding the inclusion of podiatric medicine residency programs in the definition of a Graduate Medical Education Program and provide clarification regarding return of award funds.

The proposed amendment to §6.107 of the Texas Administrative Code implements legislative changes made to Texas Education Code Chapter 58A, Section 58A.001(5)(b) by House Bill 2509 (87R). The proposed addition of §6.110(d) provides the requirement that grantees return unexpended funds, remaining funds if award is terminated, and funds expended on unallowed costs.

Dr. Stacey Silverman, Assistant Commissioner for Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

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

Dr. Stacey Silverman, Assistant Commissioner for Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the alignment of Texas Administrative Code rule with statutory changes regarding the inclusion of podiatric medicine residency programs in the definition of a Graduate Medical Education Program and clarification of the return of funds requirement. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

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

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

Comments on the proposal may be submitted to Dr. Stacey Silverman, Assistant Commissioner for Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at rulecomments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Education Code, Sections 58A.001(5)(b), which makes podiatric medicine an eligible program for grants under Chapter 58A; 58A.003, which requires the Board to seek reimbursement for any grant funds that the recipient fails to use in accordance with law; and Sections 58A.021 and 58A.022, which provides the Coordinating Board with the authority to award and administer one-time graduate medical education planning and partnership grants to hospitals, medical schools, and community-based, ambulatory patient care centers located in this state that seek to develop new graduate medical education programs with first-year residency positions.

The proposed amendment affects Texas Education Code, Chapter 58A, and 19 Texas Administrative Code, Chapter 6, Subchapter F.

§6.107. Definitions.

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

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education.

(3) Community-based, Ambulatory Patient Care Center--Includes:

(A) a federally qualified health center, as defined by §1905(1)(2)(B), Social Security Act (42 U.S.C. §1396d(1)(2)(B));

(B) a community mental health center, as defined by §1861(ff)(3)(B), Social Security Act (42 U.S.C. §1395x(ff)(3)(B));

(C) a rural health clinic, as defined by §1861(aa)(2), Social Security Act (42 U.S.C. §1395x(aa)(2)); and

(D) a teaching health center, as defined by 42 U.S.C. §2931-1(f)(3)(A).

(4) First-Year Residency Position--A position filled by a physician that is entering into residency training for the first time.

(5) Graduate-Year Level--A resident's current year of accredited graduate medical education. Graduate-Year Level is also referred to as "postgraduate year" or "PGY."

(6) Graduate Medical Education Program (also referred to as residency training)--

(A) a [A] nationally-accredited post-doctor of medicine (M.D.) or post-doctor of osteopathic medicine (D.O.) program that prepares physicians for the independent practice of medicine in a specific specialty area; or [, ~~also referred to as residency training.~~]

(B) a nationally-accredited post-doctor of podiatric medicine (D.P.M.) program that prepares podiatrists for independent practice in the specialty area of podiatry.

(7) Hospital--

(A) a facility licensed as a hospital under Chapter 241, Health and Safety Code, or as a mental hospital under Chapter 577, Health and Safety Code; or

(B) a similar facility owned or operated by this state or an agency of this state.

(8) Medical School--A Texas public or independent medical institution that awards the doctor of medicine (M.D.) or doctor of osteopathic medicine (D.O.) degree.

(9) Request for Applications--The full text of the administrative regulations, budget guidelines, reporting requirements, and other standards of accountability for this program.

(10) Applicant--An entity eligible to apply for a Graduate Medical Education Planning and Partnership Grant.

§6.110. General Information.

(a) Cancellation or Suspension of Grants. The Board has the right to reject all applications and cancel a grant solicitation at any point.

(b) Notice of Grant Award (NOGA). Before release of funds, the successful applicants must sign a NOGA issued by the Board.

(c) Reporting. Grantees must file reports with the Board as required by the Request for Applications, Notice of Grant Award, and any amendments thereto according to the schedule and format determined by the Board.

(d) Return of Funds. Grantee is required to return to the Board unexpended funds and remaining funds if award is terminated or Grantee is unable to fill the position or expend the funds within the grant period.

(e) Reimbursement. Grantee shall reimburse the Board for funds expended on unallowed or unauthorized costs.

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

Filed with the Office of the Secretary of State on January 12, 2022.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: February 27, 2022
For further information, please call: (512) 427-6239

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SUBCHAPTER G. UNFILLED POSITION GRANTS FOR GRADUATE MEDICAL EDUCATION

19 TAC §6.122, §6.125

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 6, Subchapter G, §6.122, concerning the definition of a Graduate Medical Education Program, and §6.125, concerning return or reimbursement of funds. Specifically, the amendments will align Texas Administrative Code with statutory changes regarding the inclusion of podiatric medicine residency programs in the definition of a Graduate Medical Education Program and provide clarification regarding return or reimbursement of award funds.

The proposed amendment to §6.122 of the Texas Administrative Code implements legislative changes made to Texas Education Code Chapter 58A, Subchapter A, Section 58A.001(5)(b) by House Bill 2509 (87R). The proposed addition of §6.125(d) provides the requirement that grantees return unexpended funds, remaining funds if award is terminated, and reimburse funds expended on unallowed or unauthorized costs, as required by Section 58A.003.

Dr. Stacey Silverman, Assistant Commissioner for Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

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

Dr. Stacey Silverman, Assistant Commissioner for Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the alignment of Texas Administrative Code rule with statutory changes regarding the inclusion of podiatric medicine residency programs in the definition of a Graduate Medical Education Program and clarification of the return or reimbursement of funds requirement. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

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

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

Comments on the proposal may be submitted to Dr. Stacey Silverman, Assistant Commissioner for Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at RuleComments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Education Code, Sections 58A.001(5)(b), which makes podiatric medicine an eligible program for grants under chapter 58A; 58A.003, which requires the Board to seek reimbursement for any grant funds that the recipient fails to use in accordance with law; and Sections 58A.021 and 58A.023, which provides the Coordinating Board with the authority to award and administer grants to graduate medical education programs to enable those programs to fill first-year residency positions that are accredited but unfilled as of July 1, 2013.

The proposed amendment affects Texas Education Code, Chapter 58A and 19 Texas Administrative Code, Chapter 6, Subchapter G.

§6.122. Definitions.

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

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education.

(3) First-Year Residency Position--A position filled by a physician that is entering into residency training for the first time.

(4) Graduate Medical Education Program (also referred to as residency training)--

(A) a [~~A~~] nationally-accredited post-doctor of medicine (M.D.) or post-doctor of osteopathic medicine (D.O.) program that prepares physicians for the independent practice of medicine in a specific specialty area; or [~~, also referred to as residency training.~~]

(B) a nationally-accredited post-doctor of podiatric medicine (D.P.M.) program that prepares podiatrists for independent practice in the specialty area of podiatry.

(5) Graduate-Year Level--A resident's current year of accredited graduate medical education. Graduate-Year Level is also referred to as "postgraduate year" or "PGY."

(6) Medical School--A public or independent medical institution that awards the doctor of medicine (M.D.) or doctor of osteopathic medicine (D.O.) degree, as defined in Texas Education Code, §61.003(5) or §61.501(1).

(7) Request for Applications--The full text of the administrative regulations, budget guidelines, reporting requirements, and other standards of accountability for this program.

(8) Sponsoring Institution--The organization or entity that assumes the ultimate financial and/or academic responsibility for a program of graduate medical education, e.g., a university, a medical school, a hospital, a school of public health, a health department, a public health agency, an organized health care delivery system, a medical examiner's office, a consortium, an educational foundation.

(9) Unfilled Position--A first-year residency position that is approved by the accreditor for the graduate medical education program and that was not filled as of July 1, 2013.

§6.125. General Information.

(a) Cancellation or Suspension of Grants. The Board has the right to reject all applications and cancel a grant solicitation at any point.

(b) Notice of Grant Award (NOGA). Before release of funds, the successful applicants must sign a NOGA issued by the Board.

(c) Reporting. Grantees must file reports with the Board as required by the Request for Applications, Notice of Grant Award, and any amendments thereto according to the schedule and format determined by the Board.

(d) Return of Funds. Grantee is required to return to the Board unexpended funds and remaining funds if award is terminated or Grantee is unable to fill the position or expend the funds within the grant period.

(e) Reimbursement. Grantee shall reimburse the Board for funds expended on unallowed or unauthorized costs.

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

Filed with the Office of the Secretary of State on January 12, 2022.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6239

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SUBCHAPTER H. GRANTS FOR NEW AND EXPANDED PROGRAMS FOR GRADUATE MEDICAL EDUCATION

19 TAC §6.137, §6.140

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 6, Subchapter H, §6.137, concerning the definition of a Graduate Medical Education Program, and §6.140, concerning return or reimbursement of funds. Specifically, the amendments will align Texas Administrative Code with statutory changes regarding the inclusion of podiatric medicine residency programs in the definition of a Graduate Medical Education Program and provide clarification regarding return or reimbursement of award funds.

The proposed amendment to §6.137 of the Texas Administrative Code implements legislative changes made to Texas Education Code Chapter 58A, Subchapter A, Section 58A.001(5)(b) by House Bill 2509 (87R). The proposed addition of §6.140(d) provides the requirement that grantees return unexpended funds, remaining funds if award is terminated, and reimburse funds expended on unallowed or unauthorized costs, as required by Section 58A.003.

Dr. Stacey Silverman, Assistant Commissioner for Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

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

Dr. Stacey Silverman, Assistant Commissioner for Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the alignment of Texas Administrative Code rule with statutory changes regarding the inclusion of podiatric medicine residency programs in the definition of a Graduate Medical Education Program and clarification of the return or reimbursement of funds requirement. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

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

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

Comments on the proposal may be submitted to Dr. Stacey Silverman, Assistant Commissioner for Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at RuleComments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendment is proposed under Texas Education Code, Sections 58A.001(5)(b), which makes podiatric medicine an eligible program for grants under chapter 58A; 58A.003, which requires the Board to seek reimbursement for any grant funds that the recipient fails to use in accordance with law; and 58A.021 and 58A.024, which provide the Coordinating Board with the authority to award and administer grants to eligible graduate medical education programs to enable those programs to fill first-year residency positions that are accredited but unfilled as of July 1, 2013.

The proposed amendment affects Texas Education Code, Chapter 58A and 19 TAC, Chapter 6, Subchapter H.

§6.137. Definitions.

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

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education.

(3) First-Year Residency Position--A position filled by a physician that is entering into residency training for the first time.

(4) Graduate Medical Education Program (also referred to as residency training)--

(A) a [~~A~~] nationally-accredited post-doctor of medicine (M.D.) or post-doctor [~~doctor~~] of osteopathic medicine (D.O.) program that prepares physicians for the independent practice of medicine in a specific specialty area; or[~~, also referred to as residency training.~~]

(B) a nationally-accredited post-doctor of podiatric medicine (D.P.M.) program that prepares podiatrists for independent practice in the specialty area of podiatry.

(5) Graduate-Year Level--A resident's current year of accredited graduate medical education. Graduate-Year Level is also referred to as "postgraduate year" or "PGY."

(6) Medical School--A public or independent medical institution that awards the doctor of medicine (M.D.) or doctor of osteopathic medicine (D.O.) degree, as defined in Texas Education Code, §61.003(5) or §61.501(1).

(7) Request for Applications--The full text of the administrative regulations, budget guidelines, reporting requirements, and other standards of accountability for this program.

(8) Sponsoring Institution--The organization or entity that assumes the ultimate financial and/or academic responsibility for a program of graduate medical education, e.g., a university, a medical school, a hospital, a school of public health, a health department, a public health agency, an organized health care delivery system, a medical examiner's office, a consortium, an educational foundation.

(9) Applicant--A sponsoring institution that has submitted an Application for an award under the Grants for New and Expanded Programs for Graduate Medical Education.

§6.140. General Information.

(a) Cancellation or Suspension of Grants. The Board has the right to reject all applications and cancel a grant solicitation at any point.

(b) Notice of Grant Award (NOGA). Before release of funds, the successful applicants must sign a NOGA issued by the Board.

(c) Reporting. Grantees must file reports with the Board as required by the Request for Applications, Notice of Grant Award, and any amendments thereto according to the schedule and format determined by the Board.

(d) Return of Funds. Grantee is required to return to the Board unexpended funds and remaining funds if award is terminated or Grantee is unable to fill the position or expend the funds within the grant period.

(e) Reimbursement. Grantee shall reimburse the Board for funds expended on unallowed or unauthorized costs.

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

Filed with the Office of the Secretary of State on January 12, 2022.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: February 27, 2022
For further information, please call: (512) 427-6239

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SUBCHAPTER I. RESIDENT PHYSICIAN EXPANSION GRANT PROGRAM

19 TAC §§6.175 - 6.184

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 6, Subchapter I, §§6.175 - 6.184, concerning the Resident Physician Expansion Grant Program. Specifically, the repeal will remove agency rules that no longer have statutory authority.

Authority for Subchapter I was provided by Texas Education Code (TEC), Section 61.511 (83R) on September 1, 2013. The proposed repeal of Subchapter I of the Texas Administrative Code is based on the nonrenewal and expiration of TEC Section 61.511 on September 1, 2015.

Dr. Stacey Silverman, Assistant Commissioner for Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

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

Dr. Stacey Silverman, Assistant Commissioner for Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the rulemaking will be the repeal of rules that no longer have statutory authority. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the repeal will not require the creation or elimination of employee positions;

(3) implementation of the repeal will not require an increase or decrease in future legislative appropriations to the agency;

(4) the repeal will not require an increase or decrease in fees paid to the agency;

(5) the repeal will not create a new rule;

(6) the repeal will not limit an existing rule;

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

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

Comments on the proposal may be submitted to Dr. Stacey Silverman, Assistant Commissioner for Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at RuleComments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The repeal is proposed under Texas Education Code, Section 61.511, which provided the Coordinating Board with the authority to administer the Resident Physician Expansion Grant Program to encourage creation of new graduate medical education positions through community collaboration and innovative funding. Rulemaking authority lapsed when Section 61.511 expired on September 1, 2015.

The proposed repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 6, Subchapter I.

§6.175. Purpose.
§6.176. Authority.
§6.177. Definitions.
§6.178. Eligibility.
§6.179. Award Amounts.
§6.180. Grant Application Procedures.
§6.181. Award Criteria and Selection for Funding.
§6.182. Program Compliance.
§6.183. Reporting Criteria.
§6.184. General 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.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6239

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CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§22.3, 22.6, 22.11

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter A, §§22.3, 22.6, and 22.11, concerning General Provisions. Specifically, this amendment will outline the requirements for administering the Selective Service registration requirements related to state financial aid programs, require institutions to accept data generated through the newly developed online Texas Application for State Financial Aid, and alter the maximum amount of funding that may be transferred between certain state financial aid programs.

Texas Education Code, Section 51.9095, outlines certain requirements regarding Selective Service registration regarding

state financial aid eligibility, while directing the Coordinating Board to adopt rules for the administration of the section. Texas Administrative Code, Section 22.3 aligned the administration of this requirement with the federal requirements regarding Selective Service and the receipt of federal financial aid. With the elimination of the federal requirements, Section 22.3 is amended to eliminate reference to the federal process and to outline the administrative process for the state requirement. The amended rule acknowledges that the intent of the statute can be achieved through the submission of either the Selective Service Statement of Registration Status or documentation from the Selective Service System demonstrating the applicant's Selective Service registration.

Texas Education Code, Section 61.07762, requires the Coordinating Board to adopt procedures that allow an applicant to complete the Texas Application for State Financial Aid (TASFA) through an electronic submission process in the portal that provides the common application form. To allow applicants the opportunity to use the online TASFA, regardless of which Texas institution of higher education they plan to attend, the Texas Administrative Code, Section 22.6, is amended to clarify that institutions of higher education are required to accept the data submitted through the newly developed online TASFA, which will be the sole, acceptable online version of the TASFA. This amendment implements the legislative mandate to provide for TASFA completion through Apply Texas, the State's common application form portal. This amendment provides a modern, accessible, and uniform method for students to apply for financial aid.

The General Appropriations Act for the 2022-2023 Biennium, Article III, Higher Education Coordinating Board, Rider 17, altered the maximum percentage and dollar amount that an institution may transfer between the Texas College Work-Study Program and the state grant program in which the institution participates: the TEXAS Grant, the Texas Educational Opportunity Grant, or the Tuition Equalization Grant. Texas Administrative Code, Section 22.11, is amended to align with the new maximum percentage and dollar amounts. Texas Education Code, Sections 56.077, 56.303, 56.403, and 61.229, authorize the Coordinating Board to adopt rules regarding the administration of the Texas College Work-Study Program, the TEXAS Grant Program, the Texas Educational Opportunity Grant Program, and the Tuition Equalization Grant Program, respectively.

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

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

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be providing greater clarity regarding administrative aspects of the administrative code related to student financial aid programs. Students will benefit from being able to submit the TASFA online in an electronic format that is simple and consistent regardless of institution. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will change the number of individuals subject to the rule; and

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

Comments on the proposal may be submitted to Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at charles.contero-puls@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Education Code, Section 51.9095, 56.077, 56.303, 56.403, and 61.229, which provide the Coordinating Board with the authority to establish rules related to the affected state financial aid programs.

The proposed amendment affects loans, grants, scholarships, or other financial assistance funded by state revenue, including federal funds or gifts and grants accepted by this state.

§22.3. Student Compliance with Selective Service Registration.

(a) An individual may not receive a loan, grant, scholarship, or other financial assistance funded by state revenue, including federal funds or gifts and grants accepted by this state, unless the individual files the [~~a statement of the individual's~~] Selective Service Statement of Registration Status [~~status~~] with the institution granting or certifying the financial assistance. The language to be used in the Selective Service Statement of Registration Status is disseminated by Coordinating Board staff to institutions of higher education on an annual basis. Institutions may accept documentation from the Selective Service System of an individual's registration with the Selective Service in lieu of the required statement. [~~as required by this section.~~]

(b) An individual who has demonstrated registration with the Selective Service through the Selective Service Statement of Registration Status or acceptable Selective Service System documentation is not required to file a statement of the individual's selective service status the next time the individual makes an application for financial assistance to the same institution of higher education. An individual who has not previously demonstrated registration with the Selective Service through the Selective Service Statement of Registration Status or acceptable Selective Service System documentation is required to file a statement of the individual's selective service status the next time the individual makes an application for financial assistance. [~~Rules and guidelines to be used in administering the Texas Education Code, §51.9095 will be the same as those used for students receiving federal financial aid.~~]

(c) This section does not apply to:

(1) a female individual, if females are not subject to general selective service registration under federal law; or

(2) an individual older than the maximum age at which an individual is required to be registered with the selective service system under federal law.

(d) Authority for this section is provided in Texas Education Code, Chapter 51, Section 51.9095.

§22.6. [~~Priority Deadline for~~] Applying for State Financial Aid.

(a) Priority deadline:

(1) All general academic teaching institutions shall use January 15 as the priority application deadline to receive state financial aid.

(2) The priority deadline is not to serve as a determination of eligibility for state financial aid, but otherwise eligible students who apply on or before the deadline shall be given priority consideration for available state financial aid before other applicants.

[~~(a) For academic year 2018-2019 and prior academic years, general academic teaching institutions shall use March 15 as their priority application deadline for application for state financial assistance.~~]

(b) Texas Application for State Financial Aid (TASFA):

(1) The TASFA collects data necessary for determining state financial aid eligibility for those applicants classified as Texas residents, as outlined in Chapter 21, Subchapter B of this Part, who are not eligible to apply for federal financial aid using the Free Application for Federal Student Aid.

(2) Beginning with the financial aid application cycle for academic year 2023-2024 and thereafter, the online TASFA available through the ApplyTexas website is the sole, acceptable online TASFA. All institutions participating in financial aid programs covered by this chapter must accept the data generated by the completion of this online TASFA.

(3) Beginning with the financial aid application cycle for academic year 2023-2024 and thereafter, the TASFA document available through the ApplyTexas website is the sole, acceptable printable version of the TASFA, which institutions may accept from applicants who do not have access to the necessary technology to complete the online TASFA.

(4) An institution is not prohibited from requiring an applicant to submit additional information to accompany the data received via the TASFA.

[~~(b) Beginning with academic year 2019-2020 and hereafter, all general academic teaching institutions shall use January 15 as the priority application deadline to receive state financial assistance.~~]

(c) Authority for this section is provided in Texas Education Code, Chapter 56, Section 56.008 and Chapter 61, Section 61.07762.

[~~(c) The priority deadline is not to serve as a determination of eligibility for state financial assistance, but otherwise eligible students who apply on or before the deadline shall be given priority consideration for available state financial assistance before other applicants.~~]

§22.11. Provisions specific to the TEXAS Grant, TEOG, TEG, and Texas Work-Study Programs.

(a) Funding. Funds offered through this program may not exceed the amount of appropriations, gifts, grants and other funds that are available for this use (§§56.303(c) and 56.403(c)) Texas Education Code).

(b) Authority to Transfer Funds.

(1) Institutions participating in a combination of the Toward EXcellence, Access and Success Grant, Texas Educational Opportunity Grant, Tuition Equalization Grant, and Texas College Work-Study Programs, in accordance with instructions from the Board, may transfer current fiscal year funds up to the lesser of 25 [~~10~~] percent or $60,000 [~~$20,000~~] between these programs. This threshold applies to the program from which the funds are transferred. Requests for such [~~Such~~] transfers must be submitted by the institution by the annual deadline published by the agency [~~occur by July 1 of the current fiscal year~~].

(2) Institutions participating in both the Texas College Work-Study Program and the Work-Study Student Mentorship Program, in accordance with instructions from the Board, may transfer current fiscal year funds up to 25 percent between the two programs. This threshold applies to the program from which the funds are transferred. Such transfers must occur by July 1 of the current fiscal year.

(c) Grant Uses. No state grant or work-study funding may be used for any purpose other than paying for any usual and customary cost of attendance incurred by the student related to enrollment at a participating institution of higher education for the academic year for which funding was offered.

(d) Over Awards. If, at a time after the grant has been disbursed by the institution to the student, the student receives assistance that was not taken into account in the institution's estimate of the student's financial need, so that the resulting sum of assistance exceeds the student's financial need, the institution is not required to adjust the grant under this program unless the sum of the excess resources is greater than $300.

(e) Grant adjustments. If a student officially withdraws from enrollment, the institution shall follow its general institutional refund policy in determining the amount by which the financial aid is to be reduced. If the student withdraws or drops classes after the end of the institution's refund period, no refunds are due to the program. If for some other reason the amount of a student's disbursement exceeds the amount the student is eligible to receive, the financial aid should be recalculated accordingly.

(f) Re-offering of funds. Funds made available from grant adjustments may be re-offered to other eligible students attending the institution. If funds cannot be re-offered, they should be returned to the Board in accordance with §22.2 of this subchapter (relating to Timely Distribution of Funds).

(g) Late Disbursements.

(1) A student may receive a disbursement after the end of his/her period of enrollment if the student:

(A) Owes funds to the institution for the period of enrollment for which the grant is being made; or

(B) Received a student loan that is still outstanding for the period of enrollment.

(2) Funds that are disbursed after the end of the student's period of enrollment must be used to either pay the student's outstanding balance from his/her period of enrollment at the institution or to make a payment against an outstanding student loan received during that period of enrollment. Under no circumstances are funds to be released to the student.

(3) Documentation must be retained by the institution, proving the late-disbursed funds were used to make a payment against an outstanding balance at the institution from the relevant period of enrollment and/or to make a payment against an outstanding loan taken out for the period of enrollment.

(4) Unless granted an extension by the staff of the Coordinating Board, late disbursements must be processed prior to the end of the state fiscal year for which the funds were allocated to the institution.

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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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER BB. COMMISSIONER'S RULES ON REPORTING REQUIREMENTS

19 TAC §61.1027

The Texas Education Agency (TEA) proposes an amendment to §61.1027, concerning report on the number of educationally disadvantaged students for calculating the compensatory education allotment. The proposed amendment would allow students participating in virtual learning in the 2021-2022 school year to generate state compensatory education allotment funds.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 61.1027 establishes requirements for school districts to report the number of educationally disadvantaged students attending campuses not participating in the National School Lunch Program to derive an eligible student count by an alternative method for the purpose of receiving the compensatory education allotment.

Some students who are being taught through a virtual instruction setting during the 2021-2022 school year may not generate certain types of state funding, including compensatory education allotment funds. The proposed amendment would allow such students to generate state compensatory education allotment funds for the 2021-2022 school year in order to provide the students with the additional services they may need. School districts will be required to report the students through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) with average daily attendance (ADA) eligibility code 9, Enrolled, Not in Membership Due to Virtual Learning.

FISCAL IMPACT: Leo Lopez, associate commissioner for school finance, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by temporarily including a student eligibility ADA code in TSDS PEIMS to allow students being served in a virtual setting to generate state compensatory education allotment funds during the 2021-2022 school year.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Lopez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that school districts and charter schools receive appropriate compensatory education allotment funds for the 2021-2022 school year. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins January 28, 2022, and ends February 28, 2022. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the Texas Register on January 28, 2022. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §48.104, which provides funding for the compensatory education program based on students meeting certain criteria.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §48.104.

§61.1027. Report on the Number of Educationally Disadvantaged Students for Calculating the Compensatory Education Allotment.

(a) (No change.)

(b) Student eligibility under the alternative method. In order to calculate the formula transition grant pursuant to TEC, §48.277, and §61.1011 of this title (relating to Formula Transition Grant), for purposes of calculating the compensatory education allotment under TEC, §42.152, as that section existed prior to House Bill [~~(HB)~~] 3, 86th Texas Legislature, 2019, school districts and open-enrollment charter schools with one or more campuses not participating in the NSLP may derive an eligible student count by an alternative method.

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

(c) (No change.)

(d) Provisions for students participating in virtual learning in the 2021-2022 school year. For the 2021-2022 school year, students identified as educationally disadvantaged and designated in the Texas Student Data System Public Education Information Management System (TSDS PEIMS) with average daily attendance (ADA) eligibility code 9, Enrolled, Not in Membership Due to Virtual Learning, will generate state compensatory education funds and applicable weight as determined by their census block group number.

(e) [~~(d)~~] Recordkeeping. School districts and open-enrollment charter schools that receive compensatory education program funding pursuant to this section are responsible for obtaining the appropriate data from families of potentially eligible students, verifying that information, and retaining records.

(f) [~~(e)~~] Auditing procedures. The TEA will conduct an audit of data submitted by school districts and open-enrollment charter schools that receive compensatory education program funding pursuant to this section approximately every five years or on an alternative schedule adopted at the discretion of the commissioner.

(g) [~~(f)~~] Data source. The compensatory education allotment will be based on each student census block group submitted by school districts and open-enrollment charter schools in the TSDS PEIMS [~~Texas Student Data System Public Education Information Management Systems (TSDS PEIMS)~~] Fall submission. A census block group number must be submitted for every educationally disadvantaged student and each student coded with ADA eligibility code 9, except those students who are homeless, not enrolled, or otherwise ineligible for ADA [~~average daily attendance~~] or who reside in a residential facility and whose parents live outside the district.

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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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 10. ELIGIBILITY AND FORMS

28 TAC §5.4906

The Texas Department of Insurance (TDI) proposes new 28 TAC §5.4906, concerning the renewal premium grace period of the Texas Windstorm Insurance Association (TWIA). Section 5.4906 implements House Bill 2920, 87th Legislature, 2021.

EXPLANATION. HB 2920 requires TDI to adopt rules to establish a grace period of not more than 10 days after the due date for the receipt of payment of premium for the renewal of a policy.

Section 5.4906. Section 5.4906(a) establishes a premium payment grace period for TWIA policy renewals. Section 5.4906(b) provides that the grace period applies to certain premium surcharge payments made by TWIA policyholders under Insurance Code §2210.259 or §2210.6132. The surcharges are included to give effect to the grace period required by HB 2920 because these surcharges are part of the payment a policyholder must make to TWIA at renewal.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. David Muckerheide, assistant director, Property and Casualty Lines Office, has determined that during each year of the first five years the proposed new section is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the section, other than that imposed by the statute. Mr. Muckerheide made this determination because the proposed new section does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed new section.

Mr. Muckerheide 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 new section is in effect, Mr. Muckerheide expects that administering the proposed new section will have the public benefits of ensuring that TDI's rules conform to Insurance Code §2210.203 and helping TWIA policyholders renew their policies without a lapse in coverage if payment is no more than 10 calendar days late.

Mr. Muckerheide expects that the proposed new section will not increase the cost of compliance with Insurance Code §2210.203 because it does not impose requirements beyond those in the statute. Insurance Code §2210.203(c-1) requires the Commissioner to establish a grace period of not more than 10 days after the due date for the receipt of payment of premium for the renewal of a policy. To the extent there is a cost associated with administering the rule, the cost results from the statutory requirements.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed new section will not have an adverse economic effect on small or mi-

cro businesses, or on rural communities. The proposed new section will help ensure that any TWIA policyholders that are small or micro businesses, or who reside in rural communities, can avoid a lapse in coverage if the renewal premium payment is made within 10 calendar days after the due date. 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 this proposal does not impose a possible cost on regulated persons. However, even if there was a cost, no additional rule amendments are required under Government Code §2001.0045 because proposed §5.4906 is necessary to implement legislation. The proposed rule implements Insurance Code §2210.203(c-1), as added by HB 2920.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed new section is in effect, the proposed rule:

- 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 create a new regulation;

- will not expand, limit, or repeal an existing regulation;

- will increase the number of individuals subject to the rule's applicability; and

- will positively affect the Texas economy by giving TWIA policyholders a 10-day grace period when paying their renewal premium.

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 February 28, 2022. 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 received by TDI no later than 5:00 p.m., central time, on February 28, 2022. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes new §5.4906 under Insurance Code §§2210.008, 2210.203(c-1), and 36.001.

Insurance Code §2210.008 provides that the Commissioner may adopt rules as reasonable and necessary to implement Chapter 2210.

Insurance Code §2210.203(c-1) requires TDI to adopt rules establishing a grace period of not more than 10 days after the due date for the receipt of payment of premium for the renewal of a policy.

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. Section §5.4906 implements Insurance Code §2210.203(c-1).

§5.4906. Renewal Premium Grace Period.

(a) Grace period. The premium payment for policy renewal is considered timely if the Association receives it within 10 calendar days after the due date.

(b) Applicability of the grace period to certain premium surcharges. The grace period described in subsection (a) of this section applies to a premium surcharge payment by an Association policyholder under Insurance Code §2210.259, concerning Surcharge for Certain Noncompliant Structures, or §2210.6132, concerning Contingent Source of Payment for Class 2 and Class 3 Public Securities.

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

Filed with the Office of the Secretary of State on January 13, 2022.

TRD-202200100
James Person
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6584

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

SUBCHAPTER K. MOBILE SOURCE INCENTIVE PROGRAMS

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

30 TAC §114.622

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §114.622, concerning Incentive Program requirements.

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

Background and Summary of the Factual Basis for the Proposed Rule

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

House Bill (HB) 4472, 87th Texas Legislature, 2021, amended THSC, Chapter 386, Subchapter C to provide that the commission may not set the minimum percentage of annual hours of operation required for TERP-funded marine vessels or engines as less than 55%.

The proposed rulemaking would revise §114.622 to implement HB 4472 and align with existing statute.

Section Discussion

§114.622, Incentive Program Requirements

The commission proposes to amend §114.622, creating a new subsection (c), establishing that proposed projects involving marine vessels or engines must be operated in the intercoastal waterways or bays adjacent to a nonattainment area or affected county of this state for not less than 55% over the lifetime of the project to implement HB 4472. Also, the commission proposes to amend subsequent subsections to align with the new subsection (c).

Fiscal Note: Costs to State and Local Government

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

Public Benefits and Costs

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

The proposed rulemaking may result in fiscal implications for businesses or individuals. Eligible businesses or individuals that apply for and receive a grant may experience a cost savings by having a percentage of costs to replace or upgrade vehicles or equipment covered by the grant. Grant recipients may also experience a cost savings from lower fuel and maintenance costs associated with operating a newer or upgraded vehicle or equipment.

Local Employment Impact Statement

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

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

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

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

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

The amendments to §114.622 are proposed in accordance with HB 4472, which amended THSC, Chapter 386, Subchapter C. The proposed rule revises eligibility criteria for a voluntary grant program. Because the proposed rule places no involuntary requirements on the regulated community, the proposed rule would not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. In addition, none of these amendments place additional financial burdens on the regulated community.

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

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

The commission invites public comment regarding the Draft Regulatory Impact Analysis during the public comment period. Written comments on the Draft Regulatory Impact Analysis may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

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

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

Promulgation and enforcement of the proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with the amendments to THSC, Chapter 386 as a result of HB 4472. The proposed rule would revise a voluntary program and only affect motor vehicles that are not considered to be private real property. The proposed rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, the proposed rule would not constitute a taking under Texas Government Code, Chapter 2007.

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

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

Announcement of Hearing

The commission will hold a virtual public hearing on this proposal on February 18, 2022, at 10:00 a.m. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the virtual hearing; however, commission staff will be available to discuss the proposal 30 minutes prior to the hearing.

Consistency with the Coastal Management Program

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

Registration

The hearing will be conducted remotely using an internet meeting service. Individuals who plan to attend the hearing and want to provide oral comments and/or want their attendance on record must register by February 16, 2022. To register for the hearing, please email *Rules@tceq.texas.gov* and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on February 17, 2022, to those who register for the hearing.

Members of the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZDE2ZmVlYmQtZTdiYi00YjEwLTkyOWItZjI5ZTUwNGM1ZGI3%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%2230ec010b-ff0b-4618-bbc4-622a14f9cb18%22%2c%22IsBroadcastMeeting%22%3atrue%7d&btype=a&role=a

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

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2021-032-114-AI. The comment period closes February 28, 2022. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/pro-

pose_adopt.html. For further information, please contact Nate Hickman, Air Grants Division, (512) 239-4434.

Statutory Authority

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

The amendments are proposed as part of the implementation of THSC, Chapter 386, Subchapter C, as amended by House Bill 4472, 87th Texas Legislature, 2021.

§114.622. Incentive Program Requirements.

(a) Eligible projects include:

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

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

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

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

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

(6) use of qualifying fuel;

(7) implementation of infrastructure projects;

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

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

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

(c) For a proposed project involving a marine vessel or engine, the vessel or engine must be operated in the intercoastal waterways or bays adjacent to a nonattainment area or affected county of this state for not less than 55% of time over the lifetime of the project.

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

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

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

(g) [~~(f)~~] For a project to replace a motor vehicle, the vehicle being replaced may have been owned, leased, or otherwise commercially financed by the applicant. The applicant must have a legal right to replace and recycle or scrap the vehicle and engine before a grant is awarded for that project.

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

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

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

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

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

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

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

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

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

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

Filed with the Office of the Secretary of State on January 13, 2022.

TRD-202200115
Guy Henry
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 27, 2022
For further information, please call: (512) 239-2809

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

SUBCHAPTER D. EMPLOYEE BENEFITS

40 TAC §800.150, §800.151

The Texas Workforce Commission (TWC) proposes the following new subchapter to Chapter 800, relating to General Administration:

Subchapter D. Employee Benefits, §800.150 and §800.151

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of proposed new Chapter 800, Subchapter D is to establish administrative rules relating to the operation of TWC's sick and family leave pools.

Senate Bill 248 from the 73rd Texas Legislature, Regular Session (1993) (codified as Texas Government Code, §§661.001 - 661.008), established the sick leave pool. The sick leave pool is for eligible state employees who have exhausted their sick and personal leave to cover time-and-leave absences for catastrophic and/or life-threatening illnesses and injuries for either the employee or his or her approved family member.

House Bill (HB) 2063 from the 87th Texas Legislature, Regular Session (2021) (codified as Texas Government Code, §§661.021 - 661.028), established the family leave pool. The family leave pool provides eligible state employees more flexibility in bonding with and caring for children during a child's first year following birth, adoption, or foster placement; and for caring for a seriously ill family member of the employee, including pandemic-related illnesses or complications caused by a pandemic.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER D. EMPLOYEE BENEFITS

TWC proposes new Subchapter D, as follows:

§800.150. Sick Leave Pool

New §800.150 provides eligible employees with additional paid sick leave in documented cases of a catastrophic or life-threatening illness or injury to the employee or the employee's immediate family member.

§800.151. Family Leave Pool

New §800.151 provides eligible employees with additional family leave if they have exhausted all eligible compensatory, discretionary, sick, and vacation leave due to certain situations, and have provided proper documentation for using the family leave pool in extenuating circumstances, such as an ongoing pandemic that would include providing care for a family member. The family leave pool further provides eligible employees with the ability to apply for leave time and more flexibility in bonding with and caring for children during a child's first year following birth, adoption, or foster placement; or caring for a seriously ill family member of the employee, including pandemic-related illnesses or complications caused by a pandemic.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, Article I, §17 or §19, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to establish administrative rules for TWC's sick and family leave pools.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

--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 TWC;

--will not require an increase or decrease in fees paid to TWC;

--will not create a new regulation;

--will not expand, limit, or eliminate an existing regulation;

--will not change the number of individuals subject to the rules; and

--will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Lowell Keig, Director, Business Operations, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to increase employee retention by providing an additional safety net in case of a catastrophic or life-threatening illness or injury to the employee or the employee's immediate family member or in the bonding with and caring for children during a child's first year following birth, adoption, or foster placement.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. PUBLIC COMMENT

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than February 28, 2022.

PART V. STATUTORY AUTHORITY

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.150. 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 Agency's Director of Human Resources is designated as the pool administrator.

(c) The pool administrator will recommend a policy, operating procedures, and forms for the administration of this section for approval by the Agency's Executive Director.

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

§800.151. Family Leave Pool.

(a) A family leave pool is established to provide state employees more flexibility. It is available to employees who have exhausted their eligible compensatory, discretionary, sick, and vacation leave because of:

(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 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 to the pool.

(b) The Agency's Director of Human Resources is designated as the pool administrator.

(c) The pool administrator will recommend a policy, operating procedures, and forms for the administration of this section for approval by the Agency's Executive Director.

(d) Operation of the 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 January 11, 2022.

TRD-202200052
Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: February 27, 2022
For further information, please call: (512) 689-9855

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CHAPTER 804. JOBS AND EDUCATION FOR TEXANS (JET) GRANT PROGRAM

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 804, relating to the Jobs and Education for Texans (JET) Grant Program:

Subchapter A. Definitions, §804.1

Subchapter B. Advisory Board Composition, Meeting Guidelines, §804.12 and §804.13

Subchapter C. Grant Program, §804.21 and §804.24

Subchapter D. Grants to Educational Institutions for Career and Technical Education Programs, §804.41

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of Chapter 804 is to provide the establishment and operational procedures of the JET Grant Program, administered by TWC. Formerly under the direction of the Texas Comptroller of Public Accounts, oversight of the JET Grant Program was transferred to TWC through House Bill (HB) 3062, passed by the 84th Texas Legislature, Regular Session (2015), and the Commission adopted program rules in 2016.

The 85th Texas Legislature, Regular Session (2017), passed HB 2431, which amended Texas Education Code, §314.001 to include "public state colleges," as defined by Texas Education Code, §61.003, to the list of eligible entities to apply and receive JET grant funds.

The 87th Texas Legislature, Regular Session (2021), passed Senate Bill (SB) 346 and HB 4279, which both expanded participant eligibility in the JET Grant Program. SB 346 included the addition of "open-enrollment charter schools" to the list of eligible entities for JET grants under Texas Education Code, §134.004. HB 4279 removed the term "independent" from "independent school districts" throughout Texas Education Code, §134.004, and expanded the definition of eligible school districts to include "the Windham School District."

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. DEFINITIONS

TWC proposes the following amendments to Subchapter A:

§804.1. Definitions

Section 804.1(4) is amended to add "or public state colleges" to the definition of "Certificate or degree completion" in order to include all of the entities in which an individual could receive a certificate or degree completion.

New §804.1(5) defines "Charter school" as a Texas public school operated by a charter holder under an open-enrollment charter granted pursuant to Texas Education Code, §12.101. The subsequent definitions are renumbered accordingly.

Section 804.1(8) is removed because "ISD" is no longer needed in Chapter 804 due to amendments made to Texas Education Code, §134.004 by HB 4279.

New §804.1(12) defines "Public state college" as Lamar State College--Orange, Lamar State College--Port Arthur, or Lamar Institute of Technology, per Texas Education Code, §61.003. The subsequent definition is renumbered accordingly.

New §804.1(14) defines "School district" as independent school districts or the Windham School District in accordance with Texas Education Code, §134.004.

SUBCHAPTER B. ADVISORY BOARD COMPOSITION, MEETING GUIDELINES

TWC proposes the following amendments to Subchapter B:

§804.12. Meetings Required

Section 804.12(a) currently explains the requirements of the advisory board to meet at least once a quarter to review applications and recommends awarding grants to "public junior colleges, public technical institutes, and ISDs." TWC amends the list of potential grant recipients to add "public state colleges, charter schools, and school districts" and remove "ISDs" to reflect the changes implemented by HB 2431, HB 4279, and SB 346.

§804.13. General Advisory Board Responsibilities

Section 804.13(1) currently states that the advisory board is responsible for providing advice and recommendations on the manner in which "public junior colleges, public technical institutes, and ISDs apply for JET grants." TWC amends the list of potential grant recipients to add "public state colleges, charter schools, and school districts" and remove "ISDs" to reflect the changes implemented by HB 2431, HB 4279, and SB 346.

SUBCHAPTER C. GRANT PROGRAM

TWC proposes the following amendments to Subchapter C:

§804.21. General Statement of Purpose

Section 804.21 currently provides the JET general statement of purpose to "award grants from the JET fund for the development of career and technical education programs at public junior colleges, public technical institutes, and ISDs that meet the requirements of Texas Education Code, §134.006 and §134.007." TWC proposes amending the list of potential grant recipients to add "public state colleges, charter schools, and school districts" and

remove "ISDs" to reflect the changes implemented by HB 2431, HB 4279, and SB 346.

§804.24. Reporting Requirements

Section 804.24 currently states that a "public junior college, public technical institute, or ISD" that receives a JET grant is required to comply with all reporting requirements of the contract established by TWC. TWC amends the list of grant recipients to add "public state college, charter school, or school district" and remove "ISD" to reflect the changes implemented by HB 2431, HB 4279, and SB 346.

SUBCHAPTER D. GRANTS TO EDUCATIONAL INSTITUTIONS FOR CAREER AND TECHNICAL EDUCATION PROGRAMS

TWC proposes the following amendments to Subchapter D:

§804.41. Grants for Career and Technical Education Programs

Section 804.41(a) currently specifies that Subchapter D is applicable to "JET awards to public junior colleges, public technical institutes, and ISDs for the development of career and technical education programs that meet the requirements of Texas Education Code, §134.006 and §134.007 and Texas Government Code, §403.356." TWC amends the list of grant recipients to add "public state colleges, charter schools, and school districts," and remove "ISDs" to reflect the changes implemented by HB 2431, HB 4279, and SB 346. TWC also amends the section to remove the reference to "Texas Government Code, §403.356." Texas Government Code, §403.356, contained provisions relating to the operation of the JET Grant Program under the Texas Comptroller of Public Accounts and was repealed by HB 437, 83rd Texas Legislature, Regular Session (2013).

New §804.41(c)(3) adds the ability for TWC to consider whether an applicant offers new career and technical educational opportunities not previously available to students enrolled at any campus in the Windham School District when evaluating applications for funding, in order to include the Windham School District as an eligible entity.

Section 804.41(c)(4), formerly §804.41(c)(3), is amended to add "or public state colleges" in order to include all of the eligible entities that school districts can partner with.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state or to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state or to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, Article I, §17 or §19, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to align the JET Grant Program rules to implement HB 2431, HB 4279, and SB 346, expanding eligibility for the JET Grant Program.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

--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 TWC;

--will not require an increase or decrease in fees paid to TWC;

--will not create a new regulation;

--will expand an existing regulation because of legislative changes to Texas Education Code, Chapter 134;

--will not change the number of individuals subject to the rules; and

--will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Mary York, Director, Outreach and Employer Initiatives, determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to expand eligibility to more entities across the state.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the Policy Concept regarding these rule amendments to the Boards for consideration and review on October 19, 2021. TWC also conducted a conference call with Board executive directors and Board staff on October 29, 2021, to discuss the Policy Concept. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

PART V. PUBLIC COMMENT

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than February 28, 2022.

SUBCHAPTER A. DEFINITIONS

40 TAC §804.1

PART VI. STATUTORY AUTHORITY

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities; and Texas Education Code, §134.008, which requires TWC adopt rules necessary for the administration of Texas Education Code, Chapter 134.

The proposed rules implement HB 2431, HB 4279, and SB 346 and the requirements set out in Texas Education Code, Chapter 134.

§804.1. Definitions.

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

(1) Act--Texas Education Code, Chapter 134, [~~relating to the~~] Jobs and Education for Texans Grant Program [~~in Texas Education Code, Chapter 134~~].

(2) Advisory board--The advisory board of education and workforce stakeholders created pursuant to the Act.

(3) Career and technical education--Organized educational activities that offer a sequence of courses that:

(A) provides individuals with coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare for further education and careers in high-demand occupations or emerging industries;

(B) includes competency-based applied learning that contributes to the academic knowledge, problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills, and knowledge of all aspects of an industry, including entrepreneurship, of an individual; or

(C) provides a license, a certificate, or a postsecondary degree.

(4) Certificate or degree completion--Any grouping of workforce or technical courses in sequential order that, when satisfactorily completed by a student, will entitle the student to a Texas Higher Education Coordinating Board [~~(Coordinating Board)~~]--approved certificate or associate degree from a public technical institute, [~~or~~] public junior college, or public state college.

(5) Charter school--A Texas public school operated by a charter holder under an open-enrollment charter granted pursuant to Texas Education Code, §12.101.

(6) [~~(5)~~] Developmental education--Structured courses, tutorials, laboratories, or other proven instructional efforts that successfully prepare students for college level (and therefore work-ready) courses as measured by passing the state-required college entrance exam (or meeting the Texas Success Initiative requirements).

(7) [~~(6)~~] Emerging industry--A growing, evolving, or developing industry based on new technological products or concepts.

(8) [~~(7)~~] High-demand occupation--A job, profession, skill, or trade for which employers within the state [~~State~~] of Texas generally, or within particular regions or cities of the state, have or will have a substantial need. In determining whether there is or will be a substantial need for a particular job, profession, trade, or skill, the Agency may consider occupations identified by the 28 Local Workforce Development Boards (Board-Area Target Occupations Lists) and/or the Agency's labor market projections.

[~~(8) ISD--Independent school district.~~]

(9) JET--The Jobs and Education for Texans Grant Program.

(10) Notice of Availability or NOA--The notice of availability that is published by the Agency pursuant to §804.22 of this title (relating to Notice of Grant Availability and Application).

(11) Public junior college--Any junior college certified by the Texas Higher Education Coordinating Board [~~(Coordinating Board)~~] in accordance with Texas Education Code, §61.003.

(12) Public state college--Lamar State College--Orange, Lamar State College--Port Arthur, or Lamar Institute of Technology, in accordance with Texas Education Code, §61.003.

(13) [~~(12)~~] Public technical institute--The Lamar Institute of Technology or the Texas State Technical College System, [~~as~~] in accordance with Texas Education Code, §61.003.

(14) School district--An independent school district or the Windham School District.

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

Filed with the Office of the Secretary of State on January 11, 2022.

TRD-202200053

Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: February 27, 2022
For further information, please call: (512) 689-9855

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SUBCHAPTER B. ADVISORY BOARD COMPOSITION, MEETING GUIDELINES

40 TAC §804.12, §804.13

STATUTORY AUTHORITY

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities; and Texas Education Code, §134.008, which requires TWC adopt rules necessary for the administration of Texas Education Code, Chapter 134.

The proposed rules implement HB 2431, HB 4279, and SB 346 and the requirements set out in Texas Education Code, Chapter 134.

§804.12. Meetings Required.

(a) The advisory board is required to meet at least once each quarter, or as needed, to review received applications and recommend awarding grants under this chapter to public junior colleges, public technical institutes, public state colleges, charter schools, and school districts [~~and ISDs~~].

(b) Meetings shall be subject to the requirements of the Open Meetings Act.

§804.13. General Advisory Board Responsibilities.

The advisory board shall provide advice and recommendations to the Agency on:

(1) the manner in which public junior colleges, public technical institutes, public state colleges, charter schools, and school districts [~~and ISDs~~] apply for JET grants; and

(2) the JET grants to be awarded by the Agency.

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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Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: February 27, 2022
For further information, please call: (512) 689-9855

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SUBCHAPTER C. GRANT PROGRAM

40 TAC §804.21, §804.24

STATUTORY AUTHORITY

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities; and Texas Education Code, §134.008, which requires TWC adopt rules necessary for the administration of Texas Education Code, Chapter 134.

The proposed rules implement HB 2431, HB 4279, and SB 346 and the requirements set out in Texas Education Code, Chapter 134.

§804.21. General Statement of Purpose.

In accordance with the Act, the Agency established [~~establishes~~] JET, which shall be administered pursuant to the Act and [~~the rules in~~] this chapter to award grants from the JET fund for the development of career and technical education programs at public junior colleges, public technical institutes, public state colleges, charter schools, and school districts [~~and ISDs~~] that meet the requirements of Texas Education Code, §134.006 and §134.007.

§804.24. Reporting Requirements.

A public junior college, public technical institute, public state college, charter school, or school district [~~or ISD~~] receiving a grant under this chapter must comply with all reporting requirements of the contract in the [a] frequency and format determined by the Agency in order to maintain eligibility for grant payments. Failure to comply with the reporting requirements may result in termination of the grant award and the entity being ineligible for future grants under 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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Les Trobman
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Texas Workforce Commission
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SUBCHAPTER D. GRANTS TO EDUCATIONAL INSTITUTIONS FOR CAREER AND TECHNICAL EDUCATION PROGRAMS

40 TAC §804.41

STATUTORY AUTHORITY

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities; and Texas Education Code, §134.008, which requires TWC adopt rules necessary for the administration of Texas Education Code, Chapter 134.

The proposed rules implement HB 2431, HB 4279, and SB 346 and the requirements set out in Texas Education Code, Chapter 134.

§804.41. Grants for Career and Technical Education Programs.

(a) This subchapter is applicable to JET awards to public junior colleges, public technical institutes, public state colleges, charter schools, and school districts [~~and ISDs~~] for the development of career and technical education programs that meet the requirements of Texas Education Code, §134.006 and §134.007 [~~and Texas Government Code §403.356~~].

(b) A grant received under this subchapter may be used only:

(1) to support courses or programs that prepare students for career employment in occupations that are identified by local businesses as being in high demand;

(2) to finance the initial costs of career and technical education courses or program development, including the costs of purchasing equipment, and other expenses associated with the development of an appropriate course; and

(3) to finance a career and technical education course or program that leads to a license, certificate, or postsecondary degree.

(c) In awarding a grant under this subchapter, the Agency shall primarily consider the potential economic returns to the state from the development of the career and technical education course or program. The Agency may also consider whether the course or program:

(1) is part of a new, emerging industry or high-demand occupation;

(2) offers new or expanded dual-credit career and technical educational opportunities in public high schools; [~~or~~]

(3) offers new career and technical educational opportunities not previously available to students enrolled at any campus in the Windham School District; or

(4) [~~(3)~~] is provided in cooperation with other public junior colleges, [~~or~~] public technical institutes, or public state colleges across existing service areas.

(d) A grant recipient shall provide the matching funds as identified in its application.

(1) Matching funds may be obtained from any source available to the college, including industry consortia, community or foundation grants, individual contributions, and local governmental agency operating funds.

(2) A grant recipient's matching share may consist of one or more of the following contributions:

(A) cash;

(B) equipment, equipment use, materials, or supplies;

(C) personnel or curriculum development cost; and/or

(D) administrative costs that are directly attributable to the project.

(3) The matching funds must be expended on the same project for which the grant funds are provided and valued in a manner acceptable or as determined by the Agency.

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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Les Trobman
General Counsel
Texas Workforce Commission
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For further information, please call: (512) 689-9855

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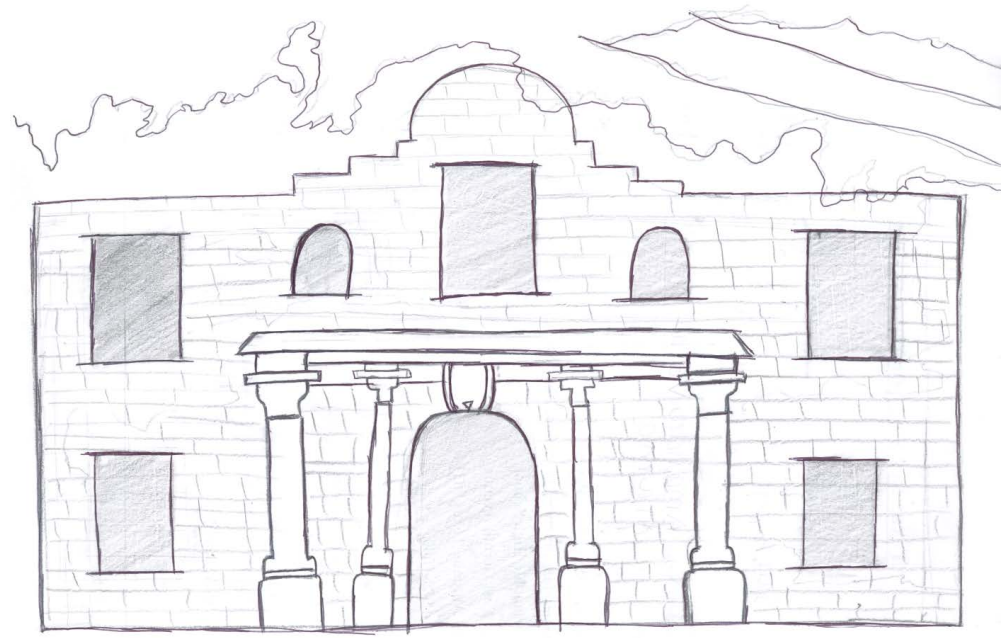

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 133. HOSPITAL LICENSING

SUBCHAPTER F. INSPECTION AND INVESTIGATION PROCEDURES

25 TAC §133.101, §133.102

Proposed repeal of §133.101 and §133.102, published in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4081), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on January 13, 2022.

TRD-202200082

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25 TAC §§133.101 - 133.106

Proposed new §§133.101 - 133.106, published in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4081), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on January 13, 2022.

TRD-202200083

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SUBCHAPTER G. ENFORCEMENT

25 TAC §133.121

Proposed amended §133.121, published in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4081), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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TRD-202200084

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CHAPTER 135. AMBULATORY SURGICAL CENTERS

SUBCHAPTER A. OPERATING REQUIREMENTS FOR AMBULATORY SURGICAL CENTERS

25 TAC §§135.21, 135.24, 135.25

Proposed repeal of §§135.21, 135.24, and 135.25, published in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4087), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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TRD-202200085

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25 TAC §135.22

Proposed amended §135.22, published in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4087), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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TRD-202200086

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SUBCHAPTER D. INSPECTION, INVESTIGATION, AND ENFORCEMENT PROCEDURES

25 TAC §§135.61 - 135.66

Proposed new §§135.61 - 135.66, published in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4087), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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TRD-202200087

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 506. SPECIAL CARE FACILITIES
SUBCHAPTER E. INSPECTIONS AND INVESTIGATIONS

26 TAC §506.61, §506.62

Proposed repeal of §506.61 and §506.62, published in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4093), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on January 13, 2022.

TRD-202200088

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26 TAC §§506.61 - 506.66

Proposed new §§506.61 - 506.66, published in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4093), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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TRD-202200089

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SUBCHAPTER F. ENFORCEMENT

26 TAC §506.71, §506.73

Proposed amended §506.71 and §506.73, published in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4093), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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TRD-202200090

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CHAPTER 510. PRIVATE PSYCHIATRIC HOSPITALS AND CRISIS STABILIZATION UNITS
SUBCHAPTER A. GENERAL PROVISIONS

26 TAC §510.1, §510.2

Proposed amended §510.1 and §510.2, published in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4099), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on January 13, 2022.

TRD-202200091

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SUBCHAPTER B. APPLICATION AND ISSUANCE OF A LICENSE

26 TAC §§510.21 - 510.26

Proposed amended §§510.21 - 510.26, published in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4099), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on January 13, 2022.

TRD-202200092

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SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §§510.41, 510.43, 510.46

Proposed amended §§510.41, 510.43 and 510.46, published in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4099), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on January 13, 2022.

TRD-202200093

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SUBCHAPTER D. VOLUNTARY AGREEMENTS

26 TAC §510.61, §510.62

Proposed amended §510.61 and §510.62, published in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4099), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on January 13, 2022.

TRD-202200094

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SUBCHAPTER E. ENFORCEMENT

26 TAC §§510.81 - 510.83

Proposed repeal of §§510.81 - 51.83, published in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4122), is withdrawn. The agency failed to adopt the proposal within six months

of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on January 13, 2022.

TRD-202200095

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26 TAC §§510.81 - 510.87

Proposed new §§510.81 - 510.87, published in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4122), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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TRD-202200096

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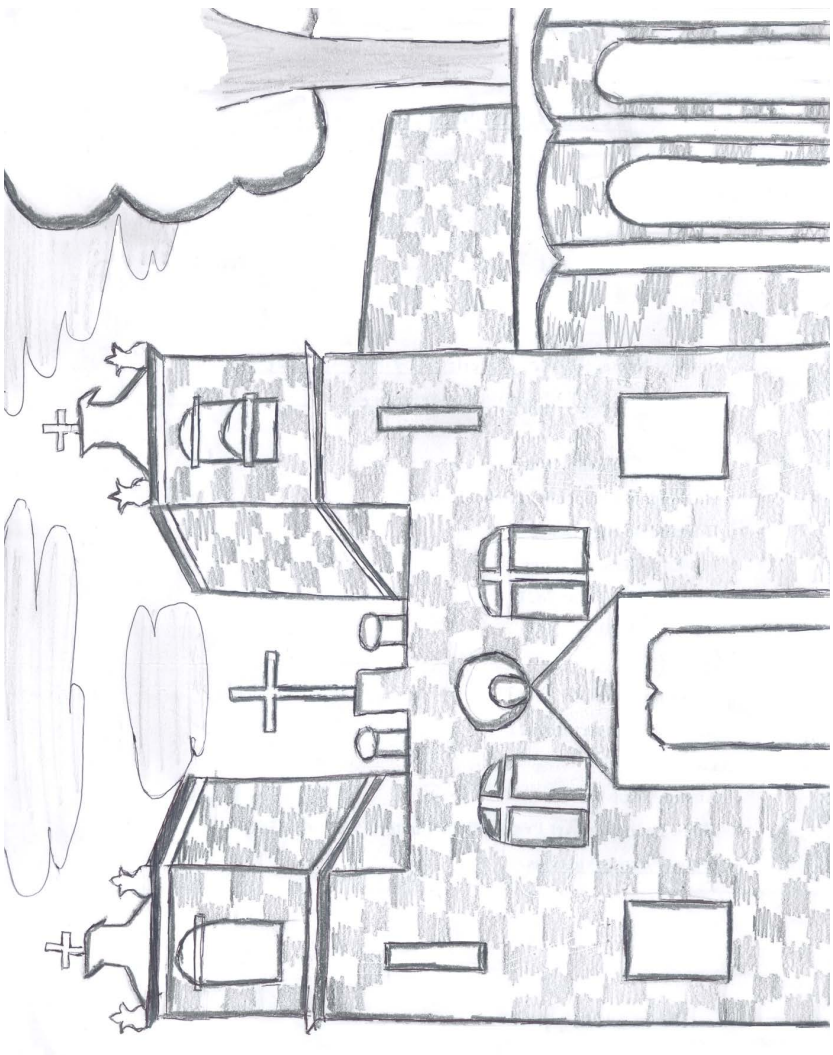

ADOPTED RULES

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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER E. POST AWARD AND ASSET MANAGEMENT REQUIREMENTS

10 TAC §§10.400 - 10.408

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 10, Subchapter E, §§10.400 - 10.408, Post Award and Asset Management Requirements, without changes to the proposed text as published in the October 29, 2021, issue of the *Texas Register* (46 TexReg 7318). The rules will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

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

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

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

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department or in a substantial decrease in fees paid to the Department.

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

6. The action will repeal an existing regulation but is associated with the simultaneous re-adoption making changes to an existing activity, Post Award and Asset Management Requirements.

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

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

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

1. The Department has evaluated this 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 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 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 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 repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments, as the repealed rule will be replaced with a similar rule.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between October 29, 2021 and November 19, 2021. No comments were received regarding the repeal.

The Board adopted the final order authorizing the repeal on January 13, 2022.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2022.

TRD-202200121
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 3, 2022
Proposal publication date: October 29, 2021
For further information, please call: (512) 475-3959

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10 TAC §§10.400 - 10.408

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 10, Subchapter E, §§10.400 - 10.408, regarding Post Award and Asset Management Requirements, with changes to the proposed text as published in the October 29, 2021, issue of the *Texas Register* (46 TexReg 7319). The rules will be republished. The purpose of the 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 rule through the 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 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; 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), effective September 1, 2022.

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

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

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect, the new 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 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 new rule does not require additional future legislative appropriations.

4. The new rule does 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 new rule is not creating a new regulation, but is replacing a rule being repealed simultaneously to provide for revisions. The new 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 new 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 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 new rule will not increase or decrease the number of individuals subject to the rule's applicability. Though the 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 new 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 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 new rule does not contemplate or authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

The Department has evaluated the new rule as to its possible effects on local economies and has determined that for the first five years the 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 new rule sections will be increased efficiency and clarity in post award requirements. The possible economic benefit to individuals required to comply with the new 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 new 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 requirements will potentially be offset by efficiency gains in other revised processes and will otherwise be absorbed by current Department resources.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE.

The Department accepted public comment between October 29, 2021, and November 19, 2021. Comments regarding the new rule were accepted in writing and e-mail with comments received from: (1) Elizabeth Roehm, Staff Attorney for Texas Housers, (2) Patricia Murphy, and (3) Lora Myrick, President of BETCO Housing Lab. Comments were received on §10.400 - Purpose, 10.401(a)(1) - 10% Test (Competitive HTC Only), §10.401(d)(2) and §10.401(d)(3)(B) - Cost Certification (Competitive and Non-Competitive HTC, and related activities only), §10.404(d) - Reserve Accounts, and §10.407 - Right of First Refusal.

§10.400 - Purpose

COMMENT SUMMARY: Commenter (2) suggested amending §10.400(a) to clarify that action requested by the Development

Owner would not be withheld in situations when there are uncorrectable issues. The Commenter proposed the following change to the language:

"Therefore, unless otherwise indicated in the specific section of this subchapter, any uncorrected issues of noncompliance outside of the corrective action period (with the exception of the events described in §1.301(c) of this Title) 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."

STAFF RESPONSE: After further discussion with the Commenter to clarify their concern and the purpose of their proposed added language, it was determined that the requested reference to §1.301(c) - Previous Participation Reviews for Multifamily Awards and Ownership Transfers would not clearly address the Commenter's concern. During the discussion, the Commenter agreed with staff's recommendation to instead add a sentence to the section below, as reflected, to address their concerns:

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. Non-compliance issues that cannot be corrected will be taken into account and will be reviewed by Asset Management staff to determine if additional action is required by the Development Owner.

Staff recommends adding the last sentence identified above to the rule section.

10.401(a)(1) - 10% Test (Competitive HTC Only)

COMMENT SUMMARY: Commenter (3) requested to remove the language regarding the Independent Accountant's Report and Taxpayer's Basis Schedule form that is required for the 10% Test package. The Commenter states that the reason for the change is that the Development Owner does not sign the report. The Commenter requested to remove the following:

"The Taxpayer's Basis Schedule form must be signed by the Development Owner."

STAFF RESPONSE: The complete name of the form referenced in the rule is "Independent Auditor's Report and Taxpayer's Basis Scheduled." Staff recognizes that the Development Owner does not sign the Independent Auditor's Report that is prepared and issued signed by the auditor. However, the Independent Auditor's Report and Taxpayer's Basis Schedule form is separate from the auditor's report. The Development Owner is required to sign the form in order certify that the information reported on the form is correct. Staff recommends no change to the rule section.

§10.401(d)(2) - Cost Certification (Competitive and Non-Competitive HTC, are related activities only.)

COMMENT SUMMARY: Commenter (3) requested to add language to §10.401(d)(2)(B) to specify when the cost certification documentation would be reviewed. The Commenter stated that the reason for the request is that it is critical for the process to be efficient for the financial feasibility of deals to avoid downward credit adjusters tied to the receipt of the IRS Forms 8609. The Commenter requested to add the following language:

"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."

STAFF RESPONSE: Staff considers the Commenter's request to be related to internal processes rather than a requirement that should be specified in rule. It is staff's goal to comply with the Commenter's requested timeline. However, adding the language in the rules is problematic because it does not take into consideration extenuating circumstances and it is not clear what action must be taken if the specified deadline is not met. Staff recommends no change to the rule section.

§10.401(d)(3)(B) - Cost Certification (Competitive and Non-Competitive HTC, and related activities only)

COMMENT SUMMARY: Commenter (2) requested to add language to §10.401(d)(3)(B) specifying that items already received by the Department are not required to be submitted again. The Commenter requested to add the following sentence to the section:

"The Post Award Activities Manual shall not require owners to re-submit documents that the Department already has, such as recorded Land Use Restrictions Agreements, Determination Notices or Carryover Allocation Agreements."

STAFF RESPONSE: The requested change would require staff to spend additional time gathering the documents, which consequently would add time to the cost certification review process. Having the Development Owner submit all of the requested information into one consolidated cost certification package is more efficient for the review process. Staff recommends no change to the rule section.

§10.404(d) - Reserve Accounts

COMMENT SUMMARY: Commenter (1) expressed concerns that tenants are not "successfully accessing Special Reserve Account funds at all properties that have them." The Commenter requests to add the following items in the rules and address them through the Department's policies:

Centrally track which properties have Special Reserve Accounts, either statewide or by region.

Annually check for any Special Reserve Accounts that have not been used in the past year or that have been minimally used. Require owners at those properties to provide new notice to each of their tenants about the availability of the funds and how to access them. Notice should include a list of example uses that have been approved at other properties in the past or could be approved.

Incentivize owners to use the funds.

For future Special Reserve Agreements, ensure that any unspent funds do not return to the owner, but instead go to tenants or the property in some way. This will reverse the perverse in-

centive that is built in for any Agreements specifying the return of unused funds to the owner.

STAFF RESPONSE: Staff's goal is to improve internal tracking of Special Reserve Accounts as requested in the first item in the Commenter's list, but staff does not believe this is something would be appropriate to add to the rule because it is more applicable to internal procedures. Regarding the Commenter's third item listed requesting to incentivize Development Owners to use the Special Reserve fund, it is unclear what the recommended incentive should be and how it should be implemented. Regarding the Commenter's second and fourth listed items, additional public comment is needed for these proposed additions to the rule as it proposes a new concept not contemplated in the draft 2022 of the Post Award and Asset Management Requirements. Staff recommends no change at this time, but will consider this issue as a discussion item for future rule revision. Staff recommends no changes to the rule based on these comments.

§10.407 - Right of First Refusal

COMMENT SUMMARY: Commenter (3) requests to add language to the section regarding the right of first refusal to tenants that identifies guidelines for Developers. The following is the Commenter's request:

Please add additional language to include guidelines for the right of first refusal to tenants as outlined in the draft qualified allocation plan, 10 TAC Chapter 11 Subchapter A §11.9(e)(7)(B), that will be presented before Governor Abbott for approval December 1, 2021.

STAFF RESPONSE: Additional public comment is needed for these proposed additions to the rule as it proposes a new concept not contemplated in the draft 2022 Post Award and Asset Management Requirements. The timing of the rule process does not allow for additional rounds of public comment as the changes are needed to reflect the legislative update to Tex. Gov't Code §2306.6726(b). Staff recommends no change at this time, but will consider this issue for future rule revision. Staff recommends no changes to the rule based on these comments.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the adopted new sections affect no other code, article, or statute.

§10.400. Purpose.

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

(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 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 (relating to Amendments and Extensions);

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

(5) For New Construction, Reconstruction, and Adaptive Reuse Developments, a certification from a Third Party civil engineer or architect stating that all necessary utilities will be available at the Development Site and that there are no easements, licenses, royalties, or other conditions on or affecting the Development that would materially or adversely impact the ability to acquire, develop, and operate

as set forth in the Application. Copies of supporting documents may be required by the Department;

(6) For the Development Owner and on-site or regional property manager, training certificate(s) from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager attended and passed at least five hours of Fair Housing training. For architects and engineers, training certificate(s) from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or 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 (relating to Amendments and Extensions), and the new Guarantors or Principals must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(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 paragraph and must include any changes or amendments to items in paragraphs (1) - (3) if applicable:

(1) The executed partnership agreement with the investor or, for Developments receiving an award only from the Department's Direct Loan 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 Part (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 Chapter 11, Subchapter D 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 Development becomes functionally obsolete, if the Development cannot be or is not restored;

(B) Date on which the Development is demolished;

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

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

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

(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 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. 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 (relating to Fee Schedule). 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 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 subhapter.

(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) of this subchapter (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.

(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; or

(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 the subparagraphs 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), 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; or

(2) A Development Owner with a LURA that identifies a specific Qualified Nonprofit Organization or Qualified Entity to be the beneficiary of the ROFR will satisfy the ROFR if:

(A) The identified beneficiary is in existence and conducting business;

(B) The Development Owner offers the Development to the identified beneficiary pursuant to the terms of the ROFR;

(C) If the ROFR includes a priority for a certain type of Qualified Entity (such as a CHDO) to have the first opportunity make an offer to acquire the Development, the identified beneficiary meets such classification; and

(D) The identified entity declines to purchase the Development in writing, and such evidence is submitted to and approved by the Department.

(g) Non-Satisfaction of ROFR. A Development Owner that has posted a Property under the ROFR process does not satisfy the ROFR requirements in the following circumstances:

(1) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), and the Development Owner does not accept the offer;

(2) The LURA identifies a specific Qualified Nonprofit Organization or Qualified Entity to be the beneficiary of the ROFR, and such entity no longer exists or is no longer conducting business and the Development Owner received other bona fide offers 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; and

(2) In order to assess the validity of the pre-request, the Development Owner must submit:

(A) Preliminary Request Form;

(B) Qualified Contract Pre-Request fee as outlined in §11.901 of this title (relating to Fee Schedule);

(C) Copy of all regulatory agreements or LURAs associated with the Property (non-TDHCA); 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 Depart-

ment 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;

(H) A copy of the most recent Physical Needs Assessment of the property conducted by a Third Party, if different from the assessment submitted during the preliminary qualified contract request, consistent with Chapter 11, Subchapter D of this title;

(I) A copy of the monthly operating statements for the Development for the most recent 12 consecutive months;

(J) The three most recent consecutive annual operating statements (audited would be preferred) for the Development;

(K) A detailed set of photographs of the Development, including interior and exterior of representative units and buildings, and the property's grounds;

(L) A current and complete rent roll for the 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 (relating to Appeals Process) and Tex. Gov't Code §2306.0321 and §2306.6715.

(g) Marketing of Property. By submitting a Request, the Development Owner grants the Department the authority to market the Development and provide Development information to interested parties. Development information will consist of pictures of the Development, location, amenities, number of Units, age of building, etc. Development Owner or broker contact information will also be provided to interested parties. The Development Owner is responsible for providing staff any requested information to assist with site visits and inspections. Marketing of the Development will continue until such time that a Qualified Contract is presented or the 1YP has expired. Notwithstanding subsection (d)(2) of this section, the Department reserves the right to contract directly with a Third Party in marketing the Development. Cost of such service, including a broker's fee, will be paid for by the existing Development Owner. The Department must have continuous cooperation from the Development Owner. Lack of cooperation will cause the process to cease and the Development Owner will be required to comply with requirements of the LURA for the remainder of the Extended Use Period. Responsibilities of the Development Owner include but are not limited to the items described in paragraphs (1) - (3) of this subsection. The Development Owner must:

(1) Allow access to the Property and tenant files;

(2) Keep the Department informed of potential purchasers; and

(3) Notify the Department of any offers to purchase.

(h) Presentation of a Qualified Contract. If the Department finds a Qualified Purchaser willing to present an offer to purchase the property for an amount at or above the QC Price, the Development Owner may accept the offer and enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property and provide a reasonable time for necessary due diligence and closing of the purchase. If the Development Owner chooses not to accept the QC offer that the Department presents, the QC request will be closed and the possibility of terminating the Extended Use Period through the Qualified Contract process is eliminated; the Property remains bound by the provisions of the LURA for the remainder of the Extended Use Period. If the Development Owner decides to sell the development for the QC Price pursuant to a QC, the purchaser must complete all requirements of an ownership transfer request and be approved by the Department prior to closing on the purchase, but the consummation of such a sale is not required for the LURA to continue to bind the Development for the remainder of the Extended Use Period.

(1) The Department will attempt to procure a QC only once during the Extended Use Period. If the transaction closes under the contract, the new Development Owner will be required to fulfill the requirements of the LURA for the remainder of the Extended Use Period.

(2) If the Department fails to present a QC before the end of the 1YP, the Department will file a release of the LURA and the Development will no longer be restricted to low-income requirements and compliance. However, in accordance with §42(h)(6)(E)(ii) of the Code, for a three-year period commencing on the termination of the Extended Use Period, the Development Owner may not evict or displace tenants of Low-Income Units for reasons other than good cause and will not be permitted to increase rents beyond the maximum tax credit rents. Additionally, the Development Owner should submit to the Department a request to terminate the LURA and evidence, in the form of a signed certification and a copy of the letter, to be approved by the Department, that the tenants in the Development have been notified in writing that the LURA will be terminated and have been informed of their protections during the three-year time frame.

(3) Prior to the Department filing a release of the LURA, the Development Owner must correct all instances of noncompliance at the Development.

(i) Compliance Monitoring during Extended Use Period. For Developments that continue to be bound by the LURA and remain affordable after the end of the Compliance Period, the Department will monitor in accordance with the applicable requirements in Subchapters F and G of this chapter (relating to Uniform Multifamily Rules).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2022.

TRD-202200120
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 3, 2022
Proposal publication date: October 29, 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) adopts the repeal of 10 TAC Chapter 13, Multifamily Direct Loan Rule, §§13.1 - 13.13, without changes to the proposed text as published in the October 29, 2021, issue of the *Texas Register* (46 TexReg 7337). The rules will not be republished. The purpose of the repeal is to provide for clarification of the existing rule through new rulemaking action.

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

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the Multifamily Direct Loan Program.

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

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

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

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, administration of the Multifamily Direct Loan Program.

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

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

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

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

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be increased clarity and improved access to the Multifamily Direct Loan funds. There will not be economic costs to individuals required to comply with the repealed section.

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

SUMMARY OF PUBLIC COMMENT. The public comment period was held from October 18 to November 18, 2021, to receive input on the proposed repealed section. No comments on the repeal were received.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2022.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

10 TAC §§13.1 - 13.13

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 13, Multifamily Direct Loan Rule, §§13.1 - 13.13, with changes to the proposed text as published in the October 29, 2021, issue of the *Texas Register* (46 TexReg 7338). The rules will be republished. The purpose of the 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 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 because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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

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

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

1. The rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, administration of the Multifamily Direct Loan Program.

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

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

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

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

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

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

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

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

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

The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.111.

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

2. This rule relates to the procedures for multifamily direct loan applications and award through various Department fund sources. Other than in the case of a small or micro-business that is an applicant for such a loan product, no small or micro-businesses are subject to the rule. It is estimated that approximately 200 small or micro-businesses are such applicants; for those entities the new rule provides for a more clear, transparent process for applying for funds and does not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the rule because this rule is applicable only to direct loan applicants for development of properties, which are not generally municipalities. The fee for applying for a Multifamily Direct Loan product is $1,000, unless the Applicant is a nonprofit that provides supportive services or the Applicant is applying for Housing Tax Credits in conjunction with Multifamily Direct Loan funds, in which case the application fee may be waived. These fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing.

There are 1,296 rural communities potentially subject to the rule for which the economic impact of the rule is projected to be $0. 10 TAC Chapter 13 places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. In an average year the volume of applications for MFDL resources that are located in rural areas is approximately fifteen. In those cases, a rural community securing a loan will experience an economic benefit, including, potentially, increased property tax revenue from a multifamily Development.

3. The Department has determined that because there are rural MFDL awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive MFDL awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.

The rule does not contemplate or authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the rule may provide a possible positive economic effect on local employment in association with this rule since MFDL Developments, layered with housing tax credits, often involve a typical minimum investment of $10 million in capital, and more commonly an investment from $20 million to $30 million. Such a capital investment has direct, indirect, and induced effects on the local and regional economies and local employment. However, because the exact location of where program funds or developments are directed is not determined in rule, and is driven by real estate demand, there is no way to predict during rulemaking where these positive effects may occur. Furthermore, while the Department believes that any and all impacts are positive, that impact is not able to be quantified for any given community until MFDL awards and LIHTCs are actually awarded to a proposed Development, given the unique characteristics of each proposed multifamily Development.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that significant construction activity is associated with any MFDL Development layered with LIHTC and each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the new rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive MFDL awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be improved clarity of program requirements in multiple sections, codification in rule practices of the division, and change citations to align with changes to other multifamily rules. There will not be any economic cost to any individuals required to comply with the new sections because this rule does not have any new requirements that would cause additional costs to applicants.

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

SUMMARY OF PUBLIC COMMENT. The public comment period was held from October 18, 2021, to November 18, 2021, to receive input on the proposed new sections. Comment was received from: Zimmerman Properties (Commenter 1) and Foundation Communities (Commenter 2). A summary of the comments and the Department's response is provided.

§13.2(14) - Qualifying Unit (Commenter 1)

SUMMARY OF COMMENT: Commenter requests that a case-by-case determination be made when applicants are combining assistance from Project-Based Vouchers with MFDL Units.

STAFF RESPONSE: Though layering 24 CFR Part 983 Project-Based Vouchers on MFDL-funded units is generally prohibited by federal rules, the Department agrees that when such cases arise, it will evaluate each Application on a case-by-case basis. A responsive change to the rule has been made.

13.3(e) - Ineligible Costs (Commenter 2)

SUMMARY OF COMMENT: Commenter requests clarity around added language concerning other federal funds' inclusion in the subsidy limit calculation performed for each application.

STAFF RESPONSE: Other federal sources, as defined by the applicable fund source, have to be taken into consideration when determining the required amount of MFDL Units. Staff concurs with this suggestion, but the clarity requested is more appropriately addressed in the Multifamily Direct Loan Calculator; responsive adjustments have been made to the Calculator available on the Department's website. Additional reference to the calculator has been added to the rule in response to this comment.

13.3(e)(4) - Ineligible Costs for Equipment required for construction (Commenter 2)

SUMMARY OF COMMENT: Commenter requests clarity on ineligibility of equipment required for construction.

STAFF RESPONSE: Guidance on this federal requirement is available in the citations listed, but more specifically, at 24 CFR 571.207(b)(1)(iii). No changes to the rule are recommended in response to this comment.

13.3(e)(15) - Ineligible Costs from another source (Commenter 2)

SUMMARY OF COMMENT: Commenter requests explanation of how the ineligible costs in this section do not conflict with §13.3(e)(14) which allows costs incurred up to 24 months prior to Contract.

STAFF RESPONSE: The ineligible costs noted in this section are prohibited by federal regulation regardless of the time they were incurred. No changes to the rule are recommended in response to this comment.

§13.4(a)(1)(A) - Soft Repayment Set-Aside (Commenter 1)

SUMMARY OF COMMENT: Commenter requests more flexibility in the Soft Repayment Set-Aside by including requirements in the NOFA instead of the rule, and removing the requirement that eligibility be limited to Supportive Housing Applications or those without subsidy unrestricted by another fund source, including HTC.

STAFF RESPONSE: Staff concurs. The rule has been revised to reflect that all MFDL Applications will be able to access more flexible payment terms formerly limited to the Soft Repayment Set-Aside Applications, and both NHTF and HOME funds may be layered on HTC units.

13.11(c)(2) - Required Site Control Agreement Provisions

SUMMARY OF COMMENT: Commenter requests clarification that NHTF does not prohibit choice limiting activities prior to the environmental clearance.

STAFF RESPONSE: Clarification language has been included.

Staff also made necessary administrative and technical corrections and clarifications to the rule.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the adopted new sections affect no other code, article, or statute.

§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 10 TAC §1.7 of this title (relating to Appeals Process) or 10 TAC §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 10 TAC §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 by 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 10 TAC §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 10 TAC Chapters 1 of this title regarding Administration, 2 of this title regarding Enforcement, 10 of this title regarding Uniform Multifamily Rules, and 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) through (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--Means 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, unless the Application contains permission from the Public and Indian Housing Division of HUD for the layered units to use a utility allowance that is not the Public Housing Utility Allowance, or the Applicant has received permission from the Community Planning and Development Division of HUD for the layered units to use the Public Housing Utility Allowance.

(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 is 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; and

(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 Report 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 10 TAC §1.7 of this title (relating to Appeals Process) or 10 TAC §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 Final Direct Loan Eligible Costs located in Table 1 of the Direct Loan Calculator as part of the required per-unit 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) The purchase of 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 (except for soft costs that are attributable to the entire project as specifically identified in the applicable federal rule, or for TCAP RF if specifically allowed by the NOFA), 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) General / Soft Repayment Set-Aside.

(i) Applicants seeking to qualify for NHTF 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, and have rents no higher than the rent limits for extremely low-income tenants in 24 CFR §93.302(b).

(ii) Applicants seeking to qualify for HOME under this set-aside must propose Developments in which all Units assisted with MFDL funds are available to households earning no more than 80% AMI and have rents no higher than the rent limits 24 CFR §92.2.

(iii) A portion of the General / Soft Repayment 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.

(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 10 TAC §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.

(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 10 TAC §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 10 TAC §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 10 TAC Chapter 11, Subchapter C (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules).

(b) Application Acceptance Date. Applications will be considered received on the business day of receipt, unless a different time period is described in the Department's rules or NOFA. If an Application is received after 5:00 p.m., Austin local time, it will be determined to have been received on the following business day. Applications received on a non-business day will be considered received on the next day the Department is open. Applications will be considered complete at the time all Application materials, required third party reports and application fee(s) are received by the Department. Within certain Set-Asides or priorities, the date of receipt may be fixed, regardless of the earlier actual date a complete Application is received, if so specified in the Department's rules or NOFA. If multiple Applications have the same Application Acceptance Date, in the same region or subregion (as applicable), and within the same Set-Aside, then score and tiebreaker factors, as described in §13.6 of this chapter (relating to Scoring Criteria) for MFDL or 10 TAC §11.7 and §11.9 of this title (relating to Tie Breaker Factors and Competitive HTC Selection Criteria, respectively) for Applications layered with 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 10 TAC Chapters 11 and 13 of this title, if such changes do not impact scoring under §11.9 of this title (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, unless a 24 CFR Part 58 review was done by another fund source.

(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.

(E) 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 10 TAC §11.9(c)(4) (relating to the Opportunity Index) (up to 7 points).

(2) Resident Services. Applicants eligible for points under 10 TAC §11.9(c)(3)(A) (relating to Resident Supportive Services) (10 points) and Applicants eligible for points under 10 TAC §11.9(c)(3)(B) (relating to community space and outreach for Resident Supportive Services) (1 point).

(3) Underserved Area. Applicants eligible for points under 10 TAC §11.9(c)(5) (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 10 TAC §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 stan-

dards; 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 tittle (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 or §13.13 of this chapter (relating to Pre-Closing and 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, 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 awarded HOME or NSP funds may not 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. For an Applicant awarded NHTF funds, choice limiting activities prior to full execution of a Contract with the Department are not prohibited, but the eligibility of costs associated with these activities will be impacted in keeping with 24 CFR §93.201(h) and all applicable federal regulations. Furthermore, certain activities may cause the Development to be ineligible because environmental mitigation could no longer be performed.

(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(d) 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) of this subparagraph, 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(b)(1) or (c)(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 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 10 TAC §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 10 TAC §13.11(c)(4) of this chapter (relating to Post-Award Requirements) may be approved prior to closing. An Applicant must submit sufficient evidence documenting good cause, including but not limited to, documented delays caused by circumstances outside the control of the applicant or constraints in arranging a multiple fund source closing. An extension will not be available if an Applicant has:

(A) Failed to timely begin or complete a process required to close; including, but not limited to:

(i) The process of finalizing all equity and debt financing;

(ii) The environmental clearance process; 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 10 TAC §13.11(c)(10) of this chapter may be requested but generally are not approved prior to initial loan closing. Extensions under this paragraph are determined based on documentation that the extension is necessary to complete construction and that there is good cause for the extension.

(4) Only to the extent determined necessary by Real Estate Analysis to maintain financial feasibility, changes to the amortization period (not to exceed 40 years) or interest rate (to not less than the minimum specified in rule or NOFA) that cause the annual repayment amount to decrease less than 20%, or any changes to the amortization or interest rate that increase the annual repayment amount up to 20%.

(5) Decreases in the Direct Loan amount, provided the decrease does not jeopardize the financial viability of the Development in the determination of Real Estate Analysis may be approved prior to closing, though the Development Owner may be subject to penalties as further described in 10 TAC §13.11 of this chapter (relating to Post-Award Requirements). Increases will not be approved unless the Applicant applies for the additional funding under an open NOFA.

(6) Changes to other loan terms or requirements that would not require a waiver or change in scoring items, as necessary to facilitate the loan closing without exposing the Department to undue financial risk.

(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) 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 adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2022.

TRD-202200122
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 3, 2022
Proposal publication date: October 29, 2021
For further information, please call: (512) 475-3959

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TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 511. ELIGIBILITY

SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

22 TAC §511.51

The Texas State Board of Public Accountancy adopts an amendment to §511.51, concerning Educational Definitions, without changes to the proposed text as published in the November 26, 2021, issue of the *Texas Register* (46 TexReg 7945). The rule will not be republished.

In order to qualify to sit for the UCPAE, credits are provided for independent study and internship. The rule revision creates a definition of independent study and internship. It also eliminates the reference to the Texas Higher Education Board rules as the Board's rule are a standalone.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 13, 2022.

TRD-202200099
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: February 2, 2022
Proposal publication date: November 26, 2021
For further information, please call: (512) 305-7842

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22 TAC §511.57

The Texas State Board of Public Accountancy adopts an amendment to §511.57, concerning Qualified Accounting Courses, without changes to the proposed text as published in the November 26, 2021, issue of the *Texas Register* (46 TexReg 7947). The rule will not be republished.

The rule revision references the new course work standards required to qualify to take the UCPAE beginning January 1, 2024. It also clarifies that independent study may qualify for up to three semester credit hours toward qualifying to take the UCPAE but that the curriculum for the course may only be applied once toward credit.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 13, 2022.

TRD-202200101
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: February 2, 2022
Proposal publication date: November 26, 2021
For further information, please call: (512) 305-7842

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22 TAC §511.58

The Texas State Board of Public Accountancy adopts an amendment to §511.58, concerning Definitions of Related Business Subjects and Ethics Courses, without changes to the proposed text as published in the November 26, 2021, issue of the *Texas Register* (46 TexReg 7949). The rule will not be republished.

The rule revision requires that the required three semester hours of ethics course training to qualify to take the UCPAE shall include the ethics rules of the AICPA, SEC and board.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 13, 2022.

TRD-202200102
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: February 2, 2022
Proposal publication date: November 26, 2021
For further information, please call: (512) 305-7842

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22 TAC §511.60

The Texas State Board of Public Accountancy adopts new §511.60, concerning Qualified Accounting Courses Prior to January 1, 2024, without changes to the proposed text as published in the November 26, 2021, issue of the *Texas Register* (46 TexReg 7950). The rule will not be republished.

New §511.60 is created to establish the current qualified accounting courses required of applicant to take the UCPAE prior to January 1, 2024.

No comments were received regarding adoption of the new rue.

The new rule is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 13, 2022.

TRD-202200103
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: February 2, 2022
Proposal publication date: November 26, 2021
For further information, please call: (512) 305-7842

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SUBCHAPTER D. CPA EXAMINATION

22 TAC §511.72

The Texas State Board of Public Accountancy adopts an amendment to §511.72, concerning Uniform Examination, without changes to the proposed text as published in the November 26, 2021, issue of the *Texas Register* (46 TexReg 7953). The amended rule will not be republished.

The rule revision identifies the new sections of the UCPAE effective January 1, 2024. It also proposes to replace the term "tax" as one of the sections to the UCPAE effective January 1, 2024, with "taxation" as a better description of the testing section.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 13, 2022.

TRD-202200104
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: February 2, 2022
Proposal publication date: November 26, 2021
For further information, please call: (512) 305-7842

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22 TAC §511.80

The Texas State Board of Public Accountancy adopts an amendment to §511.80, concerning Granting of Credit, without changes to the proposed text as published in the November 26, 2021, issue of the *Texas Register* (46 TexReg 7954). The rule will not be republished.

With the restructuring of the UCPAE, the rule revision addresses those applicants with test scores that were taken prior to the January 1, 2024, date and how they may apply to test scores the same applicant receives after January 1, 2024.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 13, 2022.

TRD-202200105
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: February 2, 2022
Proposal publication date: November 26, 2021
For further information, please call: (512) 305-7842

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 332. COMPOSTING

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§332.2 - 332.4, 332.6, 332.8, 332.22, 332.23, 332.32, 332.33, 332.35 - 332.37, 332.41 - 332.45, 332.47, 332.61, 332.71, 332.72, and 332.75.

Sections 332.2, 332.22, 332.35, 332.47, 332.71, and 332.75 are adopted *with changes* to the proposed text as published in the July 30, 2021, issue of the *Texas Register* (46 TexReg 4562), and, therefore, the rules will be republished. The amendments to §§332.3, 332.4, 332.6, 332.8, 332.23, 332.32, 332.33, 332.36, 332.37, 332.41 - 332.45, 332.61, and 332.72 are adopted *without changes* to the proposed text and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The purpose of this rulemaking is to amend existing rules for an applicant of a compost Notice of Intent (NOI) to clarify who should be listed as a landowner that receives notice of the planned facility. These adopted rules will provide clarity on the information an applicant must submit for a compost NOI. Currently, §332.22(b) uses the phrase "affected landowners" regarding who an applicant must list on its compost NOI, which creates confusion and ambiguity on which landowners should be listed. Under these amended rules, the facility is to be designated as all contiguous land, structures, other appurtenances, and improvements on land used for receiving and storing organic materials and processing them into useable final products. An applicant must include a map depicting the facility and the land bordering the facility. The applicant must provide a list of the owners of the property bordering the facility so that the chief clerk can mail notice of the planned facility to the owners of the property bordering the facility.

This rulemaking will also incorporate applicability, fees, and reporting requirements from 30 Texas Administrative Code (TAC) Chapter 330, Subchapter P, into sections for registered and permitted compost facilities.

Additional clarifications and corrections to obsolete references and typographical errors throughout Chapter 332 are included to ensure clarity, readability, and provide overall effectiveness of these rules.

Section by Section Discussion

Subchapter A: General Information

§332.2, Definitions

The commission adopts amendments to §332.2 to revise definitions that need clarification, remove obsolete links, or update grammar to ensure clarity, readability, and the overall effectiveness of these rules.

The commission adopts amendments to paragraphs 45, 46, 47, 59, 60, 62, and 63 for proper alphabetization.

The commission adopts amendments to add missing commas to §332.2(6), (9), (10), (19), (26), (27), (28), (31), (33), (47), (54), (56), (58), (59), and (64).

The commission adopts amendments to replace the word "which" with "that" in §332.2(6), (13), (14), (15), (22), (27), (29), (32), (37), (48), and (58) and replacing the word "which" with "when" in §332.2(25).

The commission adopts amendments to §332.2(11), (17), and (40), to update the name of this agency or to replace the abbreviation "TNRCC" with "agency." The commission also adopts amendments to §332.2(17) to replace a gendered term with a non-gendered term.

The commission adopts amendments to delete a space in §332.2(12) between the words "top" and "soil."

The commission adopts amendments to §332.2(15), (29), and (53), to correct incorrect citations and clarify wording.

The commission proposed revising §332.2(18) to clarify the exact boundary where a compost facility is located. In response to comments, the commission amended §332.2(18), such that facility is defined as all contiguous land, structures, other appurtenances, and improvements on land used for receiving and storing organic materials and processing them into useable final products. The amendments to this definition make the use of facility consistent with the definition used in other solid waste chapters by including contiguous property, which is considered property under the control of a common owner.

The commission adopts amendments to revise the last sentence of §332.2(33) to expand the list of what does not constitute as mulch.

Finally, the commission adopts amendments to revise §332.2(48) to delete the word "Protection" from the name Resource Conservation and Recovery Act.

§332.3, Applicability

The commission amends §332.3(d) by revising the last sentence to clarify that operations under §332.3(d)(1) and (3) are subject to the requirements of an NOI recycling facility.

§332.4, General Requirements

The commission amends §332.4(2) to replace the obsolete citation of §330.2 with §330.3. The commission adopts the deletion of the words "relating to" and the associated title in the introductory paragraph of §332.4, and §332.4(1) and (2) to bring these sections up to *Texas Register* standards.

§332.6, Compost and Mulch Operations Located at Municipal Solid Waste Facilities

The commission amends §332.6(a) by updating the obsolete citation title from "Municipal Solid Waste Class 1 Modifications" to the current name "Municipal Solid Waste Permit and Registration Modifications." The commission also adopts amendments by adding a comma to §332.6(a).

§332.8, Air Quality Requirements

The commission adopts amendments by deleting a superfluous comma in §332.8(a)(4) and replacing the word "which" with "that" in §332.8(a)(1) - (3), (a)(6) and (7), (b)(4), (c), (c)(5), (d)(5), (e)(5) and (6). The commission also adopts amendments by eliminating a superfluous comma and adding the words "and that" to §332.8(a)(2). Finally, the commission adopts amendments by replacing the word "insure" with "ensure" in §332.8(c)(3), (d)(2), and (e)(2).

Subchapter B: Operations Requiring A Notification

§332.22, Notification

The commission amends §332.22(a) by revising the agency name and previous compost form with "and submitting forms provided by the executive director." In response to comments, the commission revised the proposed amendments to §332.22(b) regarding the landowner mailing list used for mailing public notice. The proposed changes to §332.22(b) deleted the words "adjacent" and "affected" and replaced them with "adjoining property." However, under adopted amendments to §332.22(b), as discussed in the Response to Comments, the notification requirements have been changed to provide additional clarification regarding those landowners that are required to be notified of the composting operation. Adopted §332.22(b) requires that an applicant provide a map showing the boundaries of the facility and the land bordering the facility. The list of landowners who own land bordering the facility must be determined by current county tax rolls or other reliable sources at the time the application is filed. The applicant must provide the source of information for developing the list. The chief clerk will mail notice of the planned facility to the persons on the list of property owners provided by the applicant.

§332.23, Operational Requirements

The commission amends §332.23(2)(A) and (B) to replace "Centigrade" with "Celsius." The commission also adopts amendments by replacing "CFR" with "Code of Federal Regulations" in paragraph (3).

Subchapter C: Operations Requiring a Registration

§332.32, Certification by Engineer, Approval by Land Owner, and Inspection

The commission amends the title of §332.32 by replacing "Land Owner" with "Landowner." The commission amends §332.32(a) by replacing the obsolete term "registered professional engineer" with "licensed professional engineer" and replacing "Texas-registered" with "Texas-licensed." The commission adopts amendments by reworking the compound sentence at the end of §332.32(a) and splitting the sentence to read more cohesively. Finally, the commission also adopts amendments replacing a reference to "TNRCC" in §332.32(c) with "agency" to update the change in agency name.

§332.33, Required Forms, Applications, Reports, and Request to Use the Sludge Byproduct of Paper Production

The commission adopts amendments replacing the colon in §332.33(a) with a period. The commission adopts amendments replacing references to "TNRCC" in §332.33(a)(1) with "agency" to update the change in agency name. The commission also adopts amendments revising §332.33(a)(1) to eliminate references to a specific form and replacing it with a generalized requirement for the applicant to submit a necessary part of their application. For §332.33(a)(3) and (4), the commission adopts amendments include the reporting and fee requirements already found in 30 TAC Chapter 330, Subchapter P (Fees and Reporting) for municipal solid waste facilities that are required for composting facilities. The commission adopts amendments replacing and reorganizing §332.33(a)(3) by dividing the reports required by the commission into Final Products and Received Materials. The final product will have semiannual and annual reports, with report language copied from the previous §332.33(a)(3) and (a)(4). The received materials will have the same requirements as the reports in the adopted §332.43(2)(B). The commission also adopts amendments adding §332.33(a)(4), which will add fee language--including fee rates, measurement options, fee calculation, due date, payment method, penalties, and exemptions--copied exactly from Chapter 330, Subchapter P that are relevant to compost facilities. Next, the commission adopts amendments revising §332.33(b)(3) by replacing gendered terms with non-gendered terms. Finally, the commission eliminates a superfluous comma in §332.33(b)(4).

§332.35, Registration Application Processing

The commission adopts amendments by eliminating a superfluous comma in §332.35(b)(2) and adding a missing comma in §332.35(c). The commission also adopts amendments revising §332.35(c) by replacing gendered terms with non-gendered terms. Since the proposal and in response to comments, the commission has amended the language in §332.35(b)(1), §332.35(b)(2), and §332.35(d) by replacing the term "adjacent landowner" with "landowners identified in the landowner list."

§332.36, Location Standards

The commission adopts amendments by revising §332.36(6) by deleting the space between "set" and "back." The commission amends §332.36(7) to correct for an obsolete citation. Information regarding the Edwards Aquifer recharge zone is now in 30 TAC Chapter 213.

§332.37, Operational Requirements

The commission amends §332.37(2) to correct a spacing typo in 1×10^{-7}. The commission amends §332.37(10) by defining CERCLA as "Comprehensive Environmental Response,

Compensation, and Liability Act of 1980." The commission amends §332.37(11)(A) to correct the incorrect citation of "§332.72(d)(2)(A) and (D)" to "§332.72(d)(2)(A) and (C)." The commission also adopts amendments by replacing the word "which" with "that" in §332.37(11)(B). Finally, in §332.37(12), the commission adopts amending the name and training requirements of a certified compost operator to a licensed municipal solid waste supervisor with specialized compost training because of the changes in the municipal solid waste licensing rules in 30 TAC Chapter 30, Subchapter F first adopted in 2001.

Subchapter D: Operations Requiring A Permit

§332.41, Definition, Requirements, and Application Processing for a Permit Facility

The commission amends the current title of §332.41 to "Requirements, and Application Processing for a Permitted Facility." The commission adopts amendments by the first sentence of §332.41(a) as this section does not supply definitions for the chapter. The commission also amends §332.41(c) to correct an internal contradiction. Section 332.41(c) states that all permit applications are subject to the notice requirements in Chapter 39, Subchapters H and I; however, §39.403 states that compost permit applications are exempt from requirements in Chapter 39, Subchapters H - M. Finally, the commission amends §332.41(c) to accurately correct the title of 30 TAC Chapter 55 as "Requests for Reconsideration and Contested Case Hearings; Public Comment."

§332.42, Certification by Engineer, Ownership or Control of Land, and Inspection

The commission adopts amendments by replacing the obsolete term "registered professional engineer" in §332.42(a) with "licensed professional engineer" and replacing "Texas-registered" with "Texas-licensed." The commission adopts amendments by reworking the compound sentence at end of §332.42(a) and splitting the sentence to read more cohesively. The commission also adopts amendments by replacing "TNRCC" in §332.42(c) with "agency" to update the change in agency name.

§332.43, Required Forms, Applications, and Reports

The commission amends §332.43(1) to eliminate references to a specific form and "TNRCC" and replace it with a generalized requirement for the applicant to submit a permit application. Additionally, for §332.43(2) and (3), the commission adopts amendments by including reporting and fee requirements already found in Chapter 330, Subchapter P for Municipal Solid Waste Facilities that are required for composting facilities. The commission adopts amendments by replacing and reorganizing §332.43(2) by dividing the reports required by the commission into Final Products and Received Materials. The final product will have monthly and annual reports with language copied from the previous §332.43(2) and (3) and will be integrated into the adopted §332.43(2)(A)(i) and (ii). The received materials will be broken down into quarterly and annual reports. These reports will include the amount of source-separated material processed to compost or mulch product, and the annual reports will include a summary of the quarterly totals and yearly total and year-end status of the facility. The commission amends §332.43(2)(B)(viii), which adds electronic mailing options. Finally, the commission amends §332.43(3), which will add fee language--including fee rates, measurement options, fee calculation, due date, payment method, penalties, and exemptions--copied exactly from Chapter 330, Subchapter P that are relevant to compost facilities.

§332.44, Location Standards

The commission adopts amendments revising §332.44(6) by deleting the space between "set" and "back." The commission amends §332.44(7) to correct for an obsolete citation. Information regarding the Edwards Aquifer recharge zone is now in 30 TAC Chapter 213.

§332.45, Operational Requirements

The commission adopts amendments revising §332.45(1) by defining NPDES as "National Pollutant Discharge Elimination System." The commission adopts amendments by replacing the word "insure" with "ensure" in §332.45(3). The commission adopts amendments by eliminating superfluous commas found in §332.45(4) and (6) and adding a missing comma to §332.45(7). The commission also adopts amendments revising §332.45(10) by defining CFR as "Code of Federal Regulations." The commission adopts amendments by replacing the word "which" with "that" in §332.45(11) and replacing references to "TNRCC" in §332.45(12) with "agency" to update the change in agency name. Finally, in §332.45(12), the commission amends the name and training requirements of a certified compost operator to a licensed municipal solid waste supervisor with specialized compost training because of the changes in the municipal solid waste licensing rules in 30 TAC Chapter 30, Subchapter F, first adopted in 2001.

§332.47, Permit Application Preparation

The commission amends §332.47 by revising the opening paragraph to eliminate references to "Compost Form Number 3" and replacing it with a generalized requirement to submit the permit application form provided by the commission. The commission also amends the opening paragraph of §332.47 to correct the obsolete citation of "22 TAC §131.166" to "22 TAC §137.33." The commission adopts amendments by deleting language in the introductory paragraph of §332.47 that requires an applicant to submit site develop plans as a bound document in a three-ring binder. The commission adopts amendments by replacing the word "which" with "that" in §332.47(6)(A)(v)(I) and (C)(i). The commission adopts amendments by deleting the abbreviation "DHT" in §332.47(6)(A)(iv)(II), as it is no longer a relevant term in this chapter and retaining the abbreviation for USGS. The commission adopts amendments abbreviating "United States Geological Survey" in §332.47(6)(A)(iv)(II), as it has been previously defined in the sentence. The commission adopts amendments revising §332.47(6)(B)(i)(I) by adding the specific institution where the Geologic Atlas of Texas can be obtained. Additionally, the commission amends §332.47(6)(C)(i) and (6)(C)(ii)(II)(-b-) to fix spacing and subscripting typos. The commission adopts amendments by replacing "MSL" with "measured in Mean Sea Level (MSL)" in §332.47(6)(C)(ii)(II)(-b-) and (-c-). Finally, the commission adopts amendments replacing the obsolete term "registered professional engineer" throughout §322.47 with "licensed professional engineer."

Subchapter F: Household Hazardous Waste Collection

§332.61, General Requirements and Applicability

The commission amends §332.61(c) to correct the title of 30 TAC Chapter 335, Subchapter N from "Household Materials Which Could Be Classified as Hazardous Waste" to "Household Hazardous Wastes."

Subchapter G: End-Product Standards

§332.71, Sampling and Analysis Requirements for Final Product

The commission adopts amendments by eliminating a superfluous comma in §332.71(a), replacing the word "which" with "that" in §332.71(b), (g), and (g)(2), eliminating a space between "which" and "ever" in §332.71(b)(6), and adding a missing comma in §332.71(c), (g)(1), and (j)(1)(B). The commission adopts amendments by updating the name "Quality Assurance Program Plan" in §332.71(b)(6) to "Quality Assurance Project Plan." The commission adopts defining "PCBs" in §332.71(b)(6) as "Polychlorinated biphenyls." The commission also adopts amendments by replacing references to "TNRCC" and "Texas Natural Resource Conservation Commission" throughout §332.71 with "agency" to update the change in agency name. Finally, the commission adopts amendments by eliminating html-related code in §332.71(d)(1)(C)(i) and (ii), so only the plain language chemical names remain in the rule.

§332.72, Final Product Grades

The commission adopts amendments by replacing references to "TNRCC" or "Texas Natural Resource Conservation Commission" in §332.72(c) with "agency" to update the change in agency name. The commission adopts amendments by updating the name "Quality Assurance Program Plan" in §332.72(c) to "Quality Assurance Project Plan." The commission also adopts amendments by replacing the word "which" with "that" in §332.72(d)(1)(C), (2)(B), and (C), (e), and (f). Finally, the commission adopts amendments by adding a comma to §332.72(d)(2)(D).

§332.75, Out of State Production

The commission amends §332.75 to correct the reference to the title of §332.74 (Compost Labelling Requirements).

Final Regulatory Impact Determination

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the action is not subject to Texas Government Code, §2001.0025, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule with the specific intent of protecting the environment or reducing risks to human health from environmental exposure and one that may adversely affect the economy, a sector in the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state in a material way.

The rulemaking will not meet the statutory definition of a "Major environmental rule," because it is not the specific intent of the rulemaking to protect the environment or reduce risks to human health from environmental exposure. Instead, the primary purpose of the rulemaking adoption is to amend rules for clarity and to correct obsolete references and typographical errors throughout Chapter 332. These changes are not anticipated to adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state in a material way, since none of the adopted changes are substantive.

The rulemaking also does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. As previously mentioned, since the adopted changes are solely intended to amend Chapter 332 for clarity and accuracy, no substantive changes to any obligations under Chapter 332 will be made. Accordingly, the rulemaking does not exceed a standard set by federal law, an express requirement of state law, or a requirement of a delegation agreement. Finally, these changes will be adopted in accordance with specific state laws that direct the agency to establish standards and guidelines for composting facilities and will not be adopted solely under the general powers of the agency.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received for the regulatory impact analysis.

Takings Impact Assessment

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

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

Promulgation and enforcement of the rulemaking will be neither a statutory nor a constitutional taking of private real property. The primary purpose of the rulemaking is to correct obsolete references and typographical errors throughout Chapter 332 and to amend it for clarity. The rulemaking will not affect a landowner's rights in private real property, because this rulemaking adoption will not burden, restrict, or limit the owner's right to property, nor will it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules will not be subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission held a virtual public hearing on August 23, 2021. The comment period closed on August 30, 2021. The commission received comments from the TCEQ Office of Public Interest Counsel (OPIC), Risa Weinberger & Associates, Inc (RWA), and Solid Waste Services for the City of Corpus Christi (SWS). All three commenters were in support of the rule revisions and all comments suggested further revisions to the proposed rules.

Response to Comments

Comment

OPIC expressed concerns that the proposed definition of facility in §332.2(18) is ambiguous. OPIC recommended that the term be revised for consistency with other TCEQ programs by defining "Facility" to include all contiguous property so that public notice of the application will be mailed to the landowners adjacent to the facility.

Response

The commission agrees with the comment and has revised the definition of "Facility" in §332.2(18) to clarify the exact boundaries of a compost facility. The adopted language clarifies that a compost facility extends to the edge of the real property that the compost operations are situated on or within and includes all contiguous tracts of land owned in common by the real property owner. Under amended §332.2(18), facility is defined as all contiguous land, structures, other appurtenances, and improvements on land used for receiving and storing organic materials and processing them into useable final products. The changes adopted are not intended to change the landowners that were required by the proposed rule to receive notification but serve to better convey those landowners needing notification. This additional clarification also makes the use of the term facility consistent with the use in other waste programs, such as 30 TAC §305.2(14) and §330.3(52).

Comment

OPIC expressed concerns that the proposed revisions to the notice requirements for notification tier facilities in §332.22(b) were still ambiguous and left open to broad interpretation. OPIC recommended revisions to §332.22(b) to require the applicant provide a map of the tract of land owned or under the control of the applicant and the tracts of land bordering the tract owned or controlled by the applicant. OPIC further recommended that the applicant provide a list of the names and addresses of the persons owning the tracts of land bordering the tract owned by or under the control of the applicant. OPIC suggested stating that the chief clerk mails the notice of the planned facility to the list of property owners provided by the applicant.

Response

The commission agrees that additional changes to the proposed notice requirements will clarify the property owners that are intended to receive notification of composting facility applications. The commission has revised proposed §332.22(b) to include the requirements in Compost Form No. 1 (TCEQ-00651) for the applicant to provide a map depicting facility boundaries and the land bordering the facility. The revisions in response to this comment also specify that the applicant must include a list of the names and addresses of the owners of the land bordering the facility and that the chief clerk will mail notice of the planned facility to the list of property owners provided by the applicant. With the adopted revisions to the amended definition of facility in §332.2(18) and the revised application notification requirements in §332.22(b), the commission intends that the designated facility includes all of the contiguous property under common ownership, that the owners of property bordering the facility be included on a list provided in the application, and that the chief clerk mail notice of the planned facility to the owners of the property bordering the facility.

Comment

RWA and SWS commented that the notice requirements for registration tier facilities in §332.35 should be revised to match the notice requirements for notification tier facilities in §332.22(b). RWA commented that a definition of "adjoining landowners" should be added to the rules.

Response

The commission has removed the term "adjacent landowner" from proposed §332.35 and revised the section to use language similar to language used in §332.22(b). This change in terminology makes consistent the landowners required to be notified in §332.35 with the landowner notification requirements adopted in §332.22(b). The commission made changes to the proposed revisions in §332.22(b) in response to comment to establish the resources needed to determine the landowners bordering the facility property, require submission of a facility map, and indicate that the clarify that chief clerk mail notice to the owners of the property bordering the facility. These same revisions were not made to proposed §332.35 because the structure of the notification requirements for registration tier applicants is different and those requirements are already specified in existing §332.34. Regarding the addition of a definition for "adjoining landowners," the commission does not agree that it is necessary because that term is not used in the amended rules.

SUBCHAPTER A. GENERAL INFORMATION

30 TAC §§332.2 - 332.4, 332.6, 332.8

Statutory Authority

The amendments are adopted under the authority of Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers, duties and responsibilities; Texas Solid Waste Disposal Act; Texas Health and Safety Code (THSC), §§361.011, 361.017, and 361.024, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under THSC, Chapter 361; THSC, §361.428, which provides the commission with the authority to adopt rules establishing standards and guidelines for composting facilities; and THSC, §361.013, which provides the commission with the authority to charge fees for solid waste disposal and transportation.

The adopted amendments implement THSC, Chapter 361.

§332.2. Definitions.

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

(1) Agricultural materials--Litter, manure, bedding, feed material, vegetative material, and dead animal carcasses from agricultural operations.

(2) Agricultural operations--Operations involved in the production of agricultural materials.

(3) Air contaminant--Particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor or any combination thereof produced by processes other than natural. Water vapor shall not be considered an air contaminant.

(4) All-weather roads--A roadway that has been designed to withstand the maximum load imposed by vehicles entering and exiting the facility during all types of weather conditions.

(5) Anaerobic composting--The controlled biological decomposition of organic materials through microbial activity which occurs in the absence of free oxygen. Anaerobic composting does not include the stockpiling of organic materials.

(6) Backyard operations--The composting, land application, and mulching of non-industrial organic material, such as grass clippings, leaves, brush, clean wood material, or vegetative food material, generated by a homeowner, tenant of a single or multi-family residential or apartment complex, or a commercial or institutional complex where the composting, land application or mulching occurs on the dwelling property and the final product is utilized on the same property. Backyard operations include neighborhood composting demonstration sites that generate less than 50 cubic yards of final product per year.

(7) Batch (or Sampling batch)--The lot of produced compost represented by one analytical sample (3,000 cubic yards or 5,000 cubic yards depending on facility type).

(8) Beneficial reuse--Any agricultural, horticultural, reclamation, or similar use of compost as a soil amendment, mulch, or component of a medium for plant growth, when used in accordance with generally accepted practice and where applicable is in compliance with the final product standards established by this chapter. Simply offering a product for use does not constitute beneficial reuse. Beneficial reuse does not include placement in a disposal facility, use as daily cover in a disposal facility, or utilization for energy recovery.

(9) Bulking Agent--An ingredient in a mixture of composting materials included to improve structure and porosity (which improve convective air flow and reduce settling and compaction) and/or to lower moisture content. Bulking agents may include but are not limited to: compost, straw, wood chips, saw dust, or shredded brush.

(10) Clean wood material--Wood or wood materials, including stumps, roots, or vegetation with intact rootball, sawdust, pallets, and manufacturing rejects. Clean wood material does not include wood that has been treated, coated or painted by materials such as, but not limited to, paints, varnishes, wood preservatives, or other chemical products. Clean wood material also does not include demolition material, where the material is contaminated by materials such as, but not limited to, paint or other chemicals, glass, electrical wiring, metal, and sheetrock.

(11) Commission--The Texas Commission on Environmental Quality.

(12) Compost--The stabilized product of the decomposition process that is used or distributed for use as a soil amendment, artificial topsoil, growing medium amendment, or other similar uses.

(13) Composting or functionally aerobic composting--The controlled, biological decomposition of organic materials through microbial activity that occurs in the presence of free oxygen. Composting or functionally aerobic composting does not include the stockpiling of organic materials.

(14) Cured compost (CC)--A highly stabilized product that results from exposing mature compost to a prolonged period of humification and mineralization.

(15) Dairy material--Products that have a Standard of Identity defined in 21 Code of Federal Regulations Part 131.

(16) Distribute--To sell, offer for sale, expose for sale, consign for sale, barter, exchange, transfer possession or title, or otherwise supply.

(17) Executive director--The Executive Director of the Texas Commission on Environmental Quality or their duly authorized representative.

(18) Facility-- All contiguous land, structures, other appurtenances, and improvements on land used for receiving and storing organic materials and processing them into useable final products.

(19) Feedstock--Any material used for land application or as a basis for the manufacture of compost, mulch, or other useable final product.

(20) Final Product--Composted material meeting testing requirements of §332.71 of this title (relating to Sampling and Analysis Requirements for Final Product) and awaiting distribution or disposal.

(21) Fish feedstocks--Fish, shellfish, or seafood and by-products of these materials whether raw, processed, or cooked. Fish feedstocks does not include oils and/or greases that are derived from these same materials.

(22) Foreign matter--Inorganic and organic constituents that are not readily decomposed, including metals, glass, plastics, and rubber, but not including sand, dirt, and other similar materials.

(23) Grab sample--A single sample collected from one identifiable location.

(24) Grease--See the definition of Oil in this section.

(25) Hours of operation--Those hours when the facility is open to receive feedstock, incorporate feedstock into the process, retrieve product from the process, and/or ship product.

(26) Land application--The spreading of yard trimmings, manure, clean wood material, and/or vegetative food materials onto the surface of the land or the incorporation of these materials within three feet of the surface.

(27) Leachate--Liquid that has come in contact with or percolated through materials being stockpiled, processed, or awaiting removal and that has extracted, dissolved, or suspended materials. Leachate also includes condensate from gases resulting from the composting process.

(28) Manure--Animal excreta and residual materials that have been used for bedding, sanitary, or feeding purposes for such animals.

(29) Mature compost--Mature compost is the stabilized product of composting that has achieved the appropriate level of pathogen reduction (see definitions of "PFRP" and "PSRP" in this section) and is beneficial to plant growth, and meets the requirements of Table 2 of §332.72 of this title (relating to Final Product Grades).

(30) Maturity--A measure of the lack of biological activity in freshly aerated materials, resulting from the decomposition of the incoming feedstock during the active composting period.

(31) Meat feedstocks--Meat and meat by-products whether raw, processed, or cooked including whole animal carcasses, poultry,

and eggs. Meat feedstocks does not include oils and/or greases that are derived from these same materials.

(32) Mixed municipal solid waste--Garbage, refuse, and other solid waste from residential, commercial, industrial non-hazardous, and community activities that is generated and collected in aggregate.

(33) Mulch--Ground, coarse, woody yard trimmings, and clean wood material. Mulch is normally used around plants and trees to retain moisture and suppress weed growth, and is intended for use on top of soil or other growing media rather than being incorporated into the soil or growing media. Mulch does not include wood from trees or other plants that have been systemically killed using herbicides.

(34) Municipal sewage sludge--Solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screening generated during preliminary treatment of domestic sewage in a treatment works.

(35) Nuisance--Nuisances as set forth in the Texas Health and Safety Code, Chapter 341, the Texas Water Code, Chapter 26, and §101.4 of this title (relating to Nuisance).

(36) Oil--Any material rendered from vegetative material, dairy material, meat or fish feedstocks that is soluble in trichlorotrifluoroethane. It includes other material extracted by the solvent from an acidified sample and not volatilized during the test. Oil and greases do not include grease trap waste.

(37) One hundred-year floodplain--Any land area that is subject to a 1.0% or greater chance of flooding in any given year from any source.

(38) Operator--The person(s) responsible for operating the facility or part of a facility.

(39) Quality Assurance/Quality Control (QAQC) plan--A written plan to describe standard operating procedures used to sample, prepare, store, and test final product, and report test results. The plan outlines quality assurance criteria, as well as quality control procedures, needed to meet the operational specifications of this chapter.

(40) Quality Assurance Program Plan (QAPP)--A QAQC plan prepared by the agency that may be substituted for the QAQC plan.

(41) Paper--A material made from plant fibers (such as, but not limited to wood pulp, rice hulls, and kenaf). The sludge byproduct resulting from the production of paper may be approved as a feedstock pursuant to §332.33(b) of this title (relating to Required Forms, Applications, Reports, and Request To Use the Sludge Byproduct of Paper Production).

(42) Permit--A written document issued by the commission that, by its conditions, may authorize the owner or operator to construct, install, modify, or operate a facility or operation in accordance with specific limitations.

(43) Person--Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

(44) PFRP--The process to further reduce pathogens as described in 40 Code of Federal Regulations Part 503, Appendix B.

(45) Positively-sorted organic material--Positively-sorted organic material includes materials such as, but not limited to, yard trimmings, clean wood materials, manure, vegetative material, paper, and meat and fish feedstocks that are sorted or pulled out as targeted compostable organic materials from mixed municipal solid waste prior to the initiation of processing.

(46) Processing--Actions that are taken to land apply feedstocks or convert feedstock materials into finished compost, mulch, or a useable final product. Processing does not include the stockpiling of materials.

(47) PSRP--The process to significantly reduce pathogens as described in 40 Code of Federal Regulations Part 503, Appendix B.

(48) Recyclable material--For purposes of this chapter, a recyclable material is a material that has been recovered or diverted from the solid waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced from raw or virgin materials. Recyclable material is not solid waste unless the material is deemed to be hazardous solid waste by the administrator of the United States Environmental Protection Agency, whereupon it shall be regulated accordingly unless it is otherwise exempted in whole or in part from regulation under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. If, however, recyclable materials may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

(49) Recycling--A process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials in the production of new products. Recycling includes the composting process if the compost material is put to beneficial reuse as defined in this section.

(50) Residence--A single-family or multi-family dwelling.

(51) Run-off--Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(52) Run-on--Any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(53) Semi-mature compost (SMC)--Organic matter that has been through the thermophilic stage and achieved the appropriate level of pathogen reduction (see definitions of "PFRP" and "PSRP" in this section). It has undergone partial decomposition but it is not yet stabilized into mature compost. Semi-mature compost shall not be packaged, as uncontrolled microbial transformations will occur.

(54) Solid waste--Garbage; rubbish; refuse; sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility; and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations from community and institutional activities.

(55) Source-separated--Set apart from waste after use or consumption by the user or consumer.

(56) Source-separated organic material--Organic materials from residential, commercial, industrial, and other community activities, that at the point of generation have been separated, collected, and transported separately from non-organic materials, or transported in the same vehicle as non-organic materials but in separate compartments. Source-separated organic material may include materials such as, but not limited to, yard trimmings, clean wood materials, manure, vege-

tative material, and paper. Yard trimmings and clean wood material collected with whitegoods, as in brush and bulky item collections, will be considered source-separated organic materials for the purposes of these rules.

(57) Stockpile--A collection of materials that is either awaiting processing or removal.

(58) Unauthorized material--Material that is not authorized to be processed in a particular type of composting, mulching, or land application facility.

(59) Vector--An agent, such as an insect, snake, rodent, bird, or animal capable of mechanically or biologically transferring a pathogen from one organism to another.

(60) Vegetative material--Fruit, vegetable, or grain material whether raw, processed, liquid, solid, or cooked. Vegetative material does not include oils and/or greases that are derived from these same materials.

(61) Voucher--Provides the same information as required on a label to persons receiving compost distributed in bulk.

(62) Wet weight--The weight of the material as used, not a weight that has been adjusted by subtracting the weight of water within the feedstock.

(63) Wetlands--Those areas defined as wetlands in the Texas Water Code, Chapter 26.

(64) White goods--Discarded large household appliances such as refrigerators, stoves, washing machines, or dishwashers.

(65) Yard trimmings--Leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscaping maintenance and land-clearing operations. Yard trimmings does not include stumps, roots, or shrubs with intact root balls.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 239-2809

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SUBCHAPTER B. OPERATIONS REQUIRING A NOTIFICATION

30 TAC §332.22, §332.23

Statutory Authority

The amendments are adopted under the authority of Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers, duties and responsibilities; Texas Solid Waste Disposal Act, Texas Health and Safety Code (THSC), §§361.011, 361.017, and 361.024, which provide the commission with the authority to adopt rules necessary to carry out its powers and duties under THSC, Chapter 361; THSC, §361.428, which provides the commission with the authority to adopt rules establishing standards and guidelines for composting facilities; and THSC, §361.013, which provides the commission with the authority to charge fees for solid waste disposal and transportation.

The adopted amendments implement THSC, Chapter 361.

§332.22. Notification.

(a) The operator shall notify the executive director in writing of the existence of the facility 30 days prior to construction by completing and submitting forms provided by the executive director.

(b) The applicant shall include a map depicting the approximate boundaries of the facility and all land bordering the facility. The applicant shall also include a list, attached to the map, of the names and addresses of the owners of the land bordering the facility such as can be determined from the current county tax rolls or other reliable sources at the time the application is filed. The applicant shall include the source of the information included in such list. The chief clerk shall mail notice of the planned facility to the list of property owners provided under this subsection. The chief clerk shall also mail notice to other affected landowners as directed by the executive director.

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. OPERATIONS REQUIRING A REGISTRATION

30 TAC §§332.32, 332.33, 332.35 - 332.37

Statutory Authority

The amendments are adopted under the authority of Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers, duties and responsibilities; Texas Solid Waste Disposal Act, Texas Health and Safety Code (THSC), §§361.011, 361.017, and 361.024, which provide the commission with the authority to adopt rules necessary to carry out its powers and duties under THSC, Chapter 361; THSC, §361.428, which provides the commission with the authority to adopt rules establishing standards and guidelines for composting facilities; and THSC, §361.013, which provides the commission with the authority to charge fees for solid waste disposal and transportation.

The adopted amendments implement THSC, Chapter 361.

§332.35. Registration Application Processing.

(a) An application shall be submitted to the executive director. When an application is administratively complete, the executive director shall assign the application an identification number.

(b) Public Notice.

(1) When an application is administratively complete the chief clerk shall mail notice to landowners identified in the landowner list. The chief clerk also shall mail notice to other affected landowners as directed by the executive director.

(2) When an application is technically complete the chief clerk shall mail notice to landowners identified in the landowner list. The chief clerk shall also mail notice to other affected landowners as directed by the executive director. The applicant shall publish notice in the county in which the facility is located and in adjacent counties. The published notice shall be published once a week for three weeks. The applicant should attempt to obtain publication in a Sunday edition of a newspaper. The notice shall explain the method for submitting a motion for reconsideration.

(3) Notice issued under paragraphs (1) or (2) of this subsection shall contain the following information:

(A) the identifying number given the application by the executive director;

(B) the type of registration sought under the application;

(C) the name and address of the applicant(s);

(D) the date on which the application was submitted; and

(E) a brief summary of the information included in the application.

(c) The executive director shall, after review of any application for registration of a compost facility, determine approval or denial of an application in whole or in part. The executive director shall base the decision on whether the application meets the requirements of this subchapter and the requirements of §332.4 of this title (relating to General Requirements).

(d) At the same time that the executive director's decision is mailed to the applicant, a copy or copies of this decision shall also be mailed to all landowners identified in the landowner list and any affected landowners, residents, and businesses.

(e) The applicant or a person affected by the executive director's final approval of an application may file with the chief clerk a motion to overturn, under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision).

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. OPERATIONS REQUIRING A PERMIT

30 TAC §§332.41 - 332.45, 332.47

Statutory Authority

The amendments are adopted under the authority of Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers, duties and responsibilities; Texas Solid Waste Disposal Act, Texas Health and Safety Code (THSC), §§361.011, 361.017, and 361.024, which provide the commission with the authority to adopt rules necessary to carry out its powers and duties under THSC, Chapter 361; THSC, §361.428, which provides the commission with the authority to adopt rules establishing standards and guidelines for composting facilities; and THSC, §361.013, which provides the commission with the authority to charge fees for solid waste disposal and transportation.

The adopted amendments implement THSC, Chapter 361.

§332.47. Permit Application Preparation.

To assist the commission in evaluating the technical merits of a compost facility, an applicant subject to this chapter shall submit a site development plan to the commission along with a compost permit application form provided by the executive director. The site development plan must be sealed by a Texas-licensed professional engineer in accordance with the provisions of 22 TAC §137.33 (relating to Engineers' Seals). The site development plan must contain all of the following information.

(1) Title page. A title page shall show the name of the project, the county (and city if applicable) in which the proposed project is located, the name of the applicant, the name of the engineer, the date the application was prepared, and the latest date the application was revised.

(2) Table of contents. A table of contents shall be included which lists the main sections of the plan, any requested variances, and page numbers.

(3) Engineer's appointment. The site development plan shall contain an engineer's appointment, which consists of a letter from the applicant to the executive director identifying the consulting engineering firm responsible for the submission of the plan, specifications, and any other technical data to be evaluated by the commission regarding the project.

(4) Land use. To assist the executive director in evaluating the impact of the facility on the surrounding area, the applicant shall provide the following:

(A) a description of the zoning at the facility and within one mile of the facility. If the facility requires approval as a nonconforming use or a special use permit from the local government having jurisdiction, a copy of such approval shall be submitted with the application;

(B) a description of the character of the surrounding land uses within one mile of the proposed facility;

(C) proximity to residences and other uses (e.g., schools, churches, cemeteries, historic structures, historic sites, archaeologically significant sites, sites having exceptional aesthetic quality, parks, recreational sites, recreational facilities, licensed day care centers, etc.). Give the approximate number of residences and business establishments within one mile of the proposed facility including the distances and directions to the nearest residences and businesses;

(D) a discussion that shows the facility is compatible with the surrounding land uses; and

(E) a constructed land use map showing the land use, zoning, residences, businesses, schools, churches, cemeteries, historic structures, historic sites, archaeologically significant sites, sites having exceptional aesthetic quality, licensed day care centers, parks, recreational sites and recreational facilities within one mile of the facility, and wells within 500 feet of the facility.

(5) Access. To assist the executive director in evaluating the impact of the facility on the surrounding roadway system, the applicant shall provide the following:

(A) data on the roadways within one mile of the facility used to access the facility. The data shall include dimensions, surfacing, general condition, capacity, and load limits;

(B) data on the volume of vehicular traffic on access roads within one mile of the proposed facility. The applicant shall include both existing and projected traffic during the life of the facility (for projected include both traffic generated by the facility and anticipated increase without the facility);

(C) an analysis of the impact the facility will have on the area roadway system, including a discussion on any mitigating measures (turning lanes, roadway improvements, intersection improvements, etc.) proposed with the project; and

(D) an access roadway map showing all area roadways within a mile of the facility. The data and analysis required in subparagraphs (A) - (C) of this paragraph shall be keyed to this map.

(6) Facility development. To assist the executive director in evaluating the impact of the facility on the environment, the applicant shall provide the following.

(A) Surface water protection plan. The surface water protection plan shall be prepared by a licensed professional engineer. At a minimum, the applicant shall provide all of the following:

(i) a design for a run-on control system capable of preventing flow onto the facility during the peak discharge from at least a 25-year, 24-hour rainfall event;

(ii) a design for a runoff management system to collect and control at least the peak discharge from the facility generated by a 25-year, 24-hour rainfall event;

(iii) a design for a contaminated water collection system to collect and contain all leachate. If the design uses leachate for any processing, the applicant shall clearly demonstrate that such use will not result in contamination of the final product; and

(iv) drainage calculations as follows.

(I) Calculations for areas of 200 acres or less shall follow the rational method as specified in the Texas Department of Transportation Bridge Division Hydraulic Manual.

(II) Calculations for discharges from areas greater than 200 acres shall be computed by using United States Geological Survey (USGS) hydraulic equations compiled by the USGS and the Texas Department of Transportation Bridge Division Hydraulic Manual, the HEC-1 and HEC-2 computer programs developed through the Hydrologic Engineering Center of the United States Army Corps of Engineers, or an equivalent or better method approved by the executive director.

(III) Calculations for sizing containment facilities for leachate shall be determined by a mass balance based on the facility's proposed leachate disposal method.

(IV) Temporary and permanent erosion control measures shall be discussed;

(v) drainage maps and drainage plans shall be provided as follows:

(I) an off-site topographic drainage map showing all areas that contribute to the facility's run-on. The map shall delineate the drainage basins and sub-basins, show the direction of flow, time of concentration, basin area, rainfall intensity, and flow rate. This map shall also show all creeks, rivers, intermittent streams, lakes, bayous, bays, estuaries, arroyos, and other surface waters in the state;

(II) a pre-construction on-site drainage map. The map shall delineate the drainage basins and sub-basins, show the direction of flow, time of concentration, basin area, rainfall intensity and flow rate;

(III) a post-construction on-site drainage map. The map shall delineate the drainage basins and sub-basins, show the direction of flow, time of concentration, basin area, rainfall intensity, and flow rate;

(IV) a drainage facilities map. The map shall show all proposed drainage facilities (ditches, ponds, piping, inlets, outfalls, structures, etc.) and design parameters (velocities, cross-section areas, grades, flowline elevations, etc.). Complete cross-sections of all ditches and ponds shall be included;

(V) a profile drawing. The drawing shall include profiles of all ditches and pipes. Profiles shall include top of bank, flowline, hydraulic grade, and existing groundline. Ditches and swells shall have a minimum of one foot of freeboard;

(VI) a floodplain and wetlands map. The map shall show the location and lateral extent of all floodplains and wetlands on the site and on lands within 500 feet of the site; and

(VII) an erosion control map which indicates placement of erosion control features on the site.

(B) Geologic/hydrogeologic report. The geologic/hydrogeologic report shall be prepared by an engineer or qualified geologist/hydrogeologist. The applicant shall include discussion and information on all of the following:

(i) a description of the regional geology of the area. This section shall include:

(I) a geologic map of the region with text describing the stratigraphy and lithology of the map units. An appropriate section of a published map series such as the Geologic Atlas of Texas prepared by The University of Texas at Austin's Bureau of Economic Geology is acceptable;

(II) a description of the generalized stratigraphic column in the facility area from the base of the lowermost aquifer capable of providing usable groundwater, or from a depth of 1,000 feet, whichever is less, to the land surface. The geologic age, lithology, variation in lithology, thickness, depth geometry, hydraulic conductivity, and depositional history of each geologic unit should be described based upon available geologic information;

(ii) a description of the geologic processes active in the vicinity of the facility. This description shall include an identification of any faults and/or subsidence in the area of the facility;

(iii) a description of the regional aquifers in the vicinity of the facility based upon published and open-file sources. The section shall provide:

(I) aquifer names and their association with geologic units described in clause (i) of this subparagraph;

(II) a description of the composition of the aquifer(s);

(III) a description of the hydraulic properties of the aquifer(s);

(IV) identification of areas of recharge to the aquifers within five miles of the site; and

(V) the present use of groundwater withdrawn from aquifers in the vicinity of the facility;

(iv) subsurface investigation report. This report shall describe all borings drilled on site to test soils and characterize groundwater and shall include a site map drawn to scale showing the surveyed locations and elevations of the boring. Boring logs shall include a detailed description of materials encountered including any discontinuities such as fractures, fissures, slickensides, lenses, or seams. Each boring shall be presented in the form of a log that contains, at a minimum, the boring number; surface elevation and location coordinates; and a columnar section with text showing the elevation of all contacts between soil and rock layers description of each layer using the Unified Soil Classification, color, degree of compaction, and moisture content. A key explaining the symbols used on the boring logs and the classification terminology for soil type, consistency, and structure shall be provided.

(I) A sufficient number of borings shall be performed to establish subsurface stratigraphy and to determine geotechnical properties of the soils and rocks beneath the facility. The number of borings necessary can only be determined after the general characteristics of a site are analyzed and will vary depending on the heterogeneity of subsurface materials. The minimum number of borings required for a site shall be three for sites of five acres or less, and for sites larger than five acres the required number of borings shall be three borings plus one boring for each additional five acres or fraction thereof. The boring plan shall be approved by the executive director prior to performing the bores.

(II) Borings shall be sufficiently deep to allow identification of the uppermost aquifer and underlying hydraulically interconnected aquifers. Boring shall penetrate the uppermost aquifer and all deeper hydraulically interconnected aquifers and be deep enough to identify the aquiclude at the lower boundary. All the borings shall be at least 30 feet deeper than the elevation of the deepest excavation on site and in no case shall be less than 30 feet below the lowest elevation on site. If no aquifers exist within 50 feet of the elevation of the deepest excavation, at least one test bore shall be drilled to the top of the first perennial aquifer beneath the site. In areas where it can be demonstrated that the uppermost aquifer is more than 300 feet below the deepest excavation, the applicant shall provide the demonstration to the executive director and the executive director shall have the authority to waive the requirement for the deep bore.

(III) All borings shall be conducted in accordance with established field exploration methods.

(IV) Installation, abandonment, and plugging of the boring shall be in accordance with the rules of the commission.

(V) The applicant shall prepare cross-sections utilizing the information from the boring and depicting the generalized strata at the facility.

(VI) The report shall contain a summary of the investigator's interpretations of the subsurface stratigraphy based upon the field investigation;

(v) groundwater investigation report. This report shall establish and present the groundwater flow characteristics at the site which shall include groundwater elevation, gradient, and direction of flow. The flow characteristics and most likely pathway(s) for pollutant migration shall be discussed in a narrative format and shown graphically on a piezometric contour map. The groundwater data shall be collected from piezometers installed at the site. The minimum number of piezometers required for the site shall be three for sites of five acres or less, for sites greater than five acres the total number of piezometer required shall be three piezometer plus one piezometer for each additional five acres or fraction thereof.

(C) Groundwater protection plan. The application shall demonstrate that the facility is designed so as not to contaminate the groundwater and so as to protect the existing groundwater quality from degradation. For the purposes of these sections, protection of the groundwater includes the protection of perched water or shallow surface infiltration. As a minimum, groundwater protection shall consist of all of the following.

(i) Liner system. All feedstock receiving, mixing, composting, post-processing, screening, and storage areas shall be located on a surface that is adequately lined to control seepage. The lined surface shall be covered with a material designed to withstand normal traffic from the composting operations. At a minimum, the lined surface shall consist of soil, synthetic, or an alternative material that is equivalent to two feet of compacted clay with a hydraulic conductivity of 1 x 10^{-7} centimeters per second or less.

(I) Soil liners shall have more than 30% passing a number 200 sieve, have a liquid limit greater than 30%, and a plasticity index greater than 15.

(II) Synthetic liners shall be a membrane with a minimum thickness of 20 mils.

(III) Alternative designs shall utilize an impermeable liner (such as concrete).

(ii) Groundwater monitor system. The groundwater monitoring system shall be designed and installed such that the system will reasonably assure detection of any contamination of the groundwater before it migrates beyond the boundaries of the site. The monitoring system shall be designed based upon the information obtained in the "Groundwater investigation report" required by subparagraph (B)(v) of this paragraph.

(I) Details of monitor well construction and placement of monitor wells shall be shown on the site plan.

(II) A groundwater sampling program shall provide four background groundwater samples of all monitor wells within 24 months from the date of the issuance of the permit. The background levels shall be established from samples collected from each well at least once during each of the four calendar quarters: January - March; April - June; July - September; and October - December. Samples from any monitor well shall not be collected for at least 45 days following collection of a previous sample, unless a replacement sample is necessary. At least one sample per well shall be collected and submitted to a laboratory for analysis within 60 days of permit issuance for existing or previously registered operations, or prior to accepting any material for processing at a new facility. Background samples shall be analyzed for the parameters as follows:

(-a-) heavy metals, arsenic, copper, mercury, barium, iron, selenium, cadmium, lead, chromium, and zinc;

(-b-) other parameters: calcium, magnesium, sodium, carbonate, bicarbonate, sulphate, fluoride, nitrate (as N), total dissolved solids, phenolphthalein alkalinity as $CaCO_3$, alkalinity as $CaCO_3$, hardness as $CaCO_3$, pH, specific conductance, anion-cation bal-

ance, groundwater elevation (measured in Mean Sea Level (MSL)), and total organic carbon (TOC) (four replicates/sample); and

(-c-) after background values have been determined, the following indicators shall be measured at a minimum of 12-month intervals: TOC (four replicates), iron, manganese, pH, chloride, groundwater elevation (measured in MSL), and total dissolved solids. After completion of the analysis, an original and two copies shall be sent to the executive director and a copy shall be maintained on site.

(-d-) The executive director may waive the requirement to monitor for any of the constituents listed in items (-a-) - (-c-) of this subclause in a permit, if it can be documented that these constituents are not reasonably expected to be in or derived from the bulking or feedstock materials. A change to the monitoring requirements may be incorporated into a permit when issued or as a modification under §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications).

(-e-) The executive director may establish an alternative list of constituents for a permit, if the alternative constituents provide a reliable indication of a release to the groundwater. The executive director may also add inorganic or organic constituents to those to be tested if they are reasonably expected to be in or derived from the bulking or feedstock materials. A change to the monitoring requirements may be incorporated into a permit when issued or as a modification under §305.70 of this title.

(D) Facility plan and facility layout. The facility plan and facility layout must be prepared by a licensed professional engineer. All proposed facilities, structures, and improvements must be clearly shown and annotated on this drawing. The plan must be drawn to standard engineering scale. Any necessary details or sections must be included. As a minimum, the plan must show property boundaries, fencing, internal roadways, tipping area, processing area, post-processing area, facility office, sanitary facilities, potable water facilities, storage areas, etc. If phasing is proposed for the facility, a separate facility plan for each phase is required.

(E) Process description. The process description shall be composed of a descriptive narrative along with a process diagram. The process description shall include all of the following.

(i) Feedstock identification. The applicant shall prepare a list of the materials intended for processing along with the anticipated volume to be processed. This section shall also contain an estimate of the daily quantity of material to be processed at the facility along with a description of the proposed process of screening for unauthorized materials.

(ii) Tipping process. Indicate what happens to the feedstock material from the point it enters the gate. Indicate how the material is handled in the tipping area, how long it remains in the tipping area, what equipment is used, how the material is evacuated from the tipping area, at what interval the tipping area is cleaned, and the process used to clean the tipping area.

(iii) Process. Indicate what happens to the material as it leaves the tipping area. Indicate how the material is incorporated into the process and what process or processes are used until it goes to the post-processing area. The narrative shall include water addition, processing rates, equipment, energy and mass balance calculations, and process monitoring method.

(iv) Post-processing. Provide a complete narrative on the post-processing, including post-processing times, identification and segregation of product, storage of product, quality assurance, and quality control.

(v) Product distribution. Provide a complete narrative on product distribution to include items such as: end product quantities, qualities, intended use, packaging, labeling, loading, and tracking bulk material.

(vi) Process diagram. Present a process diagram that displays graphically the narrative generated in response to clauses (i) - (v) of this subparagraph.

(7) Site operating plan. This document is to provide guidance from the design engineer to site management and operating personnel in sufficient detail to enable them to conduct day-to-day operations in a manner consistent with the engineer's design. As a minimum, the site operating plan shall include specific guidance or instructions on all of the following:

(A) the minimum number of personnel and their functions to be provided by the site operator in order to have adequate capability to conduct the operation in conformance with the design and operational standards;

(B) the minimum number and operational capacity of each type of equipment to be provided by the site operator in order to have adequate capability to conduct the operation in conformance with the design and operational standards;

(C) security, site access control, traffic control, and safety;

(D) control of dumping within designated areas and screening for unprocessable or unauthorized material;

(E) fire prevention and control plan that shall comply with provisions of the local fire code, provision for fire-fighting equipment, and special training requirements for fire-fighting personnel;

(F) control of windblown material;

(G) vector control;

(H) quality assurance and quality control. As a minimum, the applicant shall provide testing and assurance in accordance with the provisions of §332.71 of this title (relating to Sampling and Analysis Requirements for Final Product);

(I) control of airborne emissions;

(J) minimizing odors;

(K) equipment failures and alternative disposal and storage plans in the event of equipment failure; and

(L) a description of the intended final use of materials.

(8) Legal description of the facility. The applicant shall submit an official metes and bounds description and plat of the proposed facility. The description and plat shall be prepared and sealed by a registered surveyor.

(9) Financial assurance. The applicant shall prepare a closure plan acceptable to the executive director and provide evidence of financial assurance to the commission for the cost of closure. The closure plan, at a minimum, shall include evacuation of all material on site (feedstock, in process, and processed) to an authorized facility and disinfection of all leachate handling facilities, tipping area, processing area, and post-processing area and shall be based on the worst case closure scenario for the facility, including the assumption that all storage and processing areas are filled to capacity. Financial assurance mechanisms must be established and maintained in accordance with Chapter 37, Subchapter J of this title (relating to Financial Assurance for Recycling Facilities). These mechanisms shall be prepared on forms approved by the executive director and shall be submitted to the com-

mission 60 days prior to the receiving of any materials for processing, or within 60 days of a permit being issued for facilities operating under an existing registration.

(10) Source-separated recycling and household hazardous waste collection. The applicant shall submit a plan to comply with the requirements of Subchapters E and F of this chapter (relating to Source-Separated Recycling; and Household Hazardous Waste Collection).

(11) Landowner list. The applicant shall include a list of landowners, residents, and businesses within 1/2 mile of the facility boundaries along with an appropriately scaled map locating property owned by the landowners.

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. HOUSEHOLD HAZARDOUS WASTE COLLECTION

30 TAC §332.61

Statutory Authority

The amendments are adopted under the authority of Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers, duties and responsibilities; Texas Solid Waste Disposal Act, Texas Health and Safety Code (THSC), §§361.011, 361.017, and 361.024, which provide the commission with the authority to adopt rules necessary to carry out its powers and duties under THSC, Chapter 361; THSC, §361.428, which provides the commission with the authority to adopt rules establishing standards and guidelines for composting facilities; and THSC, §361.013, which provides the commission with the authority to charge fees for solid waste disposal and transportation.

The adopted amendments implement THSC, Chapter 361.

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SUBCHAPTER G. END-PRODUCT STANDARDS

30 TAC §§332.71, 332.72, 332.75

Statutory Authority

The amendments are adopted under the authority of Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers, duties and responsibilities; Texas Solid Waste Disposal Act, Texas Health and Safety Code (THSC), §§361.011, 361.017, and 361.024, which provide the commission with the authority to adopt rules necessary to carry out its powers and duties under THSC, Chapter 361; THSC, §361.428, which provides the commission with the authority to adopt rules establishing standards and guidelines for composting facilities; and THSC, §361.013, which provides the commission with the authority to charge fees for solid waste disposal and transportation.

The adopted amendments implement THSC, Chapter 361.

§332.71. Sampling and Analysis Requirements for Final Product.

(a) Applicability. Facilities that receive a registration or permit under this chapter are required to test final product in accordance with this section. Final product derived from municipal sewage sludge at registered facilities is not subject to the requirements of this section but must comply with the requirements of Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation).

(b) Analytical methods. Facilities that use analytical methods to characterize their final product must use methods described in the following publications.

(1) Chemical and physical analysis shall utilize:

(A) *"Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods"* (SW-846);

(B) *"Methods for Chemical Analysis of Water and Wastes"* (EPA-600); or

(C) *"Recommended Test Methods for the Examination of Composts and Composting"* (Compost Council, 1995).

(2) Analysis of pathogens shall utilize *"Standard Methods for the Examination of Water and Wastewater"* (Water Pollution Control Federation, latest edition).

(3) Analysis for foreign matter shall utilize *"Recommended Test Methods for the Examination of Composts and Composting"* (Composting Council, 1995).

(4) Analysis for salinity and pH shall utilize NCR (North Central Regional) Method 14 for Saturated Media Extract (SME) Method contained in *"Recommended Test Procedure for Greenhouse Growth Media"* North Central Regional Publication Number 221 (Revised), and *"Recommended Chemical Soil Test Procedures"* Bulletin Number 49 (Revised), October 1988, pages 34-37.

(5) Analysis of total, fixed and volatile solids shall utilize Method 2540 G (Total, Fixed, and Volatile Solids in Solid and Semi-solid Samples) as described in *"Standard Methods for the Examination of Water and Wastewater"* (Water Pollution Control Federation, latest edition).

(6) Analysis for maturity shall utilize the reduction of organic matter (ROM) calculation method, as described in the agency "Quality Assurance Project Plan" (QAPP) or an agency approved Quality Assurance/Quality Control (QAQC) plan during the first 18 months of a facility's operation. Reduction in organic matter is calculated by measuring the volatile solids content at two points in the composting process: when compost feedstocks are initially mixed and when the compost is sampled for end-product testing for total metals and Polychlorinated biphenyls (PCBs). For purposes of compost maturity analysis, the effect of the addition and removal of volatile solids and fixed solids to the compost shall be included in the ROM calculation procedure. After the completion of the maturity testing protocol described in subsection (d) of this section, the facility QAQC plan, or 18 months, whichever comes first, the method recommended in the protocol and approved by the agency shall be utilized.

(c) Sample collection. Sample collection, preservation, and analysis shall assure valid and representative results pursuant to an agency-approved QAQC plan.

(d) Maturity Testing Protocol.

(1) A maturity testing protocol shall be described in the facility QAQC. The protocol shall consist of the ROM method or a comparison of the interim ROM method to a minimum of three test methods with one test method selected from each of subparagraphs (A), (B), and (C) of this paragraph, together with any method in subparagraph (D) of this paragraph.

(A) Chemical analyses:

(i) carbon/nitrogen ratio;

(ii) water soluble ions;

(iii) water soluble organic matter;

(iv) cation exchange capacity;

(v) electrical conductivity;

(vi) crude fiber analysis;

(vii) humification analysis; or

(viii) ratios of the above measurements.

(B) Physical analyses.

(i) Dewar self-heating; or

(ii) color.

(C) Respiration analyses:

(i) CO_2; or

(ii) O_2.

(D) Other test methods proposed in the facility QAQC plan and approved by the agency.

(2) The test methods used in the maturity test protocol shall be based on methodologies published in peer reviewed scientific journals, the publication entitled *"Recommended Test Methods for the Examination of Composts and Composting"* (Compost Council, 1995), or other methods as approved by the agency.

(3) The completed maturity testing protocol shall lead to a recommended maturity testing method(s) capable of classifying compost into maturity grades described in §332.72 of this title (relating to Final Product Grades) and identifying materials which are stable but not mature. The maturity test protocol shall address seasonal variations in compost feedstock and shall be completed within 18 months of the start of a new compost feedstock mixture.

(4) The results of the protocol and recommendations shall be submitted to the agency for review and approval. The basis of the agency review and approval shall be the demonstration that the recommended method adequately classifies compost into maturity classes. The purpose of the agency review and approval is not intended to provide detailed guidance to end users about the agricultural and horticultural compost uses.

(5) The compost maturity protocol does not need to be repeated unless a significantly new compost feedstock recipe is utilized.

(e) Documentation.

(1) Owners or operators of permitted or registered facilities shall record and maintain all of the following information regarding their activities of operation for three years after the final product is shipped off site or upon site closure:

(A) batch numbers identifying the final product sampling batch;

(B) the quantities, types, and sources of feedstocks received and the dates received;

(C) the quantity and final product grade assigned described in §332.72 of this title;

(D) the date of sampling; and

(E) all analytical data used to characterize the final product, including laboratory quality assurance/quality control data.

(2) The following records shall be maintained on-site permanently or until site closure:

(A) sampling plan and procedures;

(B) training and certification records of staff; and

(C) maturity protocol test results.

(3) Records shall be available for inspection by agency representatives during normal business hours.

(4) The executive director may at any time request by registered or certified mail that a generator submit copies of all documentation listed in paragraph (1) of this subsection for auditing the final product grade. Documentation requested under this section shall be submitted within ten working days of receipt of the request.

(f) Sampling Frequencies.

(1) Registered facilities. For those facilities which are required to register, all final product on-site must be sampled and assigned a final product grade set forth in §332.72 of this title (relating to Final Product Grades) at a minimum rate of one sample for every 5,000 cubic yard batch of final product or annually, whichever is more frequent. Each sample will be a composite of nine grab samples as discussed in subsection (g) of this section.

(2) Permitted facilities. For facilities requiring a permit, all final product on-site must be sampled and assigned a final product grade set forth in §332.72 of this title at a minimum rate of one sample for every 3,000 cubic yard batch of final product or monthly whichever is

more frequent. Each sample will be a composite of nine grab samples as discussed in subsection (g) of this section.

(3) Alternative testing frequency. One year after the initiation of final product testing in accordance with this section, an operator of a registered or permitted facility may submit to the executive director a request for an alternative testing frequency. The request shall include a minimum of 12 consecutive months of final product test results for the parameters set forth in subsection (h) of this section. The executive director will review the request and determine if an alternative frequency is appropriate.

(g) Sampling Requirements. For facilities subject to sampling and analysis, the operator shall utilize the protocol in the agency QAPP or an agency approved facility QAQC plan shall be followed. The executive director may at any time request that split samples be provided to an agency representative. Specific sampling requirements that must be satisfied include:

(1) Sampling from stockpiles. One third of the grab samples shall be taken from the base of the stockpile (at least 12 inches into the pile at ground level), one third from the exposed surface, and one third from a depth of two feet from the exposed surface of the stockpile.

(2) Sampling from conveyors. Sampling times shall be selected randomly at frequencies that provide the same number of subsamples per volume of finished product as is required in subsection (d) of this section.

(A) If samples are taken from a conveyor belt, the belt shall be stopped at that time. Sampling shall be done along the entire width and depth of the belt.

(B) If samples are taken as the material falls from the end of a conveyor, the conveyor does not need to be stopped. Free-falling samples need to be taken to minimize the bias created as larger particles segregate or heavier particles sink to the bottom as the belt moves. In order to minimize sampling bias, the sample container shall be moved in the shape of a "D" under the falling product to be sampled. The flat portion of the "D" shall be perpendicular to the beltline. The circular portion of the "D" shall be accomplished to return the sampling container to the starting point in a manner so that no product to be sampled is included.

(h) Analytical Requirements. Final product subject to the sampling requirements of this section will be tested for all of the following parameters. The executive director may at any time request that additional parameters be tested. These parameters are intended to address public health and environmental protection.

(1) Total metals to include:

(A) Arsenic;

(B) Cadmium;

(C) Chromium;

(D) Copper;

(E) Lead;

(F) Mercury;

(G) Molybdenum;

(H) Nickel;

(I) Selenium; and

(J) Zinc.

(2) Maturity/Stability by reduction in organic matter on an interim basis and by approved method of maturity/stability analysis after the completion of the maturity/stability method protocol as described in subsections (b) and (d) of this section.

(3) Weight percent of foreign matter, dry weight basis.

(4) pH by the saturated media extract method.

(5) Salinity by the saturated media extract electrical conductivity method.

(6) Pathogens:

(A) salmonella; and

(B) fecal coliform.

(7) Polychlorinated-biphenyls (PCBs)--required only for permitted facilities.

(i) Data Precision and Accuracy. Analytical data quality shall be established by EPA standard laboratory practices to ensure precision and accuracy.

(j) Reporting Requirements.

(1) Facilities requiring registration must report the following information to the executive director on a semiannual basis for each sampling batch of final product. Facilities requiring a permit must report similarly but on a monthly basis. Reports must include, but may not be limited to, all of the following information:

(A) batch numbers identifying the final product sampling batch;

(B) the quantities, types, and sources of feedstocks received and the dates received;

(C) the quantity of final product and final product standard code assigned;

(D) the final product grade or permit number of the disposal facility receiving the final product if it is not Grade 1 or Grade 2 Compost as established in §332.72 of this title (relating to Final Product Grades);

(E) all analytical results used to characterize the final product including laboratory quality assurance/quality control data and chain-of-custody documentation; and

(F) the date of sampling.

(2) Reports must be submitted to the executive director within two months after the reporting period ends.

§332.75. Out of State Production.

Any compost produced outside of the State of Texas, which is distributed within Texas, shall be labeled pursuant to §332.74 of this title (relating to Compost Labelling Requirements).

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 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§335.1, 335.2, 335.9, 335.10, 335.12, 335.13, 335.15, 335.18, 335.19, 335.24, 335.26, 335.27, 335.31, 335.41, 335.46, 335.91, 335.94, 335.112, 335.152, 335.221, 335.241, 335.251, 335.261, 335.272, 335.431, 335.471, 335.474, 335.477, 335.503, 335.504, 335.510, 335.511, 335.513, 335.521, 335.590, 335.602, 335.702, and 335.703. The commission also adopts the repeal of §§335.6, 335.11, 335.14, 335.61 - 335.63, 335.65 - 335.71, and 335.73 - 335.79. The commission further adopts new §§335.6, 335.11, 335.14, 335.51 - 335.61, 335.751, 335.753, 335.755, 335.757, 335.759, 335.761, 335.763, 335.765, 335.767, 335.769, and 335.771.

New §335.6 and amended §335.13 and §335.272 are adopted *with changes* to the proposed text as published in the July 30, 2021, issue of the *Texas Register* (46 TexReg 4586) and, therefore, will be republished. Amended §§335.1, 335.2, 335.9, 335.10, 335.12, 335.13, 335.15, 335.18, 335.19, 335.24, 335.26, 335.27, 335.31, 335.41, 335.46, 335.91, 335.94, 335.112, 335.152, 335.221, 335.241, 335.251, 335.261, 335.431, 335.471, 335.474, 335.477, 335.503, 335.504, 335.510, 335.511, 335.513, 335.521, 335.590, 335.602, 335.702, and 335.703; repealed §§335.6, 335.11, 335.14, 335.61 - 335.63, 335.65 - 335.71, and 335.73 - 335.79; and new §§335.11, 335.14, 335.51 - 335.61, 335.751, 335.753, 335.755, 335.757, 335.759, 335.761, 335.763, 335.765, 335.767, 335.769, and 335.771 are adopted *without changes* to the proposed text and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The federal hazardous waste program is authorized under the federal Resource Conservation and Recovery Act of 1976 (RCRA), §3006. States may obtain authorization from the United States Environmental Protection Agency (EPA) to administer the hazardous waste program. State authorization is a rulemaking process through which the EPA delegates the primary responsibility of implementing the RCRA hazardous waste program to individual states. This process ensures national consistency and minimum standards while providing flexibility to states in implementing rules. State RCRA programs must always be at least as stringent as the federal requirements.

Texas received authorization of its hazardous waste "base program" under RCRA on December 26, 1984 and has continuously participated in the EPA's authorization program. To maintain the RCRA authorization, the commission must adopt regulations to meet the minimum standards of federal programs administered by the EPA. Because the federal regulations undergo regular revision, the commission must adopt new regulations regularly to meet the changing federal regulations.

The commission adopts in this rulemaking parts of the RCRA Rule Clusters XXIV - XXVIII that implement revisions to the federal hazardous waste program which were made by the EPA between November 28, 2016 and December 9, 2019. Both mandatory and optional federal rule changes are included in these adopted clusters. Although not necessary to maintain authorization, the EPA also recommends that the optional federal rule changes be incorporated into the state rules. Maintaining equivalency with federal regulations will enable Texas to continue operating all delegated aspects of the federal hazardous waste program in lieu of the EPA.

Hazardous Waste Generator Improvements Rule

In the November 28, 2016 issue of the *Federal Register* (81 FR 85732), the EPA amended existing regulations applicable to generators of hazardous waste. The EPA's objectives for the revisions included: 1) reorganizing the hazardous waste generator regulations to make them more user-friendly and to improve their usability; 2) addressing gaps in the existing regulations; 3) providing greater flexibility for management of hazardous waste in a cost-effective and protective manner; and 4) making technical corrections to address errors and removing obsolete references.

The commission adopts the federal Hazardous Waste Generator Improvements Rule by repealing and replacing the standards applicable to generators of hazardous waste in Subchapter C (Standards Applicable to Generators of Hazardous Waste) and by amending sections of Subchapter R (Waste Classification). Because the generator standards are referenced throughout the chapter, the commission adopts multiple conforming amendments.

Export and Import Confidentiality Rule

In the December 26, 2017 issue of the *Federal Register* (82 FR 60894), the EPA further revised existing regulations regarding the export and import of hazardous wastes from and into the United States. Specifically, the EPA applied a confidentiality determination such that no person can assert confidential business information claims for documents related to the export, import, and transit of hazardous waste and export of excluded cathode ray tubes. The import and export confidentiality determination regulations were promulgated under the Hazardous and Solid Waste Amendments and are administered by the EPA.

Electronic Manifest Fee Rule

In the January 3, 2018 issue of the *Federal Register* (83 FR 420), the EPA established the methodology for determining and revising the user fees applicable to the electronic and paper manifests submitted to the national electronic manifest (e-Manifest) system developed under the Hazardous Waste Electronic Manifest Establishment Act (e-Manifest Act). Certain users of the hazardous waste manifest are required to pay a prescribed fee to the EPA for each electronic and paper manifest they use and submit to the national system. Regulations promulgated under the e-Manifest Act took effect in all states on the effective date of the federal rule.

The commission adopted the federal Hazardous Waste Electronic Manifest Rule promulgated in the *Federal Register* February 7, 2014 (79 FR 7518) on June 10, 2016 (41 TexReg 4259). The EPA issued a Special Consolidated Checklist for the two e-manifest rulemakings which contains additional guidance and revisions for federal revisions adopted in the 2014 Electronic Manifest Rule. The commission adopts conforming revisions to adopt the consolidated revisions associated with both federal e-manifest rulemakings.

Definition of Solid Waste Rule

In the May 30, 2018 issue of the *Federal Register* (83 FR 24664), the EPA revised existing hazardous secondary material recycling regulations associated with the definition of solid waste to comply with the United States Court of Appeals for the District of Columbia (D.C. Circuit) vacatur. The D.C. Circuit vacated portions

of the 2015 Definition of Solid Waste Rule, promulgated in the *Federal Register* on January 13, 2015 (80 FR 1694), and reinstated portions of the 2008 Definition of Solid Waste Rule, promulgated in the *Federal Register* on October 30, 2008 (73 FR 64668). Specifically, the 2018 final rule: 1) vacated parts of the 2015 verified recycler exclusion and reinstated the 2008 transfer-based exclusion; 2) upheld the 2015 containment and emergency preparedness provisions for the reinstated transfer-based exclusion; and 3) vacated the fourth factor of the 2015 definition of legitimate recycling and reinstated the 2008 version of the fourth factor. The commission did not adopt the 2008 Definition of Solid Waste Rule. The commission adopted the 2015 Definition of Solid Waste Rule as published in the *Texas Register* on January 2, 2015 (40 TexReg 77).

Pharmaceutical Waste Rule

In the February 22, 2019 issue of the *Federal Register,* the EPA created a new 40 Code of Federal Regulations (CFR) Part 266, Subpart P for the management of hazardous waste pharmaceuticals by healthcare facilities and reverse distributors in lieu of the generator regulations in 40 CFR Part 262. New 40 CFR Part 266, Subpart P standards include: 1) prohibiting the disposal of hazardous waste pharmaceuticals into sewer systems; 2) eliminating the dual regulation of the RCRA hazardous waste pharmaceuticals that are also Drug Enforcement Administration controlled substances by finalizing a conditional exemption; 3) maintaining the household hazardous waste exemption for pharmaceuticals collected during pharmaceutical take-back programs and events; 4) codifying the EPA's prior policy on the regulatory status of nonprescription pharmaceuticals going through reverse logistics; 5) finalizing an amendment to the P075 acute hazardous waste listing of nicotine and salts to exclude certain United States Food and Drug Administration approved over-the-counter nicotine replacement therapies; and 6) establishing in the preamble a policy on the regulatory status of unsold retail items that are not pharmaceuticals and are managed via reverse logistics.

Aerosol Can Waste Rule

As part of this rulemaking, the commission adopts amendments to implement the EPA's final regulations promulgated in the *Federal Register* on December 9, 2019 (84 FR 67202), which added hazardous waste aerosol cans to the universal waste program under the RCRA. The commission received a petition for rulemaking from Westlake Chemical Corporation on February 3, 2020, requesting that the commission amend its rules to incorporate the EPA's universal waste provisions for aerosol cans. On March 25, 2020, the commission considered the petition for rulemaking and ordered the executive director to initiate rulemaking (TCEQ Docket No. 2020-0220-PET). The commission now adopts this rulemaking to add hazardous waste aerosol cans to the list of universal wastes so they can be managed as universal waste. The commission anticipates that these rules will benefit a wide variety of establishments generating and managing aerosol cans, including the retail sector, by providing a practical system for handling discarded aerosol cans.

Foundry Sands Exclusion

In addition to adopted federal rule changes, the commission adopts amendments to formalize the commission's regulation of spent foundry sands from the iron and steel casting industry. The rulemaking adoption will implement state-initiated revisions to clarify that spent foundry sands that are an intended output or result from the iron and steel casting process are not classified as an industrial solid waste when introduced into the stream of commerce and managed as an item of commercial value, including use constituting disposal. The executive director issued a regulatory determination letter dated June 22, 1995, which established that spent foundry sands reused as a substitute material will be considered a co-product and will not be regulated as industrial solid waste. Regulatory revisions implemented since the 1995 letter was issued have resulted in confusion regarding the status of the material.

All adopted new rules and rule changes are discussed further in the Section by Section Discussion portion of this preamble.

Section by Section Discussion

The commission adopts stylistic, non-substantive changes to conform to current *Texas Register* style and format requirements that are not specifically discussed in the Section by Section Discussion portion of this preamble.

Subchapter A: Industrial Solid Waste and Municipal Hazardous Waste in General

§335.1, Definitions

The commission adopts amendments to 335.1 to add seven new paragraphs in alphabetical order and to renumber each paragraph following the new definitions.

The commission adopts amendments to §335.1(6) to add the definition of "Acute hazardous waste" and to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). This amendment adds the definition of "Acute hazardous waste" consistent with the new definition of "Acute hazardous waste" in 40 CFR §260.10.

The commission adopts amendments to §335.1(8) to add the definition of "Aerosol can" and to adopt federal revisions associated with the Aerosol Can Waste Rule promulgated in the *Federal Register* on December 9, 2019 (84 FR 67202). This amendment adds the definition of "Aerosol Can" consistent with the new definition of "Aerosol can" in 40 CFR §260.10.

The commission adopts amendments to §335.1(29) to add the definition of "Central accumulation area" and to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). This amendment adds the definition of "Central accumulation area" consistent with the new definition of "Central accumulation area" in 40 CFR §260.10.

The commission adopts amendments to §335.1(38) to add a definition of "Conditionally exempt small quantity generator" (CESQG) and a person who generates no more than 100 kilograms of hazardous waste in a calendar month to mean a "very small quantity generator" (VSQG) as defined in this section. The commission adopts this definition to clarify that the new term for the lowest tier hazardous waste generator category, VSQG, is applicable when the former term or the description of the lowest tier hazardous waste generator category, CESQG, is used in publications, authorizations or rules that are not included in this rulemaking. The EPA changed the name of the lowest tier hazardous waste generator category from "conditionally exempt small quantity generator" to "very small quantity generator" in the Hazardous Waste Generator Improvements Rule.

The commission adopts amendments to §335.1(49) to revise the definition of "Designated facility," remove the reference to

§335.12, and add that 40 CFR §264.72 is adopted by reference under §335.152 and 40 CFR §265.72 is adopted by reference under §335.112. These federal sections that were previously adopted under §335.12 are now adopted under §335.112 and §335.152 as described in the Section by Section Discussions for those sections.

The commission adopts amendments to §335.1(70) to revise the definition of "Final closure" and replace the reference to §335.69 with a reference to Chapter 335, Subchapter C due to the adoption of regulations associated with the Hazardous Waste Generator Improvements Rule. The commission adopts the repeal of §335.69 and replaces it with the adoption of 40 CFR Part 262 provisions in Chapter 335, Subchapter C as described in the Section by Section Discussions for §§335.51 through 335.61.

The commission adopts amendments to §335.1(105) to add the definition of "Large quantity generator" and to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). This amendment adds the definition of "Large quantity generator" consistent with the new definition of "Large quantity generator" in 40 CFR §260.10.

The commission adopts amendments to §335.1(111) to revise the definition of "Manifest" to remove the reference to "the instructions in §335.10", and to clarify that manifest users are subject to the applicable requirements of this chapter. The manifest requirements in 40 CFR Part 262, Subpart B that were previously adopted under §335.10 are now adopted by reference in §335.54 as described in the Section by Section Discussion for those sections.

The commission adopts amendments to §335.1(119) to revise the definition of "No free liquids" by clarifying that the test methods in 40 CFR §261.4(a)(26) and (b)(18) are incorporated by reference under §335.31.

The commission adopts amendments to §335.1(120) to add the definition of "Non-acute hazardous waste" and to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). This amendment adds the definition of "Non-acute hazardous waste" consistent with the new definition of "Non-acute hazardous waste" in 40 CFR §260.10.

The commission adopts amendments to §335.1(159) to revise the definition of "Small quantity generator" and to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). This amendment revises the definition of "Small quantity generator" to be consistent with the revised definition of "Small quantity generator" in 40 CFR §260.10. The revisions add the monthly quantities of acute hazardous waste generation that define the small quantity generator category.

The commission adopts amendments to §335.1(160)(A)(iv) to revise the definition of "Solid waste" by removing references to numbered paragraphs of 40 CFR §261.4(a), removing references to the CFR dated citations for 40 CFR §261.4 and §§261.39 - 261.41, and adding language clarifying that these CFR sections are adopted by reference under §335.504 as described in the Section by Section Discussion for that section.

The commission adopts amendments to Figure: 30 TAC §335.1(154)(D)(iv) to rename the figure "Figure: 30 TAC §335.1(160)(D)(iv) (Table 1)" consistent with the renumbering of the paragraphs in §335.1, to revise the citations for Table 1 in renumbered §335.1(160)(D) and (D)(i) - (iv), and to revise the language in Footnote 2 of Table 1 to be consistent with the third column heading in 40 CFR §261.2(c)(4), Table 1.

The commission adopts amendments to §335.1(160)(N) to add a conditional exclusion from the definition of "Solid waste" for foundry sands that are an intended output or result from the iron and steel casting processes when such material is introduced into the stream of commerce, managed as an item of commercial value, including controlled use in a manner constituting disposal, and not managed as discarded material. This amendment formalizes existing state guidance.

The commission adopts amendments to §335.1(178)(E) to revise the definition of "Treatability study" to remove references to §335.69 and §335.78. Sections 335.69 and 335.78 are repealed as described in the Section by Section Discussion for these sections. Sections 335.69 and 335.78 contained statements clarifying the exemptions in 40 CFR §261.4(e) and (f) which are adopted by reference under §335.504. The exemption from permit requirements for treatability studies in §335.2(g) will not be impacted by this rulemaking and the reference to §335.2 is retained.

The commission adopts amendments to §335.1(186) to revise the definition of "Universal waste" by replacing the cross-reference to §335.261(b)(16)(F) with §335.261(b)(19)(F) to reflect the renumbering of the paragraphs in §335.261(b). The revision to §335.261(b) is adopted to conform with the adoption of federal revisions associated with the Aerosol Can Waste Rule as described in the Section by Section Discussion for that section.

The commission adopts amendments to §335.1(191) to revise the definition of "Used oil" by replacing the reference to "conditionally exempt small quantity generator" with "very small quantity generator" to conform with federal revisions associated with the adoption of the Hazardous Waste Generator Improvements Rule.

The commission adopts amendments to §335.1(192)(C) to revise the definition of "User of the electronic manifest system" by replacing the reference to §335.10 with references to 40 CFR §264.71(a)(2)(v) or §265.71(a)(2)(v). These federal sections are adopted by reference under §335.112 and §335.152 as described in the Section by Section Discussion for those sections. This revision makes the definition for "User of the electronic manifest system" consistent with the federal definition for "User of the electronic manifest system" in 40 CFR §260.10.

The commission adopts amendments to §335.1(193) to add the definition of "Very small quantity generator" and to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The EPA changed the name of the lowest tier hazardous waste generator category from "conditionally exempt small quantity generator" to "very small quantity generator" in the Hazardous Waste Generator Improvements Rule. This amendment adds the definition of "Very small quantity generator" consistent with the new definition of "Very small quantity generator" in 40 CFR §260.10.

§335.2, Permit Required

The commission adopts amendments to §335.2(e) to replace "is a conditionally exempt small quantity generator as described in §335.78" with "meets the conditions for exemption for a very

small quantity generator in 40 CFR §262.14" to conform with federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The conditions for exemption for a VSQG in 40 CFR §262.14 are adopted in §335.53(c) as described in the Section by Section Discussion for that section.

The commission adopts amendments to §335.2(f) and (g) to clarify that 40 CFR §261.4(c) - (f) are adopted under §335.504, and to remove the dated citation for 40 CFR §261.4(e) and (f) in §335.2(g). Revisions implementing 40 CFR §261.4 are described in the Section by Section Discussion for §335.504.

The commission adopts new §335.2(p) to add a new exemption from permit required and adopt federal revisions associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission implements these revisions by adding language consistent with 40 CFR §270.1(c)(2)(x).

§335.6, Notification and Registration Requirements

The commission adopts the repeal of §335.6 and adopts new §335.6.

The commission adopts the requirements of repealed §335.6 under new §335.6 adding catch lines for quick reference of the subject matter of each subsection; retaining the subject matter addressed under each repealed subsection under the same new subsection with two exceptions; establishing notification requirements applicable to healthcare facilities under new Subchapter W; establishing registration requirements applicable to reverse distributers under new Subchapter W; and reorganizing and clarifying the requirements of repealed §335.6 as further described in the Section by Section Discussions for each subsection of §335.6.

The commission adopts new §335.6(a) to add the catch line "Notification of industrial solid waste and municipal hazardous waste activities not authorized by a permit"; adopt the requirements of repealed §335.6(a); to require notification to be made using a method approved by the executive director; reorganize requirements into new paragraphs (1) and (2) for clarity of the notification requirements; to not adopt the reference to §335.2(e); and to not adopt the large quantity generator notification requirements which are adopted in §335.6(c) as part of the reorganization of §335.6. Additional information is described in the Section by Section Discussions for §335.6(c) and (e).

In response to comments, the commission adopts new §335.6(a) with changes from the proposed rule. The commission adopts new §335.6(a) with the catch line to clarify the scope of the subsection.

The commission adopts new §335.6(b) to add the catch line "Duty to notify of changed and new information"; adopt the requirements of repealed §335.6(b) except the notification requirements for large quantity generators which are reorganized under new §335.6(c); require persons to notify using a method approved by the executive director; and reorganize certain requirements of repealed §335.6(b) into new paragraphs (1) - (4) to provide additional clarification of renotification requirements. The notification requirements for large quantity generators as described in the Section by Section Discussion for §335.6(c).

The commission adopts new §335.6(c) to add the catch line "Generator registration"; adopt the requirements of repealed §335.6(c); reorganize the requirements into paragraphs, subparagraphs, and clauses; add the volumes of hazardous waste generated by a very small quantity generator and the volume of Class 1 industrial waste generated by a Class 1 industrial waste generator to describe the applicability of the notification requirements of this subsection; and to not adopt the quantity limits that described applicability of the notification requirements in repealed §335.78.

The commission adopts new §335.6(d) to add the catch line "Transporter registration"; adopt the requirements of repealed §335.6(d); require notification to be made using a method approved by the executive director; and to combine in one sentence the description of the maximum quantity of municipal hazardous waste and the descriptions of the maximum quantities of hazardous waste and Class 1 industrial waste that may be transported by the generator without registration being required.

The commission adopts new §335.6(e) to add the new catch line "Transfer facility registration"; adopt the requirements of repealed §335.6(e); and require notification to be made using a method approved by the executive director.

The commission adopts new §335.6(f) to add the catch line "Waste analysis"; adopt the requirements of repealed §335.6(f); and to require chemical analysis of a solid waste to be performed in accordance with Chapter 335, Subchapter R.

The commission adopts new §335.6(g) to add the catch line "Notification prior to facility expansion" and adopt the requirements of repealed §335.6(g).

The commission adopts new §335.6(h) to add the catch line "Notification of recycling activities"; adopt the requirements of repealed §335.6(h) except an obsolete reference to persons engaged in recycling prior to the effective date of §335.6; add recyclable materials and nonhazardous recyclable materials to the subject materials; require notification to be made using a method approved by the executive director; and reorganize parts of repealed §335.6(h) into new paragraphs (1) and (2) to clarify recycling notification requirements.

The commission adopts new §335.6(i) to add the catch line "Notification of operating under the small quantity burner exemption" and adopt the requirements of repealed §335.6(i).

The commission adopts new §335.6(j) to add the catch line "Notification of used oil activities"; adopt the requirements of repealed §335.6(j) except the reference to CESQG hazardous used oil; and use the term VSQG to describe used oil generated by the lowest tier hazardous waste generator category to conform with the new definition of VSQG. Additional information is described in the Section by Section Discussion for the definition of VSQG in §335.1.

The commission does not adopt the references to the location of certain recycling requirements in Chapter 335 under repealed §335.6(k) because this information is repetitive of information provided in §335.24.

The commission adopts new §335.6(k) to include the catch line "Notification exemption for the disposal of animal carcasses" and adopt the provisions of repealed §335.6(l).

The commission adopts new §335.6(l) to establish the notification requirement for healthcare facilities operating under new Subchapter W of Chapter 335.

The commission adopts new §335.6(m) to establish the registration requirement for reverse distributors operating under new Subchapter W of Chapter 335.

§335.9, Recordkeeping and Annual Reporting Procedures Applicable to Generators

The commission adopts amendments to §335.9(a) to clarify the applicability of other recordkeeping and reporting requirements in this section.

The commission adopts amendments to §335.9(a)(1)(A) - (G) to clarify the applicability of Chapter 335, Subchapter R; replace the reference to the lowest hazardous waste generator category, "conditionally exempt small quantity generators"; describe the applicability of the requirement to report the amount of waste held in on-site storage at the end of the year with a description of the quantities of waste generated per month; and replace the reference to repealed §335.69(d) regarding hazardous waste accumulation areas at or near any point of generation with a reference to the satellite accumulation area regulations adopted under §335.53. Additional information is described in the Section by Section Discussion for §335.53 and §335.69.

The commission adopts amendments to §335.9(a)(2) to clarify the procedures for submitting an Annual Waste Summary and delete requirements adopted in subsequent reorganized paragraphs and subparagraphs.

The commission adopts amendments to §335.9(a)(2)(A) and (B) to clarify the applicability of an extension request and reorganize the requirements of §335.9(a)(2).

The commission adopts amendments to §335.9(a)(2)(C) to identify and reorganize the information required to be included in an Annual Waste Summary.

The commission adopts amendments to §335.9(a)(2)(D) to identify the requirement that large quantity generators submit the Annual Waste Summary electronically.

The commission adopts amendments to §335.9(a)(3) and (4) to clarify the applicability of the Annual Waste Summary by identifying the lowest hazardous waste generator category with the defined term, VSQG, requiring that a VSQG meet the conditions for exemption for a VSQG; adding a reference to §335.53; and removing a reference to repealed §335.78. Additional information is described in the Section by Section Discussion for adopted §335.53 and §335.78.

The commission adopts amendments to §335.9(b) to add a reference to the biennial reporting requirements in §335.56 and remove a reference to the biennial reporting requirements in repealed §335.71. Additional information is described in the Section by Section Discussion for adopted §335.56 and §335.71.

§335.10, Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste

The commission adopts amendments to §335.10 to clarify the applicability of the use of the uniform hazardous waste manifest for the transportation of hazardous waste and for the transportation of industrial Class 1 waste; to add references to sections of this chapter where manifesting requirements are adopted; and to conform to adoption of the re-named lowest tier hazardous waste generator classification, VSQG.

The commission adopts amendments to §335.10(a) to establish manifesting requirements by requiring persons to comply with §§335.12, 335.13, 335.54 and §335.58; remove the adoption by reference of the Appendix to 40 CFR Part 262 which is repealed; and remove the adoption by reference of 40 CFR §§262.20 - 262.25, 262.27, 262.42, and 40 CFR Part 262, Subpart H which are adopted under new §335.54, and §335.58.

The commission adopts amendments to §335.10(a)(2) to clarify that manifesting is not required when the conditions for an applicable exemption from manifesting have been met; add new subparagraphs §335.10(a)(2)(A) and (B) to further clarify manifesting exemptions applicable to transporters of hazardous waste; and remove the reference to repealed §335.78.

The commission adopts amendments to §335.10(b) to retain the exception from manifesting requirements for the transportation of hazardous waste on a contiguous right of way and the reporting of discharges during such transportation by adding a reference to requirements adopted in new §335.55 and removing a reference to repealed §335.67(b). Additional information is described in the Section by Section Discussion for §335.55 and §335.67.

The commission adopts amendments to §335.10(c) to add a reference to manifesting requirements adopted in new §335.54 and remove a reference to the manifesting requirements in subsection (a) of this section. Additional information is described in the Section by Section Discussion for §335.54.

The commission adopts amendments to §335.10(c)(1) and (2) to clarify manifest requirements for Class 1 waste by indicating that the TCEQ solid waste registration number or the EPA identification (ID) number may be used, adding the term of art designated facility and removing the term receiver.

The commission adopts amendments to §335.10(c)(3) - (7) clarifying the EPA ID number and Solid Waste Registration Number requirements when manifesting Class 1 waste and iterating changes to the federal manifesting rules applicable to the transportation of Class 1 waste in new paragraphs (1) through (7).

The commission adopts amendments to §335.10(d) to clarify the applicability of the exception from manifesting with the quantity limit for Class 1 waste and remove the reference to repealed §335.78.

The commission adopts amendments to §335.10(e) to clarify the applicability of specific exceptions from manifesting and reporting in new paragraphs (1) and (2), and clarify that the Annual Waste Summary is applicable to facilities that receive Class 1 industrial waste from off-site in new paragraph (3).

§335.11, Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste

The commission adopts the repeal of §335.11.

The commission adopts new §335.11(a) to incorporate by reference the manifest requirements of 40 CFR Part 263, Subpart B, including the revisions associated with the Electronic Manifest Fee Rule promulgated in the *Federal Register* on January 3, 2018 (83 FR 420). The commission does not adopt the Appendix to 40 CFR Part 262 because EPA has repealed the Appendix.

The commission adopts new §335.11(b)(1) - (6) to clarify and establish applicability of the manifesting requirements for hazardous waste by indicating that the manifesting requirements adopted under §335.11(a), and the requirements in §§335.4, 335.6, 335.10, and 335.14 and Chapter 335, Subchapter D are applicable to persons who transport hazardous waste.

The commission adopts new §335.11(c) to clarify that the manifesting requirements for Class 1 waste are in §335.11(a); establish applicability for persons who transport Class 1 waste in new paragraphs §335.11(b)(1) - (6); and identify the changes to the

federal manifesting rules that are required for persons transporting Class 1 waste in new paragraphs §335.11(c)(1) - (8).

§335.12, Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities

The commission adopts amendments to §335.12(a) to clarify that 40 CFR Part 264, Subpart E is adopted in §335.152, 40 CFR Part 265, Subpart E is adopted in §335.112 and to remove the outdated citations for the appendix to 40 CFR Part 262 and for 40 CFR §264.71 and §265.71. The appendix to 40 CFR Part 262 was removed from federal regulations in the Electronic Manifest Fee Rule, and 40 CFR §264.71 and §265.71 are adopted in §335.112 and §335.152.

The commission adopts amendments to §335.12(b) clarifying that 40 CFR Part 264, Subpart E is adopted in §335.152; adding §335.12(b)(1) - (4) to clarify the use of federal manifesting requirements for Class 1 waste; and removing outdated references to 40 CFR §§264.71, 264.72, 264.76 and the Appendix to 40 CFR Part 262.

The commission adopts §335.12(c) to adopt by reference 40 CFR §260.4, a new federal requirement adopted in the Electronic Manifest Fee Rule promulgated in the *Federal Register* on January 3, 2018 (83 FR 420) which implements manifest requirements applicable to designated facilities for interstate waste shipments.

The commission adopts §335.12(d) to adopt by reference 40 CFR §260.5, a new federal requirement adopted in the Electronic Manifest Fee Rule promulgated in the *Federal Register* on January 3, 2018 (83 FR 420) which clarifies the applicability of the electronic manifest system and fees for state-only regulated wastes.

§335.13, Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste

The commission adopts amendments to §335.13(a) to add a description of the quantities of hazardous waste that determine applicability and remove the reference to repealed §335.78 as part of the commission's implementation of the Hazardous Waste Generator Improvements Rule.

The commission adopts amendments to §335.13(b) and (c) to implement plain language clarifications.

The commission adopts amendments to §335.13(d) to clarify that the term registered generator means a generator with an active solid waste registration.

The commission adopts amendments to §335.13(e) organizing the conjunctive elements that describe an unregistered generator into three paragraphs, §335.13(e)(1) - (3); adding the quantities of waste generated; removing the reference to repealed §335.78; and clarifying that the term unregistered generator means an in-state generator that does not have an active solid waste registration.

In response to comments, the commission adopts amendments to §335.13(e)(3) that differ from the proposed rule. The adopted amendments clarify that the executive director assigns the four-character sequence number of the eight-digit Texas waste code when an unregistered generator requests a temporary Texas waste code for the shipment of hazardous waste and/or Class 1 industrial waste.

The commission adopts amendments to §335.13(f) to require generators to comply with the manifest and recordkeeping requirements in §335.10 and remove manifesting records retention requirements adopted in new §335.56 as part of the commission's implementation of the Hazardous Waste Generator Improvements Rule and the Electronic Manifest Fee Rule.

The commission adopts amendments to §335.13(g) - (i) to remove paragraphs (g) through (i), that contained manifesting requirements adopted in §335.56.

The commission adopts amendments to §335.13(j) to remove the reference to subsection (j) which required generators to comply with §335.12 and the hazardous waste import and export requirements in repealed §335.76. Generators are still required to comply with §335.12 and the hazardous waste import and export requirements are adopted in new §335.52(c).

§335.14, Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste

The commission adopts the repeal of §335.14 to remove manifest and recordkeeping requirements applicable to transporters of hazardous and Class 1 wastes that are adopted in §335.11 and in new §335.14.

The commission adopts new §335.14 to clarify which manifest and recordkeeping requirements are applicable to transporters of hazardous and Class 1 wastes.

§335.15, Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities

The commission adopts amendments to §335.15 to clarify the applicability of the section in implied subsection (a) and add catch lines to each of the paragraphs.

The commission adopts amendments to §335.15(1) to clarify the manifest requirements applicable to owners and operators of treatment, storage, or disposal facilities and delete the reference to "primary exporter" because the term "primary exporter" was removed from 30 TAC Chapter 335, June 5, 2020 (45 TexReg 3773).

The commission adopts amendments to §335.15(2) to clarify the Monthly Waste Receipt Summary requirements by reorganizing and rewording the requirements in new subparagraphs (A) - (D).

The commission adopts amendments to §335.15(3) to clarify the Unmanifested waste report requirements by reorganizing and rewording the requirements in subparagraphs (A) and (B)

The commission adopts amendments to §335.15(6) to clarify the applicability of monthly waste receipt summary requirements by adding the term "very small quantity generator" and removing the term "conditionally exempt small quantity generator."

The commission adopts amendments to §335.15(7) to clarify the method by which the biennial report is submitted; clarify that information submitted by permitted or interim status facilities under Subchapter A of Chapter 335 is not required to be submitted in a biennial report; and add references to the adoption by reference of 40 CFR §264.75 and §265.75 in §335.112 and §335.152.

The commission adopts amendments to §335.15(8) to clarify the reporting requirements applicable to facilities that receive Class 1 industrial waste from off-site in a new paragraph.

§335.18, Non-Waste Determinations and Variances from Classification as a Solid Waste

The commission adopts amendments to §335.18(a)(6) to remove the exemption for hazardous secondary materials trans-

ferred to a verified-reclamation facility or intermediate facility where the management of hazardous secondary materials is not addressed under a RCRA Part B permit or interim status standards. This amendment implements the vacaturs ordered by the United States Court of Appeals for the District of Columbia on July 7, 2017 as modified on March 6, 2018 which voided the verified-reclamation exclusion and reinstated the transfer based exclusion, and conforms to the removal of 40 CFR §260.30(f) associated with the Definition of Solid Waste Rule promulgated in the *Federal Register* on May 30, 2018 (83 FR 24664).

§335.19, Standards and Criteria for Variances from Classification as a Solid Waste

The commission adopts amendments to §335.19(d) to remove the variance and variance criteria for hazardous secondary materials transferred to a verified-reclamation facility or intermediate facility where the management of hazardous secondary materials is not addressed under a RCRA Part B permit or interim status standards and renumbers the subsequent subsections. This amendment implements vacaturs ordered by the United States Court of Appeals for the District of Columbia on July 7, 2017 as modified on March 6, 2018 which voided the verified-reclamation exclusion, and conforms to the removal of 40 CFR §260.31(d) associated with the Definition of Solid Waste Rule promulgated in the *Federal Register* on May 30, 2018 (83 FR 24664).

§335.24, Requirements for Recyclable Materials and Nonhazardous Recyclable Materials

The commission adopts amendments to §335.24(b) to clarify that Subchapter A is applicable to recyclable materials.

The commission adopts amendments to §335.24(c)(1) to add a reference to §335.58, the new adoption by reference of 40 Code CFR Part 262, Subpart H, and remove adoption by reference of citation for 40 CFR Part 262, Subpart H from subsection (c).

The commission adopts amendments to §335.24(c)(2) to clarify that 40 CFR §261.4(a)(13) is adopted by reference under §335.504.

The commission adopts amendments to §335.24(c)(3) to remove the dated citation for 40 CFR §261.4(a)(12) and to clarify that the federal requirements is adopted by reference under §335.504.

The commission adopts amendments to §335.24(d) to clarify the applicability of Chapter 335, Subchapters A and R to generators and transporters of recyclable materials.

The commission adopts amendments to §335.24(f)(3) and (4) to require owners or operators of recycling facilities that do not store recyclable materials before recycling to comply with the monthly waste summary report requirements in §335.15 and clarify that such owners and operators are subject to the biennial reporting requirements of 40 CFR §264.75 or §265.75. These amendments conform with 40 CFR §261.6(c)(2)(iv) added to federal regulations in the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). Owners or operators of recycling facilities that do not store recyclable materials before recycling are subject to the biennial reporting requirements of 40 CFR §264.75 or §265.75, and the monthly waste summary report requirements in §335.15 fulfill the federal biennial reporting requirements.

The commission adopts amendments to §335.24(o) to add that 40 CFR Part 262, Subpart H is adopted by reference under §335.58 and remove the dated citation for the Subpart.

The commission adopts amendments to §335.24(p) to add references to §335.26, §335.27, and Chapter 335, Subchapter V to clarify that hazardous secondary materials requirements relate to solid waste recycling.

§335.26, Notification Requirements for Hazardous Secondary Materials

The commission adopts amendments to §335.26 to adopt by reference revisions associated with the Definition of Solid Waste Rule published in the May 30, 2018 issue of the *Federal Register* (83 FR 24664) by updating the federal citation for to 40 CFR §260.42. This revision is a consequence of the vacaturs ordered by the United States Court of Appeals for the District of Columbia on July 7, 2017 as modified on March 6, 2018 which voided the verified-reclamation exclusion.

§335.27, Legitimate Recycling of Hazardous Secondary Materials

The commission adopts amendments to §335.27 to adopt by reference revisions associated with the Definition of Solid Waste Rule published in the May 30, 2018, issue of the *Federal Register* (83 FR 24664) by updating the federal citation for 40 CFR §260.43. This revision is a consequence of the vacaturs ordered by the United States Court of Appeals for the District of Columbia on July 7, 2017 as modified on March 6, 2018.

§335.31, Incorporation of References

The commission adopts amendments to §335.31 to adopt by reference federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732) by updating the federal citation for 40 CFR §260.11. Specifically, the language in 40 CFR §260.11(d)(1) was modified in the Hazardous Waste Generator Improvements Rule.

Subchapter B: Hazardous Waste Management General Provisions

§335.41, Purpose, Scope and Applicability

The commission adopts amendments to §335.41(d)(4) to replace the reference to §335.77 with 40 CFR §262.70 adopted under new §335.57 as described in the Section by Section Discussion for that section.

The commission adopts amendments to §335.41(d)(9) to establish that Chapter 335, Subchapters E and F are not applicable to the owner or operator of an authorized municipal or industrial waste facility when the only hazardous waste managed at the facility is generated by a VSQG and excluded from regulation. This amendment will adopt revisions in 40 CFR §264.1(g)(1) and §265.1(c)(5) associated with the Hazardous Waste Generator Improvements Rule and promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732).

The commission adopts amendments to §335.41(d)(10) to establish that Chapter 335, Subchapters E and F are not applicable to a generator accumulating waste on-site in compliance with a condition for exemption adopted under §335.53. This amendment will adopt certain revisions in 40 CFR §264.1(g)(3) and §265.1(c)(7) associated with the Hazardous Waste Generator Improvements Rule and promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732).

The commission adopts amendments to §335.41(d)(11) to establish that Chapter 335, Subchapters E and F are not applicable to reverse distributors accumulating potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals in compliance with adopted new Subchapter W. This amendment will adopt revisions in 40 CFR §264.1(g)(13) and §265.1(c)(16) associated with the Pharmaceutical Waste Rule and promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816).

The commission adopts amendments to §335.41(e)(1) by replacing the reference to §335.78 with the new term for the lowest hazardous waste generator category, "very small quantity generator", and language making the exception from applicability of Chapter 335, Subchapter E dependent upon the VSQG meeting the conditions for exemption in 40 CFR §262.14 which is adopted under §335.53. The definition of VSQG is adopted under §335.1 as described in the Section by Section Discussion for that definition. This adopted amendment will implement the adoption of the Hazardous Waste Generator Improvements Rule as further described in the Section by Section Discussion for §335.53.

The commission adopts amendments to §335.41(e)(2) to add an exception from applicability of Chapter 335, Subchapter E for generators accumulating hazardous waste on-site in compliance with conditions for exemption for eligible academic entities and episodic generation. This amendment will adopt revisions in 40 CFR §265.1(c)(7) associated with the Hazardous Waste Generator Improvements Rule and promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The existing provision in §335.41(e)(2) is deleted because it is duplicative of language adopted in §335.41(d)(9).

The commission adopts §335.41(f)(2)(D) to establish applicability of the adoption of requirements for residues of hazardous waste pharmaceuticals under the requirements for residues of hazardous waste in containers. This amendment will adopt revisions in 40 CFR §261.7(c) associated with the Pharmaceutical Waste Rule and promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816).

§335.46, Sharing of Information

The commission adopts §335.46(b) to adopt by reference 40 CFR §260.2(c) as amended in the federal Electronic Manifest Rule which was promulgated in the *Federal Register* on February 7, 2014 (79 FR 7518).

The commission adopts §335.46(c) to adopt by reference 40 CFR §260.2(d) as adopted in the federal Export and Import Confidentiality Rule which was promulgated in the *Federal Register* on December 26, 2017 (82 FR 60894).

Subchapter C: Standards Applicable to Generators of Hazardous Waste

§335.51, Definitions

The commission adopts new §335.51(1) to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732) by adopting the definition of "Condition for exemption" consistent with the new definition of "Condition for exemption" in 40 CFR §262.1. If the conditions for exemption are not met, then the generator is subject to the permitting or interim facility regulations in Chapter 335, Subchapters E and F.

The commission adopts new §335.51(2) to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732) by adopting the definition of "Independent requirement" consistent with the new definition of "Independent requirement" in 40 CFR §262.1. All hazardous waste generators must comply with the independent requirements of 40 CFR Part 262, as adopted by reference under this subchapter.

§335.52, Purpose, Scope, and Applicability

The commission adopts new §335.52(a) to establish the purpose scope and applicability of Chapter 335, Subchapter C; conform with revisions to 40 CFR §262.10 associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732) and the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816); and to require persons who import hazardous waste into the state to comply with the generator regulations in Chapter 335, Subchapter A because this requirement under §335.61 is repealed.

The commission adopts new §335.52(a)(1) to identify the independent requirements applicable to hazardous waste generators based on generator category and correspond with 40 CFR §262.10(a)(1).

The commission adopts new §335.52(a)(2) to identify the conditions for exemption for VSQGs, small quantity generators, and large quantity generators and correspond with 40 CFR §262.10(a)(2).

The commission adopts new §335.52(b) to identify the requirement for hazardous waste generators to conduct a generator category determination and correspond with 40 CFR §262.10(b).

The commission adopts new §335.52(c) to identify the provisions applicable to hazardous waste exporters or importers and correspond with 40 CFR §262.10(d).

The commission adopts new §335.52(d) to establish the applicability of this chapter to hazardous waste importers and correspond with 40 CFR §262.10(e).

The commission adopts new §335.52(e) to identify the provisions applicable to farmers that generate hazardous waste pesticides and correspond with 40 CFR §262.10(f).

The commission adopts new §335.52(f) to identify the consequences applicable to hazardous waste generators that violate an independent requirement or fail to comply with a condition for exemption and correspond with 40 CFR §262.10(g).

The commission adopts new §335.52(g) to identify the applicability of this subchapter to owners or operators of treatment, storage, or disposal facilities shipping hazardous wastes and correspond with 40 CFR §262.10(h).

The commission adopts new §335.52(h) to identify the exemption from this subchapter for a person responding to an explosives or munitions emergency and correspond with 40 CFR §262.10(i).

The commission adopts new §335.52(i) to identify exclusions applicable to laboratories owned by eligible academic entities and correspond with 40 CFR §262.10(l).

The commission adopts new §335.52(j) to identify the exemption for reverse distributors from this subchapter and correspond with 40 CFR §262.10(m).

The commission adopts new §335.52(k) to identify the exemption from this subchapter for healthcare facilities that are not VSQGs, and to clarify the provisions of this subchapter applicable to healthcare facilities that are VSQGs and correspond with 40 CFR §262.10(n).

§335.53, General Standards Applicable to Generators of Hazardous Waste

The commission adopts new §335.53 to adopt by reference the federal regulations in 40 CFR §§262.11 - 262.18 as described further in this preamble.

The commission adopts new §335.53(a) to adopt by reference new 40 CFR §262.11(e) - (g) associated with the Hazardous Waste Generator Improvements Rule and promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The state requirement to conduct a hazardous waste determination in repealed §335.62 is replaced by this section. The remainder of revised 40 CFR §262.11 is adopted in §335.504, as described in the Section by Section Discussion for that section.

The commission adopts new §335.53(b) to adopt by reference new 40 CFR §262.13 associated with the Hazardous Waste Generator Improvements Rule and promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732), and the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The exclusion for hazardous wastes from the generator category determination in repealed §335.78(c) and (d) is replaced by this section.

The commission adopts new §335.53(c) to adopt by reference new 40 CFR §262.14 associated with the Hazardous Waste Generator Improvements Rule and promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732), and the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The state provisions for conditionally exempt small quantity generators (the term was replaced in the Hazardous Waste Generator Improvements Rule with "very small quantity generator") in repealed §335.78 are replaced by this section.

The commission adopts new §335.53(d) to adopt by reference new 40 CFR §262.15 associated with the Hazardous Waste Generator Improvements Rule and promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The state provisions for satellite accumulation in repealed §335.69(d) and (e) are replaced by this section.

The commission adopts new §335.53(e) to adopt by reference new 40 CFR §262.16 associated with the Hazardous Waste Generator Improvements Rule and promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The state provisions for small quantity generators in repealed §335.69(f) - (h) are replaced by this section.

The commission adopts new §335.53(f) to adopt by reference new 40 CFR §262.17 associated with the Hazardous Waste Generator Improvements Rule and promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The state provisions for large quantity generators in repealed §335.69(a) - (b) and (j) - (l) are replaced by this section.

The commission adopts new §335.53(g) to adopt by reference new 40 CFR §262.18 associated with the Hazardous Waste Generator Improvements Rule and promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The state provision for the EPA identification number requirement in repealed §335.63 is replaced by this section.

§335.54, Hazardous Waste Manifest

The commission adopts new §335.54 to adopt by reference federal regulations in 40 CFR Part 262, Subpart B and to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732), and the Electronic Manifest Fee Rule promulgated in the *Federal Register* on January 3, 2018 (83 FR 420). This section will establish manifest requirements for generators. This section will replace the adoption of sections in 40 CFR Part 262, Subpart B previously in §335.10 so that the federal provisions are adopted only once in Chapter 335.

§335.55, Pre-transport Requirements Applicable to Small and Large Quantity Generators

The commission adopts new §335.55 to adopt by reference federal regulations in 40 CFR Part 262, Subpart C, and to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). This section will establish the pre-transport requirements for small and large quantity generators of hazardous waste and will replace repealed §§335.65 - 335.68.

§335.56, Recordkeeping and Reporting Applicable to Small and Large Quantity Generators

The commission adopts new §335.56 to adopt by reference federal regulations in 40 CFR Part 262, Subpart D and to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). This section will establish the recordkeeping and reporting requirements for small and large quantity generators of hazardous waste. This federal language was previously adopted in repealed §§335.13(g) - (i), 335.70, 335.71, 335.73, and 335.74.

§335.57, Farmers

The commission adopts new §335.57 to adopt by reference federal regulations in 40 CFR Part 262, Subpart G and to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). This section will establish the requirements for farmers disposing of hazardous waste pesticides and will replace repealed §335.77.

§335.58, Transboundary Movements of Hazardous Waste for Recovery or Disposal

The commission adopts new §335.58 to adopt by reference federal regulations in 40 CFR Part 262, Subpart H and to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732), and the Export and Import Confidentiality Rule promulgated in the *Federal Register* on December 26, 2017 (82 FR 60894), and amended in the *Federal Register* on August 6, 2018 (83 FR 38262). This section will establish the requirements for transboundary movements of hazardous waste and will reorganize the adoption by reference in repealed §335.76.

§335.59, Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities

The commission adopts new §335.59 to adopt by reference federal regulations in 40 CFR Part 262, Subpart K and to adopt

federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). This section will establish the alternative requirements for laboratories owned by eligible academic entities and will replace repealed §335.79.

§335.60, Alternative Standards for Episodic Generation

The commission adopts new §335.60 to adopt by reference new federal regulations in 40 CFR Part 262, Subpart L and to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). This section will establish requirements for alternative standards for episodic generation of hazardous waste applicable to VSQGs and small quantity generators.

§335.61, Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators

The commission adopts new §335.61 to adopt by reference new federal regulations in 40 CFR Part 262, Subpart M and to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). This new federal subpart was established to repeat the requirements in 40 CFR Part 265, Subparts C and D applicable to large quantity generators of hazardous waste in 40 CFR Part 262. 40 CFR Part 265, Subparts C and D remain adopted by reference in §335.112.

Repealed Subchapter C: Standards Applicable to Generators of Hazardous Waste

§335.61, Purpose, Scope and Applicability

The commission adopts the repeal of current §335.61. This section is replaced by adopted new §335.52 as described in the Section by Section Discussion for that section.

§335.62, Hazardous Waste Determination and Waste Classification

The commission adopts the repeal of §335.62. This section is replaced by adopted new §335.53 as described in the Section by Section Discussion for that section.

§335.63, EPA Identification Numbers

The commission adopts the repeal of §335.63. This section is replaced by adopted new §335.53 as described in the Section by Section Discussion for that section.

§335.65, Packaging

The commission adopts the repeal of §335.65. This section is replaced by adopted new §335.55 as described in the Section by Section Discussion for that section.

§335.66, Labeling

The commission adopts the repeal of §335.66. This section is replaced by adopted new §335.55 as described in the Section by Section Discussion for that section.

§335.67, Marking

The commission adopts the repeal of §335.67. This section is replaced by adopted new §335.55 as described in the Section by Section Discussion for that section.

§335.68, Placarding

The commission adopts the repeal of §335.68. This section is replaced by adopted new §335.55 as described in the Section by Section Discussion for that section.

§335.69, Accumulation Time

The commission adopts the repeal of §335.69. This section is replaced by adopted new §335.53 as described in the Section by Section Discussion for that section.

§335.70, Recordkeeping

The commission adopts the repeal of §335.70. This section is replaced by adopted new §335.56 as described in the Section by Section Discussion for that section.

§335.71, Biennial Reporting

The commission adopts the repeal of §335.71. This section is replaced by adopted new §335.56 as described in the Section by Section Discussion for that section.

§335.73, Additional Reporting

The commission adopts the repeal of §335.73. This section is replaced by adopted new §335.56 as described in the Section by Section Discussion for that section.

§335.74, Special Requirements for Generators of Between 100 and 1,000 Kilograms per Month

The commission adopts the repeal of §335.74. This section is replaced by adopted new §335.56 as described in the Section by Section Discussion for that section.

§335.75, Notification Requirements for Interstate Shipments

The commission adopts the repeal of §335.75. This section is duplicative of requirements in §335.13 as described in the Section by Section Discussion for that section.

§335.76, Additional Requirements Applicable to International Shipments

The commission adopts the repeal of §335.76. This section is replaced by adopted new §335.58 as described in the Section by Section Discussion for that section.

§335.77, Farmers

The commission adopts the repeal of §335.77. This section is replaced by adopted new §335.57 as described in the Section by Section Discussion for that section.

§335.78, Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators

The commission adopts the repeal of §335.78. This section is replaced by adopted new §335.52 and §335.53 as described in the Section by Section Discussions for those sections.

§335.79, Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities

The commission adopts the repeal of §335.79. This section is replaced by adopted new §335.59 as described in the Section by Section Discussion for that section.

Subchapter D, Standards Applicable to Transporters of Hazardous Waste

§335.91, Scope

The commission adopts amendments to §335.91(a) to implement plain language clarifications.

The commission adopts amendments to §335.91(c) to clarify additional sections and subchapters applicable to hazardous waste transporters.

The commission adopts amendments to §335.91(e) to remove the dated citation for 40 CFR Part 262, Subpart H and to clarify that 40 CFR Part 262, Subpart H, 40 CFR §262.83(d), and 40 CFR §262.84(d) is adopted by reference under new §335.58.

§335.94, Transfer Facility Requirements

The commission adopts amendments to §335.94(a) to add the term "independent requirements", and replace the reference to repealed §335.65 with 40 CFR §262.30 as adopted under §335.55.

The commission adopts amendments to §335.94(c) to adopt the language added to 40 CFR §263.12(b) in the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732).

Subchapter E: Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities

§335.112, Standards

The commission adopts amendments to §335.112 to adopt by reference revisions associated with the adoption of the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The commission adopts these revisions by updating the federal citations for 40 CFR Part 265, Subparts B, E, I, J, AA, BB, and DD in §335.112(a)(1), (4), (8), (9), (19), (20), and (22) respectively.

The commission adopts amendments to §335.112(a)(4) to adopt revisions associated with the Electronic Manifest Fee Rule by updating the federal citation for 40 CFR Part 265 Subpart E, and revising the list of CFR sections excepted from the adoption of 40 CFR Part 265, Subpart E.

The commission adopts amendments to §335.112(a)(7) to correct a typographical error by replacing the incorrect citation 40 CFR §264.146 with 40 CFR §265.146.

The commission adopts amendments to §335.112(a)(21) to adopt revisions associated with the Electronic Manifest Fee Rule by updating the federal citation for 40 CFR Part 265, Subpart CC.

The commission adopts §335.112(a)(24) to adopt revisions associated with the Electronic Manifest Fee Rule by adopting by reference 40 CFR Part 265, Subpart FF and renumbering the subsequent paragraphs.

The commission adopts amendments to §335.112(b) to adopt revisions associated with the Electronic Manifest Fee Rule by adding exception language clarifying that the changes listed in subsection (b) do not apply to the use of the manifest system requirements under 40 CFR §265.71 or the fees for the electronic hazardous waste manifest program requirements under 40 CFR Part 265, Subpart FF.

The commission additionally adopts amendments to §335.112(b)(7) to adopt revisions associated with the Electronic Manifest Fee Rule by removing 40 CFR §265.71 and §265.72 from the list of CFR sections that when referenced in regulations adopted by reference under this section must be substituted with references to sections in Chapter 335.

The commission adopts amendments to §335.112(c) because the necessity and practice of maintaining and making available to the public on demand an up-to-date physical copy of the CFR has been superseded by the CFR being maintained accessible and available to the public on the internet.

Subchapter F: Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities

§335.152, Standards

The commission adopts amendments to §335.152 to adopt by reference the changes associated with the adoption of the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The commission adopts these revisions by updating the federal citations for 40 CFR Part 264, Subparts B, E, I, J, AA, BB, and DD in §335.152(a)(1), (4), (7), (8), (17), (18), and (20) respectively.

The commission adopts amendments to §335.152(a)(4) to adopt revisions associated with the Electronic Manifest Fee Rule by updating the federal citation for 40 CFR Part 264, Subpart E, and revising the list of CFR sections excepted from the adoption of 40 CFR Part 264, Subpart E.

The commission adopts amendments to §335.152(a)(4) and (19) and add §335.152(a)(22) to adopt by reference revisions associated with the Electronic Manifest Fee rule promulgated in the *Federal Register* on January 3, 2018 (83 FR 420). The commission adopts these revisions by updating the federal citation for 40 CFR Part 264, Subpart CC; adding new 40 CFR Part 264, Subpart FF as §335.152(a)(22); and renumbering the subsequent paragraph.

The commission adopts amendments to §335.152(c) to clarify that the changes listed in subsection (c) do not apply to the state adoption of 40 CFR §264.71 or 40 CFR Part 264, Subpart FF, and amended §335.152(c)(7) to remove 40 CFR §264.71 and §264.72 from the list of CFR references that are changed to references in Chapter 335.

The commission adopts amendments to §335.152(b) to delete the last sentence, and amendments to delete the entirety of §335.152(d), because the necessity and practice of maintaining and making available to the public on demand an up-to-date physical copy of the CFR has been superseded by the CFR being maintained accessible and available to the public on the internet.

Subchapter H: Standards for the Management of Specific Wastes and Specific Types of Facilities

Division 2: Hazardous Waste Burned for Energy Recovery

§335.221, Applicability and Standards

The commission adopts amendments to §335.221(a)(19) to remove and replace the reference to §335.78 with the phrase "generated by a very small quantity generator" in order to conform with federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The definition for VSQG is adopted in §335.1 as described in the Section by Section Discussion for that definition.

The commission adopts amendments to §335.221(b) to remove and replace references to §335.78 and the term "conditionally exempt small quantity generator." In §335.221(b)(1), "conditionally exempt small quantity generator" is replaced with the phrase "a generator that meets the conditions for exemption

for a very small quantity generator during the calendar month in which the hazardous waste was generated." The language in previous §335.221(b)(2) is separated into revised paragraph (2) and new paragraph (3), and the subsequent paragraphs are renumbered. Adopted §335.221(b)(3) replaces the references to CESQGs and §335.78 with VSQGs.

Division 3: Recyclable Materials Utilized for Precious Metal Recovery

§335.241, Applicability and Requirements

The commission adopts amendments to §335.241(b)(3) to add references to the hazardous waste manifest requirements adopted in new §335.54 and in amended §335.112 and §335.152; change the titles of amended §335.10 and amended §335.11 in references to these sections by deleting the terms "Industrial" and "Solid" to conform to the use of the term "Class 1"; remove discontinued term "designated OECD member countries"; add a reference to import export requirements adopted in amended §335.152; and to remove import export requirements to conform with the adoption of these requirements under new §335.54 and amended §335.112. These changes are described further in the Section by Section Discussion for each section identified.

The commission adopts amendments to §335.241(b)(4) to incorporate federal revisions associated with the Imports and Exports of Hazardous Waste Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85696) by revising the language in §335.241(b)(4) to be consistent with the federal language in 40 CFR §266.70(b)(3). The Imports and Exports of Hazardous Waste Rule was adopted June 5, 2020 (45 TexReg 3773), however §335.241 was not opened and revised at that time. The commission adopts further amendments to §335.241(b)(4) to remove the reference to repealed §335.76 and clarify that new §335.58 applies to exports and imports of precious metals for recovery.

Division 4: Spent Lead-Acid Batteries Being Reclaimed

§335.251, Applicability and Requirements

The commission adopts amendments to §335.251(a) to adopt by reference the revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732) by updating the *Federal Register* citation for 40 CFR Part 266, Subpart G.

The commission adopts amendments to §335.251(c) and (e) - (g) to replace references to repealed §335.63 with new §335.53 as described in the Section by Section Discussion for those sections.

Division 5: Universal Waste Rule

§335.261, Universal Waste Rule

The commission adopts revisions to the universal waste regulations, as described in the Section by Section Discussion for this section, to add aerosol cans to the list of hazardous waste recognized as universal waste.

The commission adopts amendments to §335.261(a) to update the *Federal Register* citation for 40 CFR Part 273 to adopt by reference revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732), Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816), and the Aerosol Can Waste Rule promulgated in the *Federal Register* on December 9, 2019 (84 FR 67202).

The commission adopts amendments to §335.261(b)(4) to replace the citation to §335.261(b)(16)(F) with §335.261(b)(19)(F) to conform with revisions associated with the Aerosol Can Waste Rule.

The commission adopts amendments to §335.261(b)(8) to replace the reference to §335.77 with adopted new §335.57 as described in the Section by Section Discussion for those sections.

The commission adopts amendments to §335.261(b)(12) to replace the citation to §335.261(b)(16)(E) with §335.261(b)(19)(E) to conform with revisions associated with the Aerosol Can Waste Rule.

The commission adopts amendments to §335.261(b)(14) - (16) to conform with revisions associated with the Aerosol Can Waste Rule by adding references to Chapter 335 instead of reference to 40 CFR Part 261, adding a reference to §335.41(f) instead of 40 CFR §261.7 and renumbering the subsequent paragraphs.

The commission adopts amendments to renumbered §335.261(b)(17) to replace the citation to §335.261(b)(16)(F) with §335.261(b)(19)(F) to conform with revisions associated with the Aerosol Can Waste Rule.

The commission adopts further amendments to renumbered §335.261(b)(17) to add that 40 CFR §261.4(b)(1) is changed to both §335.1 and §335.402(5). The reference to §335.402(5) was mistakenly listed in renumbered §335.261(b)(18).

The commission adopts amendments to renumbered §335.261(b)(18) to replace the reference to 40 CFR §261.5 with 40 CFR §262.14 to conform with revised 40 CFR §273.8 associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). Additionally, the commission adopts amendments to renumbered §335.261(b)(18) by replacing the reference to repealed §335.78 with new §335.53 as described in the Section by Section Discussion for those sections, and by replacing the citation to §335.261(b)(16)(F) with §335.261(b)(19)(F) to conform with revisions associated with the Aerosol Can Waste Rule and the renumbering of paragraphs in this subsection.

The commission adopts further amendments to renumbered §335.261(b)(18) to remove the reference to §335.402(5).

The commission adopts §335.261(b)(19)(F)(vi) to implement revisions associated with the Aerosol Can Waste Rule promulgated in the *Federal Register* on December 9, 2019 (84 FR 67202). This revision will add aerosol cans to the list of hazardous wastes recognized as a universal waste regulated under this division.

The commission adopts amendments to renumbered §335.261(b)(20) to replace the citation to §335.261(b)(16)(D) with §335.261(b)(19)(D) to conform with revisions associated with the Aerosol Can Waste Rule and the renumbering of paragraphs in this subsection.

The commission adopts amendments to renumbered §335.261(b)(23) to implement revisions associated with the Aerosol Can Waste Rule by replacing the reference to "40 CFR §262.34" with "40 CFR parts 260 through 272" to correspond with revised 40 CFR §273.13, and by replacing the reference to repealed §335.69 with Chapter 335.

The commission adopts §335.261(b)(25) and (26) to conform with revisions associated with the Aerosol Can Waste Rule by adding references to §335.53 instead of the references to 40 CFR §§262.11 and 262.14 - 262.17; adding a reference to Chapter 335 instead of the reference to 40 CFR Parts 260 - 272; and renumbering the subsequent paragraphs.

The commission adopts amendments to renumbered §335.261(b)(28) to replace the citation to §335.261(b)(16)(C) with §335.261(b)(19)(C) to conform with revisions associated with the Aerosol Can Waste Rule and renumbering the subsequent paragraphs.

The commission adopts amendments to renumbered §335.261(b)(31) to implement revisions associated with the Aerosol Can Waste Rule by replacing the reference to "40 CFR §262.34" with "40 CFR parts 260 through 272" to correspond with revised 40 CFR §273.33, and by replacing the reference to repealed §335.69 with Chapter 335.

The commission adopts §335.261(b)(35) and (36) to conform with revisions associated with the Aerosol Can Waste Rule by adding references to §335.53 instead of the reference to 40 CFR §§262.11 or 262.14 - 262.17, and reference to Chapter 335 instead of the reference to 40 CFR Parts 260 - 272, and renumbering the subsequent paragraphs.

The commission adopts amendments to renumbered §335.261(b)(41) to replace the citation to §335.261(b)(16)(A) with §335.261(b)(19)(A) to conform with revisions associated with the Aerosol Can Waste Rule.

The commission adopts amendments to renumbered §335.261(b)(45) to replace the citation to §335.261(b)(16)(F) with §335.261(b)(19)(F) to conform with revisions associated with the Aerosol Can Waste Rule.

The commission adopts amendments to §335.261(c) to implement revisions associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission adopts language consistent with 40 CFR §273.80(a).

The commission adopts §335.261(c)(4) to implement revisions associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission adopts language consistent with 40 CFR §273.80(d). Specifically, the EPA added 40 CFR §273.80(d) to exclude hazardous waste pharmaceuticals from being added as a universal waste category.

Division 6: Military Munitions

§335.272, Standards.

The commission adopts amendments to §335.272(b)(6) to replace the reference to repealed §335.61(h) with new §335.52 as described in the Section by Section Discussion for those sections.

The commission adopts amendments to §335.272(b)(7) to replace the section title for §335.91, which was incorrectly identified as "Standards Applicable to Transporters of Hazardous Waste", the title for Chapter 335, Subchapter D.

Since proposal, the commission adopts amendments to §335.272(b)(9) replacing a citation to §335.402 with a citation to §35.402 to correct a typographical error.

Subchapter O: Land Disposal Restrictions

§335.431, Purpose, Scope, and Applicability

The commission adopts amendments to §335.431(c)(1) to adopt by reference revisions to 40 CFR Part 268 associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). Specifically, the EPA amended 40 CFR §§268.1, 268.7, and 268.50 in the Hazardous Waste Generator Improvements Rule.

The commission adopts further amendments to §335.431(c)(1) to adopt by reference revisions associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission adopts these revisions by amending the *Federal Register* citation for 40 CFR Part 268. Specifically, the EPA amended the section heading in 40 CFR §268.7 and the subject heading in 40 CFR §268.7(a) to include reverse distributors. The EPA also added 40 CFR §268.50(a)(4) and (5) to clarify that healthcare facilities and reverse distributors that meet certain conditions are not subject to the prohibition of storage of hazardous wastes restricted from land disposal under the RCRA.

The commission adopts amendments to §335.431(d)(5) to replace the federal citation for 40 CFR §262.34 with 40 CFR §262.16 and §262.17 consistent with the revised language in 40 CFR §268.50(a)(1), and replace the reference to repealed §335.69 with new §335.53 as described in the Section by Section Discussion for that section.

The commission adopts §335.431(d)(6) and (7) to conform with revisions associated with the Pharmaceutical Waste Rule by adding state replacement references for the new federal language.

Subchapter Q: Pollution Prevention: Source Reduction and Waste Minimization

§335.471, Definitions

The commission adopts amendments to §335.471(1) to remove the definition of "Acute hazardous waste" and renumber the subsequent paragraphs. A new definition of "Acute hazardous waste" is adopted in §335.1(6) as further described in the Section by Section Discussion for that section.

The commission adopts amendments to §335.471(3) to remove the definition of "Conditionally exempt small quantity generator" and renumber the subsequent paragraphs. The EPA renamed the generator classification "conditionally exempt small quantity generator" as "very small quantity generator" in the Hazardous Waste Generator Improvements Rule, and definitions for "conditionally exempt small quantity generator" and "very small quantity generator" are adopted in §335.1(38) and (193) respectively as further described in the Section by Section Discussions for that section.

The commission adopts amendments to §335.471(5) to remove the definition of "Environmental management system" and renumber the subsequent paragraphs. The definition for "Environmental management system" is no longer needed due to the adopted deletion of §335.477(3) as described in the Section by Section Discussion for that section.

The commission adopts amendments to §335.471(8) to remove the definition of "Large quantity generator" and renumber the subsequent paragraphs. The definition for "Large quantity generator" is adopted in §335.1(105) as further described in the Section by Section Discussion for that section.

The commission adopts amendments to §335.471(12) to remove the definition of " Small quantity generator" and renumber the subsequent paragraphs. The definition for "Small quantity generator" will no longer be needed in this subchapter due to the expansion of the definition in §335.1(159) as further described in the Section by Section Discussion for that section.

§335.474, Pollution Prevention Plans

The commission adopts amendments to §335.474(1) to replace the citation for the definition of "Large quantity generators" in §335.471(8) with §335.1, and to remove the citation for the definition of "TRI Form R reporters" in §335.471(15).

The commission adopts amendments to §335.474(2) to replace the citation for the definition of "Small quantity generators" in §335.471(12) with §335.1, and to remove the citation for the definition of "TRI Form R reporters" in §335.471(15).

§335.477, Exemptions

The commission adopts amendments to §335.477(3) to delete the paragraph. The referenced section, 30 TAC §90.36, was repealed as published in the July 13, 2012 issue of the *Texas Register* (37 TexReg 5310).

Subchapter R: Waste Classification

§335.503, Waste Classification and Waste Coding Required

The commission adopts amendments to §335.503(a)(1) to clarify that hazardous waste and industrial solid waste are subject to this chapter.

The commission adopts amendments to §335.503(b) to clarify how an eight-digit waste code number is assigned and the use of characters and digits in the waste code number.

The commission adopts amendments to §335.503(b)(1) to clarify that the first four characters of a waste code number which constitute the four-character sequence number may consist of numeric and or alpha characters.

The commission adopts amendments to §335.503(b)(2) to remove discontinued practice of assigning alphanumeric sequences codes for one-time shipments for registered generators. The executive director assigns alphanumeric sequences codes for one-time shipments for unregistered generators in accordance with §335.503(b)(3).

The commission adopts amendments to §335.503(b)(6) and (7) replacing references to CESQG with references to generators meeting the conditions for exemption for a VSQG in conformance with federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The definition for VSQG is adopted in §335.1 as described in the Section by Section Discussion for that definition.

The commission adopts amendments to §335.503(b)(6) and (7) to reflect changes to the first four characters of the waste code indicating that hazardous waste is generated by the lowest tier hazardous waste generator by replacing the four-character sequence number "CESQ" with the four-character sequence number "VSQG." The commission intends to implement this change by allowing generators that are not required to transport waste with an accompanying hazardous waste manifest to use either the new four-character sequence number "VSQG" or to continue using the repealed four-character sequence number "CESQ" through December 31, 2024. The commission intends to require use of the sequence number "VSQG" beginning on January 1, 2025.

The commission adopts amendments to §335.503(b)(8) to implement plain language clarifications regarding the four-character sequence number "TSDF" as the first four characters of the waste code when shipping waste received from off-site, and to remove manifesting instructions adopted and reorganized under §335.54 and §335.12.

The commission adopts amendments to §335.503(b)(9) to add the requirement for healthcare facilities shipping non-creditable hazardous waste pharmaceuticals to a designated facility to use the four-character sequence number "PHRM" as the first four characters of the waste code in conformance with changes associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816).

§335.504, Hazardous Waste Determination

The commission adopts amendments to §335.504 to label implied subsection (a) as subsection (a); add the catch line "Hazardous waste determination"; and add §335.504(a)(3)(A) and (B), (B)(i) and (ii), (b), and (c) to adopt certain requirements of 40 CFR §262.11 in narrative. These amendments adopt revisions to 40 CFR §262.11 associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732).

The commission adopts amendments to §335.504(a)(1) to adopt by reference revisions to 40 CFR Part 261, Subpart A associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732), the Definition of Solid Waste Rule promulgated in the *Federal Register* on May 30, 2018 (83 FR 24664), the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816), and the Aerosol Can Waste Rule promulgated in the *Federal Register* on December 9, 2019 (84 FR 67202). The commission adopts these revisions by amending the *Federal Register* citation for 40 CFR Part 261, Subpart A.

The commission adopts amendments to §335.504(a)(1) to adopt by reference revisions to 40 CFR Part 261, Subpart E associated with the Export and Import Confidentiality Rule promulgated in the *Federal Register* on December 26, 2017 (82 FR 60894) and amended in the *Federal Register* on August 6, 2018 (83 FR 38262). The commission adopts these revisions by amending the *Federal Register* citation for 40 CFR Part 261, Subpart E.

The commission adopts amendments to §335.504(a)(2) to adopt revisions in the hazardous waste determination requirements of 40 CFR §262.11 and to adopt by reference revisions to 40 CFR Part 261, Subpart D associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732) and the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816), The commission adopts these revisions by amending the *Federal Register* citation for 40 CFR Part 261, Subpart D.

§335.510, Sampling Documentation

The commission adopts amendments to §335.510(a) to add the reference to 40 CFR §262.11(f) as adopted by reference at §335.53 to clarify the documentation required for generators to conform with revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732).

§335.511, Use of Process Knowledge

The commission adopts amendments to §335.511(a) to require generators to follow §335.504 when using process knowledge to classify hazardous waste and to add language specifying what constitutes acceptable process knowledge generators may use to classify nonhazardous industrial waste. These amendments will conform with revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732).

§335.513, Documentation Required

The commission adopts amendments to §335.513(a) to add the reference to 40 CFR §262.11(f) as adopted by reference at §335.53 to the documentation required for generators to conform with revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732).

§335.521, Appendices

The commission adopts amendments to Figure 30 TAC §335.521(a)(2) to replace the word "non-hazardous" with "nonhazardous" for consistency with the rest of the chapter.

The commission adopts amendments to §335.521(b) to revise the name of the agency and the agency website.

Subchapter T: Permitting Standards for Owners and Operators of Commercial Industrial Nonhazardous Waste Landfill Facilities

§335.590, Operational and Design Standards

The commission adopts amendments to §335.590(25) to adopt revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The commission adopts these revisions by replacing references to CESQG with VSQG. The reference to repealed §335.78(a) is deleted.

Subchapter U: Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standard Permit

§335.602, Standards

The commission adopts amendments to §335.602(a)(4) to adopt by reference revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The commission adopts these revisions by amending the *Federal Register* citation for 40 CFR Part 267, Subpart E.

The commission adopts amendments to §335.602(b)(2)(I) to adopt by reference revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The commission adopts these revisions by replacing the reference to 40 CFR §262.34 with 40 CFR §262.16 or §262.17 in accordance with revisions to 40 CFR §267.71, and replacing the reference to repealed §335.69 with new §335.53, the section in which these federal regulations are adopted.

Subchapter V: Standards for Reclamation of Hazardous Secondary Materials

§335.702, Standards

The commission adopts amendments to §335.702(a)(3) to adopt by reference revisions to 40 CFR §261.420(g) associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732), by adding a federal citation for 40 CFR Part 261, Subpart M.

§335.703, Financial Assurance Requirements

The commission adopts amendments to §335.703(c)(1) to adopt revisions associated with the Definition of Solid Waste Rule published in the May 30, 2018 issue of the *Federal Register* (83 FR 24664) by deleting the phrase "receiving a variance for."

Subchapter W: Management Standards for Hazardous Waste Pharmaceuticals

§335.751, Definitions

The commission adopts new §335.751 to adopt definitions associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission adopts these regulations by adding definitions for the terms "Evaluated hazardous waste pharmaceutical", "Hazardous waste pharmaceutical", "Healthcare facility", "Household waste pharmaceutical", "Long-term care facility", "Non-creditable hazardous waste pharmaceutical", "Nonhazardous waste pharmaceutical", "Non-pharmaceutical hazardous waste", "Pharmaceutical", "Potentially creditable hazardous waste pharmaceutical", and "Reverse distributor", consistent with the definitions in 40 CFR §266.500.

§335.753, Applicability

The commission adopts new §335.753 to adopt regulations associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission adopts these regulations by adding language consistent with language in 40 CFR §266.501 to establish the applicability of Chapter 335, Subchapter W to healthcare facilities and reverse distributors for the management of hazardous waste pharmaceuticals.

§335.755, Standards for Healthcare Facilities Managing Non-Creditable Hazardous Waste Pharmaceuticals

The commission adopts new §335.755 to adopt regulations associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission adopts these regulations by adding language consistent with language in 40 CFR §266.502 to establish the standards for healthcare facilities managing non-creditable hazardous waste pharmaceuticals.

§335.757, Standards for Healthcare Facilities Managing Potentially Creditable Hazardous Waste Pharmaceuticals

The commission adopts new §335.757 to adopt regulations associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission adopts these regulations by adding language consistent with language in 40 CFR §266.503 to establish the standards for healthcare facilities managing potentially creditable hazardous waste pharmaceuticals.

§335.759, Healthcare Facilities That are Very Small Quantity Generators for Both Hazardous Waste Pharmaceuticals and Non-pharmaceutical Hazardous Waste

The commission adopts new §335.759 to adopt regulations associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission adopts these regulations by adding language consistent with language in 40 CFR §266.504 to establish the standards applicable to healthcare facilities that are also VSQGs.

§335.761, Prohibition of Sewering Hazardous Waste Pharmaceuticals

The commission adopts new §335.761 to adopt regulations associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission adopts these regulations by adding language consistent with language in 40 CFR §266.505 to establish the sewering prohibition applicable to all hazardous waste pharmaceuticals.

§335.763, Conditional Exemptions for Hazardous Waste Pharmaceuticals that are Controlled Substances and Household Waste Pharmaceuticals Collected in a Take-back Event or Program

The commission adopts new §335.763 to adopt regulations associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission adopts these regulations by adding language consistent with language in 40 CFR §266.506 to establish the conditional exemption from regulation under this subchapter for hazardous waste pharmaceuticals that are also subject to regulation by the federal Drug Enforcement Administration.

§335.765, Residues of Hazardous Waste Pharmaceuticals in Empty Containers

The commission adopts new §335.765 to adopt regulations associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission adopts these regulations by adding language consistent with language in 40 CFR §266.507 to describe the requirements for containers with residues of hazardous waste pharmaceuticals to be considered empty.

§335.767, Shipping Non-Creditable Hazardous Waste Pharmaceuticals from a Healthcare Facility or Evaluated Hazardous Waste Pharmaceuticals from a Reverse Distributor

The commission adopts new §335.767 to adopt regulations associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission adopts these regulations by adding language consistent with language in 40 CFR §266.508 and adopting 40 CFR §266.508(a)(1)(iii)(b) by reference, to establish the shipping requirements for hazardous waste pharmaceuticals that are not eligible for a manufacturer's credit.

§335.769, Shipping Potentially Creditable Hazardous Waste Pharmaceuticals from a Healthcare Facility or a Reverse Distributor to a Reverse Distributor

The commission adopts new §335.769 to adopt regulations associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission adopts these regulations by adding language consistent with language in 40 CFR §266.509 to establish the shipping requirements for hazardous waste pharmaceuticals that are potentially eligible for a manufacturer's credit.

§335.771, Standards for the Management of Potentially Creditable and Evaluated Hazardous Waste Pharmaceuticals by Reverse Distributors

The commission adopts new §335.771 to adopt regulations associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission adopts these regulations by adding language consistent with language in 40 CFR §266.510 to establish the standards applicable to reverse distributors for the management of hazardous waste pharmaceuticals. This section will also establish registration and reporting requirements for reverse distributors.

Final Regulatory Impact Determination

The commission reviewed the rulemaking adoption in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rulemaking adoption is not a major environmental rule because it is not anticipated to adversely effect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state since the rulemaking adoption implements requirements already imposed on the regulated community under 42 United States Code (USC), §6926(g). Likewise, there will be no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state from those revisions outside 42 USC, §6926(g), because either the changes are not substantive, or the regulated community will benefit from the greater flexibility and reduced compliance burden.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The rulemaking adoption does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225.

First, the rulemaking will not exceed a standard set by federal law because the commission is adopting this rulemaking to implement revisions to the federal hazardous waste program. The commission must meet the minimum standards and mandatory requirements of the federal program to maintain authorization of the state hazardous waste program.

Second, although the rulemaking adopts some requirements that are more stringent than existing state laws, federal law requires the commission to promulgate rules that are as stringent as federal law for the commission to maintain authorization of the state hazardous waste program.

Third, the rulemaking will not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. On the contrary, the commission is adopting rules that are required to maintain authorization of the state hazardous waste program.

And fourth, this rulemaking will not seek to adopt a rule solely under the general powers of the agency. Rather, this rulemaking is authorized by specific sections of the Texas Water Code and

the Texas Health and Safety Code that are cited in the Statutory Authority section of this preamble.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the rulemaking adoption and performed analysis of whether the adopted rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rules is to maintain state's authorization to implement the RCRA hazardous waste program by adopting state hazardous waste rules that are equivalent to the federal regulations. The adopted rulemaking substantially advances these stated purposes by adopting rules that are equivalent to the federal regulations or incorporate the federal regulations.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to the portions of the rulemaking adoption that adopts rules that meet the minimum standards of the federal hazardous waste program because Texas Government Code, §2007.003(b)(4), exempts an action reasonably taken, by a state agency, to fulfill an obligation mandated by federal law from the requirements of Texas Government Code, Chapter 2007. Under 42 USC, §6926(g), the state must adopt rules that meet the minimum standards of the federal hazardous waste program administered by the EPA in order to maintain authorization to administer the program. Therefore, the portions of the rulemaking adoption that are adopting rules that meet the minimum standards of the federal hazardous waste program are exempt from the requirements of Texas Government Code, Chapter 2007 because the rules are required by federal law.

Finally, to the extent that portions of the rulemaking adoption are not exempt under Texas of the adopted rules will be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations will not affect a landowner's rights in real property because the rulemaking adoption will not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the rulemaking adoption is consistent with the applicable CMP goals and policies. The CMP goals applicable to the adopted rules include protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; and to make agency and subdivision decision-making affecting CNRAs efficient by identifying and addressing duplication and conflicts among local, state, and federal regulatory and other programs for the management of CNRAs. CMP policies applicable to the adopted rules include to construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the federal Solid Waste Disposal Act, 42 United States Code, §§6901 et seq. Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with these CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas, and because the adopted rules will update and enhance the commission's rules concerning hazardous waste facilities.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. There were no comments received regarding the CMP.

Public Comment

The commission held a virtual public hearing on August 23, 2021. The comment period closed on August 30, 2021. The commission received comments from CVS Health (CVS), the Household & Commercial Products Association (HCPA), Texas Chemical Council (TCC), Texas Industry Project (TIP), Texas Molecular Holdings LLC (TM), and one individual. Four commenters supported the proposed rule revisions, two commenters were neither in support of nor against the proposed rule revisions, and three commenters suggested changes to the rule revisions.

Response to Comments

Comment

CVS commented in support of the adoption of the Pharmaceutical Waste Rule in full. HCPA commented in support of the addition of aerosol cans to the list of hazardous wastes that may be managed under the universal waste program. TCC and TM commented in support of the rulemaking, and TM commented in support of adoption of 40 CFR §260.5.

Response

The commission acknowledges these comments.

Comment

TM recommended that the commission hold stakeholder meetings to facilitate compliance with the new and amended rules.

Response

The commission intends to provide guidance and conduct outreach to facilitate compliance with the adopted provisions. No changes have been made in response to this comment.

Comment

TM commented that use of the term "unpermitted" in the heading of §335.6(a) is confusing and recommended using the term "permit-exempt."

Response

The commission agrees with this comment and changed the catch line of §335.6(a) from "Notification of unpermitted industrial

solid waste activities" to "Notification of industrial solid waste and municipal hazardous waste activities not authorized by a permit."

Comment

TCC and TIP asked the commission to elaborate on the small quantity generator (SQG) renotification required by §335.6, asked whether a SQG will use the EPA 8700-12 form or a different form to renotify and asked what additional information a SQG would be required to submit.

Response

The commission intends to provide guidance to inform generators how to comply with the state SQG renotification requirements. The commission's intent is to provide flexibility for the executive director to approve a variety of methods of re-notification such as updates to solid waste registrations via either federal or state forms and submittal of annual waste summaries. The commission's implementation of SQG renotification will include, at a minimum, the information required by the 8700-12 form. No changes have been made in response to this comment.

Comment

TIP recommends requiring one collective SQG renotification for multiple SQGs associated with a common central facility.

Response

The commission's implementation of the SQG renotification requirement must be at least as stringent as the EPA's requirements. Hazardous waste generator categories and generator conditional exemptions are dependent on the individual site where hazardous waste is generated and each SQG is required to have a unique EPA identification number. Thus, it is not clear that combining renotifications of multiple SQGs is practical or would satisfy the requirement. No changes have been made in response to this comment.

Comment

TM requested clarification of the annual waste summary (AWS) requirements in §335.9(a)(2)(C)(ii).

Response

The requirement in §335.9(a)(2)(C)(ii) is applicable to the receipt of off-site generated Class 1 waste by an owner or operator in compliance with §335.10(e) and to the receipt of off-site generated hazardous waste from a very small quantity generator (VSQG) in compliance with 40 CFR §262.17(f) as adopted under §335.53(f). The owner or operator or large quantity generator consolidating waste from off-site must report the waste received from off-site as their own on their AWS. The Class 1 waste generator and the VSQG shipping wastes off-site are not required to submit an AWS under §335.9(a)(4) for these wastes under these scenarios. No changes have been made in response to this comment.

Comment

TM requested that the commission revise §335.10(c)(1) to require the EPA ID number to be included on a manifest for shipments of Class 1 industrial waste, and allow use of a solid waste registration number only if the generator does not have an EPA ID number.

Response

Because Class 1 industrial waste generators are not required to obtain an EPA ID number, the commission declines to require a manifest prepared for a shipment of Class 1 industrial waste to include an EPA ID number. No changes have been made in response to this comment.

Comment

TM requested clarification of the annual waste summary requirements in §335.10(e)(3) for generators receiving waste from off-site.

Response

The owner or operator of the receiving facility must report the Class 1 industrial solid waste received from off-site on the annual waste summary per §335.10(e)(3). No changes have been made in response to this comment.

Comment

TM recommended using data from the e-manifest system instead of requiring a separate annual waste summary and waste receipt summaries.

Response

The commission is required by state law to collect and record information about industrial and hazardous waste. Until or unless the commission transitions to importing, converting, and uploading data from the e-manifest system into commission databases, receivers may download data from the e-manifest system and convert the data to a file format that may be imported into TCEQ's monthly waste receipt summary. No changes have been made in response to this comment.

Comment

TM commented that §335.13(e)(2) conflicts with §335.6(c).

Response

Paragraph §335.13(e)(2) describes one of three conjunctive elements that define an unregistered generator, specifically the amount of hazardous or Class 1 waste that the generator generates in a calendar month. This section does not create an exception to the requirement to register under §335.6(c). The executive director may assign a temporary solid waste registration number (SWR) to facilitate the management and transportation of hazardous waste and/or Class 1 waste by an unregistered generator because the generator does not have an active registration. The executive director may assign a four-digit sequence number to be used as the first four digits of the Texas waste code as required by §335.503, to facilitate the management and transportation of hazardous waste and/or Class 1 waste by an unregistered generator because the generator does not have an active registration and as such does not assign Texas waste codes to waste generated on-site. Assignment of a temporary SWR, the first four digits of a Texas waste code, and/or a temporary EPA ID number is currently known as the commission's one-time shipment program. A temporary SWR or use of a temporary Texas waste code does not conflict with or waive the registration requirements of §335.6(c). This is reenforced by §335.6(c)(3) which states that notifications under §335.6 are in addition to any information required by §335.13.

Comment

TM asked whether §335.13(e) is only applicable to a VSQG during an episodic event.

Response

An unregistered generator of hazardous waste or an unregistered generator of Class 1 industrial waste may request that the executive director assign a temporary SWR and/or the first four digits of a temporary Texas waste code to facilitate the management and immediate transportation of waste if the generator does not have an active registration and as such does not assign Texas waste codes to waste generated on-site. The commission is adopting a new conditional exclusion under the Generator Improvements Rule that is applicable to certain hazardous waste generated during episodic events. The commission's established one-time shipment program as described under the previous response is independent from the new conditional exclusion regarding hazardous waste. No changes have been made in response to this comment.

Comment

TM asked how long a temporary solid waste registration number (SWR) or Texas waste code may be used before registration is required under 335.6.

Response

As explained in the previous two responses, the executive director providing an unregistered generator a temporary SWR or a four-digit sequence number to be used as the first four digits of a Texas waste code in accordance with §335.503 and §335.13 does not waive or create an exception to the registration requirements of §335.6(c). Owners and operators and unregistered generators using a temporary SWR or a four-digit sequence number as the first four digits of a Texas waste code must renew its one-time shipment requests on a yearly basis. A Texas waste code that uses a four-digit sequence number assigned by the executive director is no longer considered valid one year after it was requested. In response to this comment the commission has further amended §335.13(d)(3) to clarify that the executive director assigns the four-digit sequence used as the first four digits of the Texas waste code.

Comment

TCC and TIP encouraged the commission to exclude temporary waste accumulation areas used for one-time events from closure requirements in §335.53(f), and to mirror Louisiana Department of Environmental Quality (LDEQ) regulations that allow documentation of closure of these units using existing recordkeeping practices.

Response

The Commission's implementation of Texas' hazardous waste program must be at least as stringent as the EPA's hazardous waste regulations. The EPA promulgated a definition of central accumulation area (CAA) to include an on-site hazardous waste accumulation area that is subject to conditions for exemption for a small quantity generator or a large quantity generator (LQG). The EPA expressly included CAA among hazardous waste units that an LQG is required to demonstrate closure of in accordance with the closure performance standards. No changes have been made in response to this comment.

Comment

TCC and TIP requested additional information about how the commission will implement pre-transport requirements of §335.55 which implement extensive Department of Transportation requirements. TIP raised concerns that improperly labelling containers is a common RCRA violation, and that large complex facilities contain hundreds of drums and containers that require labeling. TIP and TCC recommended that the commission provide guidance and TCC recommended that the commission utilize a logical and realistic approach to implementation and enforcement of the new requirements.

Response

The commission may issue guidance on the pre-transportation requirements. The EPA committed to issuing additional guidance and to conducting training on the Generator Improvements Rule in the Generator Improvements Rule adoption preamble. The commission's implementation is informed by the floor of the EPA's requirements as identified in EPA guidance. No changes have been made in response to this comment.

Comment

TCC and TIP expressed concerns that the EPA large quantity generator (LQG) Quick Reference Guide guidance is not relevant to large complex facilities and encouraged the commission to provide an example Quick Reference Guide that would be appropriate for these facilities.

Response

The commission acknowledges this comment. No changes have been made in response to this comment.

Comment

TCC and TIP encouraged the commission to revise the Quick Reference Guide requirements in §335.61 to mirror LDEQ regulations that allow satellite accumulation area (SAA) locations to be generally identified on the Quick Reference Guide facility map and to exclude short-term, temporary storage central accumulation areas, such as RCRA 90-day units, from Quick Reference Guide and contingency plan requirements.

Response

The commission declines to limit the scope of the federal hazardous regulations being adopted by reference. The commission's implementation of Texas' hazardous waste program must be at least as stringent as the EPA's hazardous waste regulations. The EPA introduced the term "quick reference guide" to replace the term "contingency plan executive summary." The EPA promulgated a definition of central accumulation area (CAA) to include an on-site hazardous waste accumulation area that is subject to conditions for exemption for a SQG or a LQG. The EPA did not exclude CAA or less than 90-day units from Quick Reference Guide and contingency planning requirements. The commission acknowledges that the general location of a SAA location may satisfy the intent and purpose of depicting locations of and routes of access to hazardous wastes in the quick reference guide facility map. The commission's implementation is informed by the floor of the EPA's requirements as identified in EPA guidance. No changes have been made in response to this comment.

Comment

TCC and TIP commented that under the verified recycler exclusion (VRE), which was proposed to be repealed and replaced by the transfer based exclusion (TBE), that the facility owner operator and the commission are responsible for assuring that off-site facilities for the recycling of hazardous secondary materials (HSM) are in compliance with legitimate HSM recycling criteria and that under the TBE the burden of assuring compliance falls to the owner operator and generators that send HSM to off-site recycling facilities. TIP commented that the commis-

sion is more experienced and better situated to review and certify compliance with HSM legitimate recycling criteria than generators that may be influenced by costs associated with compliance and asserted that TBE also imposes additional costs on generators when sending HSM off-site for recycling. TCC and TIP urged that the commission retain VRE, not replace VRE with TBE and that the commission enhance implementation of VRE with a formal application and approval process.

Response

While the commission agrees that EPA allows state hazardous waste programs to be broader in scope than the federal program, the management standards applicable to the recycling of HSM at an off-site facility under Verified Recycler Exclusion and Transfer Based Exclusion are equivalent. Additionally, the commission acknowledges that HSM generators will assume additional costs of conducting and documenting due diligence and certifying that off-site HSM recycling facilities conduct legitimate recycling in compliance with the regulations. However, the commission has determined that repealing the Verified Recycler Exclusion and adopting the Transfer Based Exclusion would provide consistency with the federal program and offer the greatest amount of flexibility for the recycling of HSM in-state and across state lines while still being protective of human health and the environment. No changes have been made in response to this comment.

Comment

An individual requested that the commission clarify in the final rule or in the Response to Comments that hazardous secondary materials (HSM) originating in Texas are authorized to be transported to and managed at an out-of-state verified reclamation facility operating under a state-only verified recycling exclusion.

Response

A statement in the adoption preamble would not have the legal effect of authorizing HSM that is managed in compliance with the Transfer Based Exclusion to be transported to and managed at an out-of-state facility under a state-only verified recycler exclusion. The requirements of each federal HSM exclusion, as promulgated by the EPA, are not interchangeable. Because states have adopted the Verified Recycler Exclusion with changes to the vacated federal exclusion, whether HSM managed in compliance with Texas' Transfer Based Exclusion is authorized to be consigned for transportation to an out-of-state facility in compliance with a state-only Verified Recycler Exclusion necessitates a case-by-case analysis. No changes have been made in response to this comment.

Comment

TM requested sufficient notice for customers to transition from CESQ sequence numbers to VSQG sequence numbers, and to confirm that the state STEERS system will accept VSQG IDs for WRS submittals.

Response

The commission described the implementation of this requirement in the proposal preamble Section by Section Discussion for §335.503(b)(6) and (7) with a deadline to begin requiring the VSQG sequence number after January 1, 2025. The commission's implementation of Texas' hazardous waste program is informed by the floor of EPA's requirements as iterated in EPA guidance, including the use of TXCESQG and TXVSQG for the EPA ID, and thus the commission intends to allow for TXVSQG as a valid EPA ID for unregistered VQSGs in the WRS reporting. No changes have been made in response to this comment.

Comment

TM requested clarification of the applicability of the Pharmaceutical Waste Rule to their commercial hazardous and nonhazardous waste treatment, storage, and disposal facilities that stock and provide first aid supplies and over the counter medications for employees.

Response

A waste management facility maintaining first aid supplies and over the counter medications for employees does not trigger applicability of 40 CFR Part 266, Subpart P, as adopted under Chapter 335, Subchapter W. The sewerage ban prohibiting the disposal of over the counter and prescription medications by introducing those materials to the sewer is broadly applicable to all types of facilities and sewer systems. The commission's implementation of the Pharmaceutical Waste Rule is informed by the floor of the EPA's requirements as identified in EPA guidance. In the February 22, 2019 *Federal Register,* EPA's adoption preamble for the hazardous waste pharmaceutical requirements states that "this final rule does not affect how RCRA-permitted or interim status TSDFs manage hazardous waste pharmaceuticals at their facilities, except indirectly when they treat hazardous waste pharmaceuticals to meet the land disposal restrictions" (84 FR 5836). No changes have been made in response to this comment.

Comment

TM requested guidance on how pharmaceuticals will be considered legitimately used/reused or reclaimed for exclusion from the definition of solid waste.

Response

The commission's implementation of the Pharmaceutical Waste Rule is informed by the floor of EPA's requirements as iterated in EPA guidance, including the preamble of the federal promulgation of the hazardous waste pharmaceutical requirements applicable to exclusions for legitimately used/reused or reclaimed pharmaceuticals. No changes have been made in response to this comment.

SUBCHAPTER A. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE IN GENERAL

30 TAC §§335.1, 335.2, 335.6, 335.9 - 335.15, 335.18, 335.19, 335.24, 335.26, 335.27, 335.31

Statutory Authority

The amendments and new sections are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments and new sections are also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid

waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The adopted amendments and new sections implement THSC, Chapter 361.

§335.6. Notification Requirements.

(a) Notification of industrial solid waste and municipal hazardous waste activities not authorized by a permit. Any person who intends to store, process, recycle, or dispose of industrial solid waste without a permit, as authorized by §335.2(d), (f), or (h) of this title (relating to Permit Required) or §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), shall notify the executive director using a method approved by the executive director, that storage, processing, recycling, or disposal activities are planned.

(1) A person required to notify of activities under this subsection shall notify at least 90 days before conducting an activity under this subsection.

(2) A person required to notify under this section shall submit additional information, upon request, to the executive director to demonstrate that storage, processing, recycling, or disposal is compliant with the terms of this chapter, including but not limited to information listed under subsection (b)(3) of this section.

(b) Duty to notify of changed and new information. Any person who stores, processes, or disposes of municipal hazardous waste or industrial solid waste shall promptly notify the executive director using a method approved by the executive director of:

(1) any new information concerning storage, processing, and disposal described in paragraph (3) of this subsection; and

(2) any changes to information previously submitted or reported under subsection (a) of this section:

(A) authorized in any permit issued by the commission; or

(B) submitted or reported to the commission in any application filed with the commission.

(3) Information concerning storage, processing, and disposal required to be submitted under this subsection includes and is not limited to:

(A) waste composition;

(B) waste management methods;

(C) facility engineering plans and specifications; and

(D) the geology where the facility is located.

(4) A person who notifies the executive director under this section shall immediately document and notify the executive director within 90 days of changes in information previously provided and additional information that was not provided.

(c) Generator registration.

(1) Any person, by site, that generates in any calendar month more than 100 kilograms of non-acute hazardous waste, more than 1 kilogram of acute hazardous waste, or more than 100 kilograms of industrial Class 1 waste shall register in a method approved by the executive director.

(2) Large quantity generators must meet the requirements of this subsection using the electronic interface provided by the executive director unless:

(A) the executive director has granted a written request to use paper forms or an alternative notification method; or

(B) the software does not have features capable of meeting the requirements.

(3) Notifications submitted pursuant to this section shall be in addition to information provided in any permit applications required by §335.2 of this title, or any reports required by §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators), §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste), and §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste).

(4) If waste is recycled on-site or managed pursuant to §335.2(d)(1) - (4) or (6) - (9) of this title, the generator must also comply with the notification requirements specified in subsection (h) of this section.

(5) The information submitted pursuant to the notification requirements of this subchapter and to the additional requirements of §335.503 of this title (relating to Waste Classification and Waste Coding Required) shall include, but is not limited to:

(A) a description of the waste including:

(i) a description of the process generating the waste; and

(ii) the composition of the waste;

(B) a hazardous waste determination in accordance with §335.504 of this title (relating to Hazardous Waste Determination), which includes the appropriate United States Environmental Protection Agency (EPA) hazardous waste number(s) described in 40 Code of Federal Regulations (CFR) Part 261;

(C) the disposition of each solid waste generated, if subject to the notification requirement of this subsection, including:

(i) whether the waste is managed on-site and/or off-site;

(ii) a description of the type and use of each on-site waste management facility unit;

(iii) a listing of the wastes managed in each unit; and

(iv) whether each unit is permitted, or qualifies for an exemption, under §335.2 of this title.

(d) Transporter registration. Any person who transports hazardous waste or industrial Class 1 waste shall notify the executive director of such activity by registering using a method approved by the executive director. A person, by site, that generates in any calendar month less than 100 kilograms of non-acute hazardous waste, less than 1 kilogram of acute hazardous waste, and less than 100 kilograms of industrial Class 1 waste and only transports their own waste is not required to comply with this subsection.

(e) Transfer facility registration. A person that intends to operate a transfer facility in accordance with §335.94 of this title (relating to Transfer Facility Requirements) shall notify the executive director of such activity by registering using a method approved by the executive director.

(f) Waste analysis. Any person who ships, stores, processes, or disposes of industrial solid waste or hazardous waste shall provide the chemical analysis of the solid waste performed in accordance with Subchapter R of this chapter (relating to Waste Classification) to the executive director upon written request.

(g) Notification prior to facility expansion. Any person who stores, processes, or disposes of industrial solid waste or municipal hazardous waste shall notify the executive director in writing of any activity or facility expansion not authorized by permit, at least 90 days prior to conducting such activity. Such person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether such activity is compliant with this chapter.

(h) Notification of recycling activities. Any person who intends to ship off-site or transfer to another person for recycling, or who conducts or intends to conduct the recycling of, industrial solid waste, municipal hazardous waste, recyclable materials, or nonhazardous recyclable materials as defined in §335.24 of this title or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and who is required to notify under §335.24 of this title or Subchapter H of this chapter shall notify the executive director using a method approved by the executive director.

(1) A person that is required to notify under this subsection shall include, at a minimum, the following information:

(A) the type(s), classification(s), Texas waste code(s) and EPA hazardous waste number(s) described in 40 CFR Part 261, if any, of each industrial solid waste and municipal hazardous waste intended to be recycled;

(B) the method of storage prior to recycling; and

(C) the nature of the recycling activity.

(2) A person required to notify the executive director of the intent to recycle under this subsection may begin recycling activities 90 days after submitting notification of intent to recycle under this subsection if the executive director has not requested additional information in response to the notification or upon receipt of an acknowledgment from the executive director.

(i) Notification of operating under the small quantity burner exemption. The owner or operator of a facility qualifying for the small quantity burner exemption under 40 CFR §266.108 must provide a one-time signed, written notification to the EPA and to the executive director indicating the following:

(1) the combustion unit is operating as a small quantity burner of hazardous waste;

(2) the owner and operator are in compliance with the requirements of 40 CFR §266.108, §335.221(a)(19) of this title (relating to Applicability and Standards) and this subsection; and

(3) the maximum quantity of hazardous waste that the facility may burn as provided by 40 CFR §266.108(a)(1).

(j) Notification of used oil activities. Notification and regulation requirements on nonhazardous used oil, oil made characteristically hazardous by use (instead of mixing), used oil generated by a very small quantity generator, and household used oil after collection that will be recycled shall notify in accordance with Chapter 324 of this title (relating to Used Oil).

(k) Notification exemption for the disposal of animal carcasses. A landowner who disposes of domestic or exotic animal carcasses and who complies with a certified water quality management plan developed for their site under Texas Agriculture Code, §201.026(f) as added by Acts 2001, 77th Legislature, Chapter 1189, §1 (relating to Nonpoint Source Pollution) is exempt from the notification requirements of subsections (a) and (b) of this section.

(l) Healthcare facilities notification. A person required to notify the executive director under §335.755 of this title (relating to Standards for Healthcare Facilities Managing Non-Creditable Hazardous Waste Pharmaceuticals) shall notify using a method approved by the executive director.

(m) Reverse distributor registration. A person required to notify the executive director under §335.771 of this title (relating to Standards for the Management of Potentially Creditable Hazardous Waste Pharmaceuticals and Evaluated Hazardous Waste Pharmaceuticals by Reverse Distributors) shall register using a method approved by the executive director.

§335.13. Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste.

(a) The requirements of this section do not apply to a generator that generates less than 100 kilograms of Class 1 waste, 100 kilograms of hazardous waste, and 1 kilogram of acute hazardous in a calendar month, by site.

(b) An unregistered generator that ships hazardous waste or Class 1 waste shall prepare a complete and correct Waste Shipment Summary from the manifests.

(c) The Waste Shipment Summary shall be prepared in a form provided or approved by the executive director and submitted to the executive director on or before the 25th of each month for shipments originating during the previous month. An unregistered generator must keep a copy of each summary for a period of at least three years from the due date of the summary. An unregistered generator must prepare and submit a Waste Shipment Summary only for those months in which shipments are actually made.

(d) A registered generator is defined as an in-state generator who has complied with §335.6 of this title (relating to Notification Requirements) and has an active solid waste registration number.

(e) An unregistered generator is defined as an in-state generator that:

(1) does not have an active solid waste registration;

(2) in a calendar month generates more than 100 kilograms of non-acute hazardous waste, 1 kilogram of acute hazardous waste, or 100 kilograms of Class 1 waste; and

(3) ships hazardous waste and/or Class 1 industrial waste using a temporary solid waste registration number and a temporary Texas waste code that begins with a four-character sequence number assigned by the executive director.

(f) Both registered and unregistered generators shall comply with the manifest and recordkeeping requirements under §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste).

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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Deputy Director, Environmental Law Division
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♦ ♦ ♦

30 TAC §§335.6, 335.11, 335.14

Statutory Authority

The repealed rules are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The repealed rules are also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The adopted repealed rules implement THSC, Chapter 361.

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. HAZARDOUS WASTE MANAGEMENT GENERAL PROVISIONS

30 TAC §335.41, §335.46

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments are also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The adopted amendments implement THSC, Chapter 361.

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SUBCHAPTER C. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

30 TAC §§335.51 - 335.61

Statutory Authority

The new rules are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The new rules are also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The adopted new rules implement THSC, Chapter 361.

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30 TAC §§335.61 - 335.63, 335.65 - 335.71, 335.73 - 335.79

Statutory Authority

The repealed rules are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The repealed rules are also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The adopted repealed rules implement THSC, Chapter 361.

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SUBCHAPTER D. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

30 TAC §335.91, §335.94

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments are also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The adopted amendments implement THSC, Chapter 361.

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SUBCHAPTER E. INTERIM STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES

30 TAC §335.112

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and haz-

ardous waste and to adopt rules consistent with THSC, Chapter 361.

The adopted amendment implements THSC, Chapter 361.

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SUBCHAPTER F. PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES

30 TAC §335.152

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The adopted amendment implements THSC, Chapter 361.

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SUBCHAPTER H. STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND SPECIFIC TYPES OF FACILITIES
DIVISION 2. HAZARDOUS WASTE BURNED FOR ENERGY RECOVERY

30 TAC §335.221

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The adopted amendment implements THSC, Chapter 361.

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DIVISION 3. RECYCLABLE MATERIALS UTILIZED FOR PRECIOUS METAL RECOVERY

30 TAC §335.241

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

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DIVISION 4. SPENT LEAD-ACID BATTERIES BEING RECLAIMED

30 TAC §335.251

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The adopted amendment implements THSC, Chapter 361.

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DIVISION 5. UNIVERSAL WASTE RULE

30 TAC §335.261

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The adopted amendment implements THSC, Chapter 361.

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DIVISION 6. MILITARY MUNITIONS

30 TAC §335.272

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The adopted amendment implements THSC, Chapter 361.

§335.272. Standards.

(a) The regulations contained in 40 Code of Federal Regulations (CFR) Part 266 Subpart M, as amended in the *Federal Register* through February 12, 1997 (at 62 FR 6622) are adopted by reference, subject to the changes indicated in subsection (b) of this section.

(b) Reference to:

(1) August 12, 1997 is changed to the effective date of this rule;

(2) 40 CFR Parts 260 - 270 means the commission's rules including, but not limited to, Chapter 50 of this title (relating to Action on Applications and Other Authorizations), Chapter 305 of this title (relating to Consolidated Permits), and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), as applicable;

(3) 40 CFR Parts 260 - 279 means the commission's rules including, but not limited, to Chapter 50 of this title, Chapter 305 of this title, Chapter 328 of this title (relating to Waste Minimization and Recycling), and Chapter 335 of this title, as applicable;

(4) 40 CFR §260.10 is changed to §335.1 of this title (relating to Definitions);

(5) 40 CFR §261.2 is changed to the definition of "solid waste" in §335.1 of this title);

(6) 40 CFR §262.10(i) means as this section is adopted by reference under §335.52 of this title (relating to Purpose, Scope, and Applicability);

(7) 40 CFR §263.10(e) means as this section is adopted under §335.91(f) of this title (relating to Scope);

(8) 40 CFR §§264.1(g)(8), 265.1(c)(11), and 270.1(c)(3) are changed to §335.41(d)(2) of this title (relating to Hazardous Waste Management General Provisions);

(9) 40 CFR §270.61 is changed to §35.402 of this title (related to Emergency Actions Concerning Hazardous Waste);

(10) Resource Conservation and Recovery Act (RCRA) §1004(27) is changed to Texas Health and Safety Code (THSC), §361.003(34) (related to the definition of Solid Waste);

(11) RCRA §3004(u) is changed to Texas Water Code (TWC), §7.031(a) and (b) (relating to Corrective Action Relating to Hazardous Waste);

(12) RCRA §3008(h) is changed to TWC, §7.031(c) - (e) (relating to Corrective Action Relating to Hazardous Waste);

(13) RCRA §7003 is changed to THSC, §361.272 (relating to Administrative Orders Concerning Imminent and Substantial Endangerment), THSC, §361.273 (relating to Injunction as Alternative to Administrative Order), THSC, §361.301 (relating to Emergency Order), TWC, §26.121, (relating to Unauthorized Discharges Prohibited).

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SUBCHAPTER O. LAND DISPOSAL RESTRICTIONS

30 TAC §335.431

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The adopted amendment implements THSC, Chapter 361.

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SUBCHAPTER Q. POLLUTION PREVENTION: SOURCE REDUCTION AND WASTE MINIMIZATION

30 TAC §§335.471, 335.474, 335.477

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments are also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

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SUBCHAPTER R. WASTE CLASSIFICATION

30 TAC §§335.503, 335.504, 335.510, 335.511, 335.513, 335.521

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments are also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

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SUBCHAPTER T. PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF COMMERCIAL INDUSTRIAL NONHAZARDOUS WASTE LANDFILL FACILITIES

30 TAC §335.590

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commis-

sion authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The adopted amendment implements THSC, Chapter 361.

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SUBCHAPTER U. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARD PERMIT

30 TAC §335.602

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The adopted amendment implements THSC, Chapter 361.

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Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: February 3, 2022
Proposal publication date: July 30, 2021
For further information, please call: (512) 239-2678

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SUBCHAPTER V. STANDARDS FOR RECLAMATION OF HAZARDOUS SECONDARY MATERIALS

30 TAC §335.702, §335.703

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments are also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The adopted amendments implement THSC, Chapter 361.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2022.

TRD-202200150
Guy Henry
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: February 3, 2022
Proposal publication date: July 30, 2021
For further information, please call: (512) 239-2678

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SUBCHAPTER W. MANAGEMENT STANDARDS FOR HAZARDOUS WASTE PHARMACEUTICALS

30 TAC §§335.751, 335.753, 335.755, 335.757, 335.759, 335.761, 335.763, 335.765, 335.767, 335.769, 335.771

Statutory Authority

The new rules are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The new rules are also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The adopted new rules implement THSC, Chapter 361.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2022.

TRD-202200151
Guy Henry
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: February 3, 2022
Proposal publication date: July 30, 2021
For further information, please call: (512) 239-2678

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER F. COOPERATION WITH THE TEXAS ANIMAL HEALTH COMMISSION

37 TAC §4.81

The Texas Department of Public Safety (the department) adopts new §4.81, concerning Cooperation with the Texas Animal Health Commission Regarding Enforcement of Entry Requirements. This rule is adopted without changes to the proposed text as published in the July 30, 2021, issue of the *Texas Register* (46 TexReg 4678) and will not be republished.

The new rule satisfies the requirements of Texas Agricultural Code, §161.051 which directs the department and the Texas Animal Health Commission to adopt a memorandum of understanding that includes provisions under which officers of the department check for health papers and permits when a livestock vehicle is stopped for other reasons in the regular course of the officers' duties.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference and Texas Agriculture Code, §161.051 which authorizes the department adopt a joint memorandum of understanding with the agricultural commission that includes provisions to check for health papers and permits when a livestock vehicle is stopped for other reasons in the regular course of an officer's duties.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 10, 2022.

TRD-202200044
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: January 30, 2022
Proposal publication date: July 30, 2021
For further information, please call: (512) 424-5848

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Texas

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 105, Foundation School Program, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by TEA in 19 TAC Chapter 105 are organized under Subchapter AA, Commissioner's Rules Concerning Optional Extended Year Program; Subchapter BB, Commissioner's Rules Concerning Charter School Funding; and Subchapter CC, Commissioner's Rules Concerning Severance Payments.

As required by the Texas Government Code, §2001.039, TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 105, Subchapters AA-CC, continue to exist.

The public comment period on the review of 19 TAC Chapter 105, Subchapters AA-CC, begins January 28, 2022, and ends February 28, 2022. A form for submitting public comments on the proposed rule review is available on the TEA website at https://tea.texas.gov/about-tea/laws-and-rules/commissioner-rules-tac/commissioner-of-education-rule-review.

TRD-202200199
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: January 19, 2022

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Texas Groundwater Protection Committee

Title 31, Part 18

The Texas Groundwater Protection Committee (TGPC or committee) files this notice of intention to review and proposes the readoption of Chapter 601, Groundwater Contamination Report.

This review of Chapter 601 is proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist.

CHAPTER SUMMARY

The TGPC was created by the 71st Texas Legislature in 1989 to bridge gaps between existing state groundwater programs and to optimize water quality protection by improving coordination among agencies involved in groundwater activities. The committee's rules in Chapter 601 define the conditions that constitute groundwater contamination for purposes of inclusion of cases in the public files for each state agency having responsibilities related to the protection of groundwater. These rules also describe the contents of the committee's Joint Groundwater Monitoring and Contamination Report ("Joint Report") required under Texas Water Code (TWC), §26.406, which must be published no later than April 1st of each year and document the activities and findings of the committee made during the previous calendar year. The Joint Report must describe the current status of groundwater monitoring activities conducted by or required by each agency at regulated facilities or associated with regulated activities; contain a description of each case of groundwater contamination documented during the previous calendar year; describe each case of contamination for which enforcement action was incomplete at the time of issuance of the preceding Joint Report; and indicate the status of enforcement actions for each case of contamination listed in the Joint Report. The rules also specify the form and content of notices of groundwater contamination that must be mailed to each owner of a private drinking water well that may be affected by documented cases of groundwater contamination and to each applicable groundwater conservation district as directed by TWC, §26.408.

PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The committee conducted a preliminary review and determined that the reasons for the rules in Chapter 601 continue to exist. Chapter 601 is necessary because TWC, §26.406 specifically provides that the committee must adopt rules defining the conditions that constitute groundwater contamination for purposes of inclusion of cases in the public files and the Joint Report required by TWC, §26.406, while TWC, §26.408 specifically directs the committee to designate the form and content of the notice of groundwater contamination mailed to owners of private drinking water wells and to groundwater conservation districts. To meet these statutory requirements, the rules provide the definitions and applicability for maintaining public files on groundwater contamination cases and contents of the annual Joint Report required by TWC, §26.406(d) and the form and content of the mailed notice required by TWC, §26.408(c).

PUBLIC COMMENT

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039. The committee invites public comment on whether the reasons for the rules in Chapter 601 continue to exist. Comments may be submitted to Gwen Ricco, MC-205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference TGPC-Groundwater Contamination Report Quadrennial Rule Review. Comments must be received by 5:00 p.m., March 1, 2022. For further information or

questions concerning this proposal, please contact Kelly Mills, Designated Chairman, Texas Groundwater Protection Committee, at (512) 239-4512.

TRD-202200189
Guy Henry
Deputy Director, Environmental Quality Division
Texas Groundwater Protection Committee
Filed: January 18, 2022

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Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 103, Health and Safety, Subchapter AA, Commissioner's Rules Concerning Physical Fitness; Subchapter BB, Commissioner's Rules Concerning General Provisions for Health and Safety; Subchapter CC, Commissioner's Rules Concerning School Safety and Discipline; and Subchapter DD, Commissioner's Rules Concerning Video Surveillance of Certain Special Education Setting, pursuant to the Texas Government Code, §2001.039. TEA proposed the review of 19 TAC Chapter 103, Subchapters AA-DD, in the January 10, 2020 issue of the *Texas Register* (45 TexReg 385).

Relating to the review of 19 TAC Chapter 103, Subchapter AA, TEA finds that the reasons for adopting Subchapter AA continue to exist and readopts the rules. TEA received no comments related to the review of Subchapter AA. At a later date, TEA anticipates proposing updates to §103.1003, Student Physical Activity Requirements and Exemptions, to align with the new strands for physical education Texas Essential Knowledge and Skills adopted in 2020.

Relating to the review of 19 TAC Chapter 103, Subchapter BB, TEA finds that the reasons for adopting Subchapter BB do not continue to exist. TEA received no comments related to the review of Subchapter BB. At a later date, TEA anticipates proposing the repeal of Subchapter BB.

Relating to the review of 19 TAC Chapter 103, Subchapter CC, TEA finds that the reasons for adopting §§103.1201, 103.1203, and 103.1207 continue to exist and readopts the rules. TEA found that the reasons did not exist for §103.1205, Pilot Program for Placement of Students in Junior Reserve Officers Training Corps (JROTC) Program, and repealed the rule effective July 6, 2021 (46 TexReg 4024). TEA received no comments related to the review of Subchapter CC. No changes are necessary as a result of the review.

Relating to the review of 19 TAC Chapter 103, Subchapter DD, TEA finds that the reasons for adopting Subchapter DD continue to exist and readopts the rules. Following are the comments received related to the review of Subchapter DD and the corresponding responses.

Comment: One individual recommended revising 19 TAC §103.1301(g)(7) to specify that a school district's policies relating to the placement, operation, and maintenance of video cameras should include the procedures for a request to view or listen to a video or audio recording and responding to the request.

Response: The agency disagrees. Section 103.1301(h) implements TEC, §29.022(i), which addresses the requirements for the release and viewing of video recordings with which school districts, open-enrollment charters schools, and campuses must comply, regardless of the existence of local policies.

Comment: One individual recommended revising §103.1301(g)(9) to read, "be operated at all times when a student or students are present in a self-contained classroom or other special education setting." The commenter explained that there are times when a student or students may be in a classroom or setting that is not a part of the instructional day and that the need for video coverage is needed for these times as well. In addition, the commenter noted that the rule should also apply when a single student is in a self-contained classroom or other special education setting.

Agency Response: The agency disagrees. The operation of video cameras under TEC, §29.022(b), is limited to the instructional day, and the rule already addresses the presence of a single student.

Comment: One individual recommended adding new language in §103.1301(g) that would read, "a requirement that, if for any reason the school or campus will discontinue operation of a video camera during a school year, not later than the fifth school day before the date the operation of the video camera will be discontinued, the school or campus must notify the parents of each student in regular attendance in the classroom or setting that operation of the video camera will not continue unless requested by a person eligible to make a request under §29.022(a-1). If an eligible person makes a request, the school or campus may not discontinue operation of the video camera." The commenter noted that the added language is a statutory requirement found in TEC, §29.022(b).

Agency Response: The agency disagrees. The statutory provisions at issue are addressed by subsection §103.1301(g)(8).

Comment: One individual recommended adding language in §103.1301(g) that would read, "a requirement that, not later than the 10th school day before the end of each school year, the school or campus must notify the parents of each student in regular attendance in the classroom or setting that operation of the video camera will not continue during the following school year unless a person eligible to make a request for the next school year under §29.022(a-1) submits a new request." The commenter noted that the added language is a statutory requirement found in TEC, §29.022(b).

Agency Response: The agency disagrees. The statutory provisions at issue are addressed by subsection §103.1301(g)(8).

Comment: One individual recommended revising §103.1303(b)(7)(B) to replace the sentence "Any request for an expedited review shall include the names, telephone numbers, and addresses of all interested parties to the request" with the sentence "In response to a request for an expedited review, the school district shall provide to the agency the names, telephone numbers, and addresses of all interested parties to the request." The commenter noted that some individuals who may be entitled to an expedited review may not know or have access to all of the currently required information and that TEA should not deny an individual an expedited review because of the individual's lack of access to the information.

Agency Response: The agency disagrees. The sooner interested parties are identified, the less time the process will take. A failure to list an interested party does not result in the dismissal of a case. Section 103.1303(b)(7)(E) directs all interested parties to list any additional interested parties that were not notified. If the initial listing of interested parties is lacking, it will be cured by the listed interested parties identifying additional interested parties.

No changes are necessary as a result of the review of Subchapter DD.

This concludes the review of 19 TAC Chapter 103.

TRD-202200201

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: January 19, 2022

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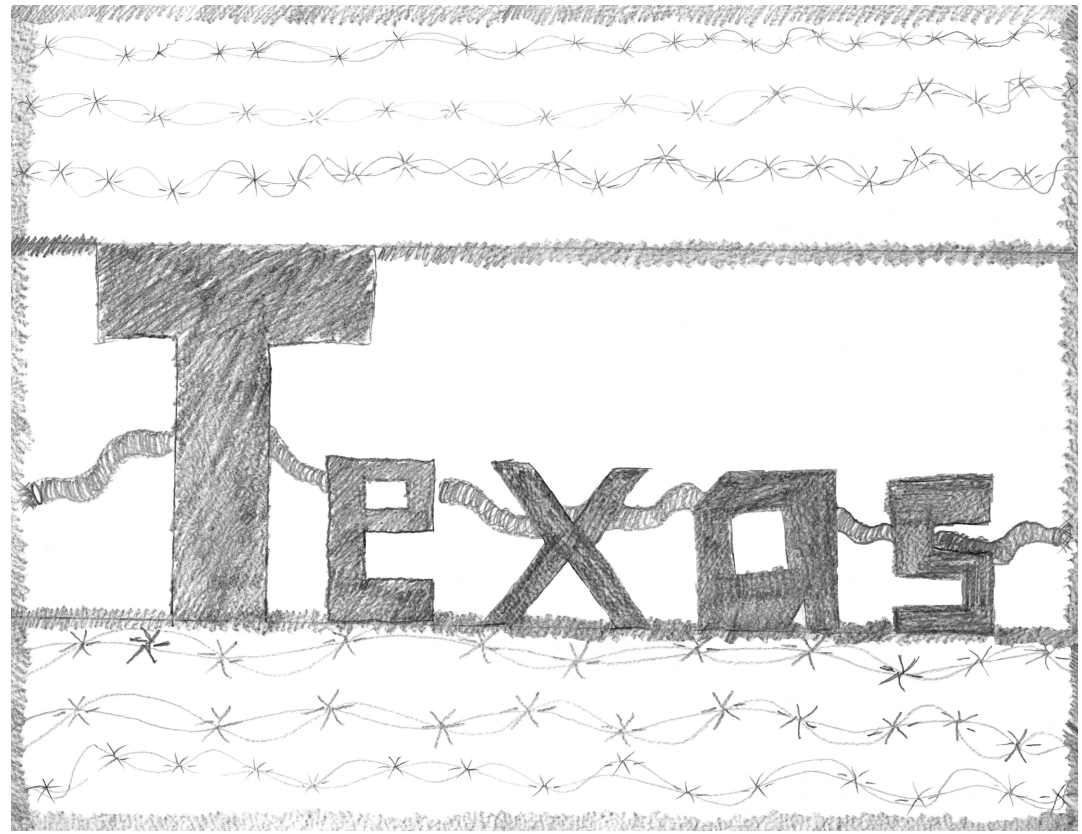
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IN ADDITION

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.

Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - December 2021

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period December 2021 is $53.18 per barrel for the three-month period beginning on September 1, 2021, and ending November 30, 2021. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of December 2021, from a qualified low-producing oil lease, is not eligible for credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period December 2021 is $3.73 per mcf for the three-month period beginning on September 1, 2021, and ending November 30, 2021. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of December 2021, from a qualified low-producing well, is not eligible for credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of December 2021 is $71.69 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of December 2021, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of December 2021 is $3.86 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of December 2021, from a qualified low-producing gas well.

Inquiries should be submitted to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

This agency hereby certifies that legal counsel has reviewed this notice and found it to be within the agency's authority to publish.

Issued in Austin, Texas, on January 14, 2022.

TRD-202200157
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: January 14, 2022

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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 01/24/22 - 01/30/22 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/24/22 - 01/30/22 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 02/01/22 - 02/28/22 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 02/01/22 - 02/28/22 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-202200190
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 18, 2022

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Credit Union Department

Applications for a Merger or Consolidation

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration:

An application was received from East Texas Professional Credit Union (Longview) seeking approval to merge with North East Texas Credit Union (Lone Star), with East Texas Professional Credit Union being the surviving credit union.

An application was received from Space City Credit Union (Houston) seeking approval to merge with Brazosport Teachers Federal Credit Union (Clute), with Space City Credit Union being the surviving 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. 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-202200197
John J. Kolhoff
Commissioner
Credit Union Department
Filed: January 19, 2022

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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 application:

Application to Expand Field of Membership - Approved

Credit Union of Texas, Allen, Texas - See *Texas Register* dated August 27, 2021.

TRD-202200194
John J. Kolhoff
Commissioner
Credit Union Department
Filed: January 19, 2022

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code, (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 1, 2022.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **March 1, 2022.** 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: 3J2K LLC dba Quick Time 2; DOCKET NUMBER: 2021-1039-PST-E; IDENTIFIER: RN101897999; LOCATION: San Augustine, San Augustine County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(B), (2)(A)(i)(III), and (iii), and (d)(1)(B)(ii) and TWC, §26.3475(c)(1) and (a), by failing to monitor the underground storage tanks installed on or after January 1st 2009, in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring, failing to conduct reconciliation of detailed inventory control records at least once every 30 days in a manner sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the 30-day period plus 130 gallons, also, failing to test the line leak detector at least once per year for performance and operational reliability, and, furthermore, failing to monitor each pressurized pipe installed on or after January 1, 2009, for releases at a frequency of at least once every 30 days by using interstitial monitoring; PENALTY: $6,825; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Aqua Texas, Incorporated; DOCKET NUMBER: 2021-0476-MWD-E; IDENTIFIER: RN101525715; LOCATION: Spicewood, Travis County; TYPE OF FACILITY: wastewater treatment facility and disposal site; RULES VIOLATED: 30 TAC §305.125(1) and TCEQ Permit Number WQ0013477001, Monitoring Requirements Number 7.a, by failing to report an unauthorized discharge in writing to the Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance; 30 TAC §305.125(1) and TCEQ Permit Number WQ0013477001, Special Provisions Number 15, by failing to install permanent transmission lines from the holding pond to each tract of land to be irrigated; 30 TAC §305.125(1) and (5), and TCEQ Permit Number WQ0013477001, Operational Requirements Number 1 and Special Provisions Number 16, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and (5) and TCEQ Permit Number WQ0013477001, Special Provisions Number 4, by failing to design and manage the irrigation area to prevent ponding or surfacing of effluent or contamination of ground and surface waters and to prevent nuisance conditions; 30 TAC §305.125(1) and (5), TWC, §26.121(a)(2), and TCEQ Permit Number WQ0013477001, Operational Requirements Number 1, Special Provisions Number 7, and Permit Conditions 2.g, by failing to maintain a minimum freeboard of two feet in the storage pond, and failing to prevent an unauthorized discharge of treated wastewater into or adjacent to any water in the state; and 30 TAC §305.125(1) and (5), TWC, §26.121(a)(2), and TCEQ Permit Number WQ0013477001, Effluent Limitations and Monitoring Requirements A and Special Provision Number 11, by failing to monitor chlorine residual in the effluent at the point of irrigation application; PENALTY: $41,812; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(3) COMPANY: BUDDY GROUP, INCORPORATED dba BUDDY; DOCKET NUMBER: 2021-1060-PST-E; IDENTIFIER: RN101492155; LOCATION: Marble Falls, Burnet County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all recordkeeping requirements are met; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $3,575; ENFORCEMENT COORDINATOR: Sarah Smith, (512) 239-4495; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(4) COMPANY: City of Wallis; DOCKET NUMBER: 2021-0014-MWD-E; IDENTIFIER: RN101916245; LOCATION: Wallis, Austin 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 WQ0010765001, Interim Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limitations; PENALTY: $14,375; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $14,375; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512)

239-1001; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: General Motors LLC; DOCKET NUMBER: 2021-1265-AIR-E; IDENTIFIER: RN102505963; LOCATION: Arlington, Tarrant County; TYPE OF FACILITY: automobile manufacturing plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and 122.143(4), Federal Operating Permit (FOP) Number O1551, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 2.F, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; and 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 19156, Special Conditions Number 1, FOP Number O1151, GTC and STC Number 10, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $5,193; ENFORCEMENT COORDINATOR: Kate Dacy, (512) 239-4593; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Gonzalez, Jacob E.; DOCKET NUMBER: 2021-1583-PWS-E; IDENTIFIER: RN108893256; LOCATION: El Campo, Wharton County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Ecko Beggs, (915) 834-4938; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Hurtado Contstruction Company; DOCKET NUMBER: 2022-0050-WR-E; IDENTIFIER: RN111322947; LOCATION: Richmond, Fort Bend County; TYPE OF FACILITY: operator; RULES VIOLATED: 30 TAC §297.11 and TWC, §11.081 and §11.121, by failing to obtain prior authorization prior to diverting, storing, importing, and using state water, or beginning construction of any work designed for the storage, taking or diversion of water; PENALTY: $350; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Miramar Brands Incorporated dba 7-Eleven 36320; DOCKET NUMBER: 2021-1177-PST-E; IDENTIFIER: RN102482098; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $3,937; ENFORCEMENT COORDINATOR: Courtney Gooris, (512) 239-1118; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2021-1053-AIR-E; IDENTIFIER: RN100225945; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 107153, PSDTX1328M2, N260, and GHGPSDTX38M1, Special Conditions Number 1, Federal Operating Permit Number O3949, General Terms and Conditions and Special Terms and Conditions Number 19, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $4,875; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $1,950; ENFORCEMENT COORDINATOR: Richard Garza, (512) 534-5859; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 764-3500.

(10) COMPANY: West Harris County Municipal Utility District 10; DOCKET NUMBER: 2020-1585-MWD-E; IDENTIFIER: RN101609790; LOCATION: Houston, Harris 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 WQ0014072001, Effluent Limitations and Monitoring Requirement Number 1, by failing to comply with permitted effluent limitations; PENALTY: $35,750; ENFORCEMENT COORDINATOR: Ellen Ojeda, (512) 239-2581; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 764-3500.

TRD-202200160
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: January 14, 2022

♦ ♦ ♦

Amended Notice of Hearing (To change hearing date.) on Marbac, L.L.C.: SOAH Docket No. 582-21-2735; TCEQ Docket No. 2021-0438-MWD; Permit No. WQ0015880001

APPLICATION.

Marbac, L.L.C., 9803 Highway 242, Suite 200-134, Conroe, Texas 77385, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015880001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 99,000 gallons per day. TCEQ received this application on April 6, 2020.

The facility will be located at 17431 Farm-to-Market Road 1314, in Montgomery County, Texas 77302. The treated effluent will be discharged to a man-made channel; thence to an unnamed tributary; thence to West Fork San Jacinto River in Segment No. 1004 of the San Jacinto River Basin. The unclassified receiving water use is minimal aquatic life use for the man-made channel. The designated uses for Segment No. 1004 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code §307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-95.34147%2C30.198416&level=12. For the exact location, refer to the application.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Montgomery County Clerk, 210 West Davis Street, Suite 100, Conroe, Texas.

CONTESTED CASE HEARING.

Considering directives to protect public health, the State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - February 28, 2022

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 161 803 1228

Password: TPDES1

or

To join the Zoom meeting via telephone:

(669) 254-5252 or (646) 828-7666

Meeting ID: 161 803 1228

Password: 440494

Visit the SOAH website for registration at: http://www.soah.texas.gov/ or call SOAH at (512) 475-4993.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on May 26, 2021. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the 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.

Further information may also be obtained from Marbac, L.L.C. at the address stated above or by calling Mr. Justin Baca at (713) 992-2907.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: January 14, 2022

TRD-202200159

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 14, 2022

♦ ♦ ♦

Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant With Enhanced Controls: Proposed Air Quality Registration Number 167377

APPLICATION. Listocon Group LLC, 2060 West Commerce Street, Dallas, Texas 75208-8025 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a permanent Concrete Batch Plant with Enhanced Controls Registration Number 167377 to authorize the operation of a concrete batch plant. The facility is proposed to be located at 3080 South Belt Line Road, Dallas, Dallas County, Texas 75253. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.658778&lng=-96.615417&zoom=13&type=r. This application was submitted to the TCEQ on December 10, 2021. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on December 29, 2021.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Wednesday, February 16, 2022, at 6:00 p.m.

Members of the public who would like to ask questions or provide comments during the hearing may access the hearing via webcast by following this link: https://www.gotomeeting.com/webinar/join-webinar and entering Webinar ID 426-725-931. It is recommended that you join the webinar and register for the public hearing at least 15 minutes before

the hearing 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 hearing to register for the hearing and to obtain information for participating telephonically. Members of the public who wish to only listen to the hearing may call, toll free, (415) 655-0060 and enter access code 645-245-106. 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.

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Dallas/Fort Worth Regional Office, located at 2309 Gravel Drive, Fort Worth, Texas 76118-6951, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Listocon Group LLC, 2060 West Commerce Street, Dallas, Texas 75208-8025, or by calling Ms. Ida Rodriquez, Permit Consultant at (972) 670-2841.

Notice Issuance Date: January 12, 2022

TRD-202200117
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 14, 2022

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Notice of Availability of the Draft 2022 Texas Integrated Report of Surface Water Quality for the Federal Clean Water Act, §305(b) and §303(d)

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft 2022 Texas Integrated Report of Surface Water Quality (IR). The IR is developed as a requirement of the federal Clean Water Act (CWA), §305(b) and §303(d). It is an overview of the status of surface waters in the state. Factors considered in evaluating the status of water bodies include concerns for public health, viability for use by aquatic species and other wildlife, and specific pollutants and their potential sources. The IR includes summaries of water bodies that do not support beneficial uses or water quality criteria or are otherwise a cause for concern. It is used by TCEQ to support water quality management activities, including monitoring, water quality standards revisions, total maximum daily loads, watershed protection plans, and best management practices to control pollution sources.

Draft 2022 IR Information

The draft 2022 IR will be available January 28, 2022, on TCEQ's website at *https://www.tceq.texas.gov/waterquality/assessment/public_comment.* Information regarding the public comment period may also be found on this website. Review of and comment on individual waterbodies and their summaries, as described in the draft 2022 IR contained on this website, are encouraged throughout the comment period that ends on March 1, 2022.

After the public comment period ends, TCEQ will evaluate all additional data or information received. Changes made in response to any additional data or information submitted will be reflected in the draft 2022 IR that will be submitted to the United States Environmental Protection Agency (EPA) for approval.

Public Comments

TCEQ will consider and respond to comments received during the comment period in a "Response to Comments" document. The Response to Comments and draft 2022 IR will be posted on the website when TCEQ sends the draft 2022 IR to EPA. Written comments must be received by 5:00 p.m. on March 1, 2022. Comments must be submitted in writing via e-mail, post, or special delivery and will not be accepted by phone.

E-mail comments to *303d@tceq.texas.gov.* Individuals unable to access the documents on TCEQ's website may contact Andrew Sullivan by mail at Texas Commission on Environmental Quality, Water Quality Planning Division, MC 234, P.O. Box 13087, Austin, Texas 78711-3087, or telephone at (512) 239-4587.

TRD-202200191
Guy Henry
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 18, 2022

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Notice of Correction to Agreed Order Number 12

In the October 22, 2021, issue of the *Texas Register* (46 TexReg 7238), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 12, for Kenmark Homes LP, Docket Number 2021-1284-WQ-E. The error is as submitted by the commission.

The reference to the Company should be corrected to read: "Kenmark Homes, LP."

The identifier should be corrected to read: "RN111284949"

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202200161
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: January 14, 2022

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Notice of Correction to Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions Agreed Order Number 1

In the July 2, 2021, issue of the *Texas Register* (46 TexReg 4039), the Texas Commission on Environmental Quality (commission) published notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions, specifically Item Number 1, for DANAM

ENTERPRISES INC. dba Hildebrand Grocery, Docket Number 2018-0728-PST-E. The error is as submitted by the commission.

The reference to the penalty should be corrected to read: "$12,396."

For questions concerning these errors, please contact Clayton Smith at (512) 239-6224.

TRD-202200172
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: January 18, 2022

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Notice of Final Action on the Alternative Method of Control for the Hazardous Organic National Emissions Standards for Hazardous Air Pollutants

The Texas Commission on Environmental Quality (TCEQ) has made a final determination regarding an Alternative Method of Control (AMOC) for the Hazardous Organic National Emissions Standards for Hazardous Air Pollutants under the requirements of 40 Code of Federal Regulations (CFR) §63.102(b).

Summary: On September 30, 2021, Covestro LLC (Covestro) requested an AMOC under the federal Clean Air Act. Covestro requested approval to substitute a closed system and control with a thermal oxidizer in lieu of the requirements in 40 CFR §63.135(c) to use a submerged fill pipe for a wastewater tank in the TDI Train's TDA Unit at the Baytown Complex located in Chambers County, Texas. The submerged fill pipe required by the rule controls emissions by 65%, while the alternative requested will control emissions by 95%, resulting in greater emissions control than required. The preliminary determination and opportunity for comment or hearing was published in the Texas Register on November 19, 2021, and the comment period closed December 22, 2021. With this notice, the TCEQ is taking final action to approve the AMOC request and the resulting alternative operating conditions necessary to achieve a reduction in emissions of Volatile Organic Compounds (VOC) at least as equivalent to the reduction in emissions required by 40 CFR §61.302(b).

For further information, please contact Anne Inman, P.E., Operating Support Section, Air Permits Division, TCEQ (512) 239-1276.

TRD-202200178
Guy Henry
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 18, 2022

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Notice of Hearing on Christopher Rodriguez: SOAH Docket No. 582-22-1014; TCEQ Docket No. 2021-1434-LIC

APPLICATION.

Christopher Rodriguez, 1000 East Burnett Street, Apartment 44, Ennis, Texas 75044, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Water Operator License. The Executive Director denied Mr. Rodriguez's application for cause. Mr. Rodriguez has requested a formal hearing on the Executive Director's decision. During the review of Mr. Rodriguez's application, the Executive Director discovered that Mr. Rodriguez received deferred adjudication for a Class A Misdemeanor and a Third-Degree Felony. The Executive Director denied Mr. Rodriguez's application because he was convicted of a misdemeanor and a felony that directly relate to the duties and responsibilities of the licensed occupation.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - February 10, 2022

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 161 352 4635

Password: WPz74H

or

To join the Zoom meeting via telephone:

(669) 254-5252

Meeting ID: 161 352 4635

Password: 421921

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, provide an opportunity for settlement discussions, and address other matters as determined by the administrative law judge. The preliminary hearing will be held unless all timely hearing requests are withdrawn or the parties agree to waive the preliminary hearing.

The evidentiary phase of the contested case hearing, to be held at a later date, will be a legal proceeding similar to a civil trial in state district court to determine whether Mr. Rodriguez should be issued a Water Operator License. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **If Christopher Rodriguez fails to appear at the preliminary hearing or evidentiary hearing, the Executive Director will request that the hearing be canceled, and that appeal of the Executive Director's decision be dismissed.**

SOAH's rules allow for participation by telephone or videoconference. Permission must be obtained from SOAH at least ten days before the hearing.

Legal Authority: Texas Water Code Chapters 5 and 37; Texas Occupations Code Chapter 53; Texas Government Code, Chapter 2001; 30 Texas Administrative Code (TAC) Chapter 30, and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapters 70 and 80 and 1 TAC Chapter 155.

INFORMATION.

For information concerning the hearing process, please contact the TCEQ Office of Public Interest Counsel, MC 103, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6363. Further information regarding this hearing may be obtained by contacting Alicia Ramirez, Staff Attorney, TCEQ, Environmental Law Division, MC 173, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0133. General information about the TCEQ can be found at our website at www.tceq.texas.gov. General information about SOAH can be found on its website at www.soah.texas.gov/index.asp, or by calling (512) 475-4993.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address:

TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: January 12, 2022

TRD-202200080
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 13, 2022

♦ ♦ ♦

Notice of Hearing on City of Brackettville and Fort Clark Municipal Utility District: SOAH Docket No. 582-22-1171; TCEQ Docket No. 2021-1215-MWD; Permit No. WQ0010194002

APPLICATION.

City of Brackettville and Fort Clark Municipal Utility District, P.O. Box 526, Brackettville, Texas 78832, have applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010194002 to authorize the addition of four holding ponds to attenuate effluent flow and to increase the irrigation area from 40 acres to 92 acres. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallon per day (gpd) (November-March) and 183,000 gpd (April-October). The draft permit also authorizes the disposal of treated domestic wastewater via irrigation of 92 acres. TCEQ received this application on May 18, 2020.

The facility and the disposal site are located approximately 2.3 miles south of the intersection of State Highway 131 and U.S. Highway 90 and 0.75 mile west of State Highway 131, in Kinney County, Texas 78832. The treated effluent is discharged to Las Moras Creek, thence to the Rio Grande Below Amistad Reservoir in Segment No. 2304 of the Rio Grande Basin. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-100.425%2C29.274444&level=12. For the exact location, refer to the application.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Brackettville City Hall, 119 West Spring Street, Brackettville, Texas.

CONTESTED CASE HEARING.

Considering directives to protect public health, the State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - March 2, 2022

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 161 038 8685

Password: 4RK2gd

or

To join the Zoom meeting via telephone:

(669) 254-5252 or (646) 828-7666

Meeting ID: 161 038 8685

Password: 519726

Visit the SOAH website for registration at: http://www.soah.texas.gov/

or call SOAH at (512) 475-4993.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on November 29, 2021. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 Texas Administrative Code (TAC) Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the 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.

Further information may also be obtained from City of Brackettville and Fort Clark Municipal Utility District at the address stated above or by calling Ms. Nora Rivas, at (830) 563-2412.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: January 12, 2022

TRD-202200078
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 12, 2022

♦ ♦ ♦

Notice of Hearing on Ethan Williams: SOAH Docket No. 582-22-0586; TCEQ Docket No. 2021-1229-LIC

APPLICATION.

Ethan Williams, 113 4th Street, Whitesboro, Texas 76273, has applied to the Texas Commission on Environmental Quality (TCEQ) for an OSSF Apprentice License. The Executive Director denied Mr. Williams's application for cause. Mr. Williams has requested a formal hearing on the Executive Director's decision. During the review of Mr. Williams's application, the Executive Director discovered that Mr. Williams has received deferred adjudication for three Class A Misdemeanors occurring in 2013, 2014, and 2016. The Executive Director denied Mr. Williams's application because he considers him to have been convicted of offenses that directly relate to the duties and responsibilities of the licensed occupation.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - February 10, 2022

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 161 352 4635

Password: WPz74H

or

To join the Zoom meeting via telephone:

(669) 254-5252

Meeting ID: 161 352 4635

Password: 421921

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, provide an opportunity for settlement discussions, and address other matters as determined by the administrative law judge. The preliminary hearing will be held unless all timely hearing requests are withdrawn or the parties agree to waive the preliminary hearing.

The evidentiary phase of the contested case hearing, to be held at a later date, will be a legal proceeding similar to a civil trial in state district court to determine whether Mr. Williams should be issued an OSSF Apprentice License. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **If Ethan Williams fails to appear at the preliminary hearing or evidentiary hearing, the Executive Director will request that the hearing be canceled, and that appeal of the Executive Director's decision be dismissed.**

SOAH's rules allow for participation by telephone or videoconference. Permission must be obtained from SOAH at least ten days before the hearing.

Legal Authority: Texas Water Code Chapters 5 and 37; Texas Occupations Code Chapter 53; Texas Government Code, Chapter 2001; 30 Texas Administrative Code (TAC) Chapter 30, and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapters 70 and 80 and 1 TAC Chapter 155.

INFORMATION.

For information concerning the hearing process, please contact the TCEQ Office of Public Interest Counsel, MC 103, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6363. Further information regarding this hearing may be obtained by contacting Hollis Henley, Staff Attorney, TCEQ, Environmental Law Division, MC 173, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2253. General information about the TCEQ can be found at our website at www.tceq.texas.gov. General information about SOAH can be found on its website at www.soah.texas.gov/index.asp, or by calling (512) 475-4993.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: January 12, 2022

TRD-202200081
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 13, 2022

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Notice of Hearing on Marbac, L.L.C.: SOAH Docket No. 582-21-2735; TCEQ Docket No. 2021-0438-MWD; Permit No. WQ0015880001

APPLICATION.

Marbac, L.L.C., 9803 Highway 242, Suite 200-134, Conroe, Texas 77385, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015880001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 99,000 gallons per day. TCEQ received this application on April 6, 2020.

The facility will be located at 17431 Farm-to-Market Road 1314, in Montgomery County, Texas 77302. The treated effluent will be discharged to a man-made channel; thence to an unnamed tributary; thence to West Fork San Jacinto River in Segment No. 1004 of the San Jacinto River Basin. The unclassified receiving water use is

minimal aquatic life use for the man-made channel. The designated uses for Segment No. 1004 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code §307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-95.34147%2C30.198416&level=12. For the exact location, refer to the application.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Montgomery County Clerk, 210 West Davis Street, Suite 100, Conroe, Texas.

CONTESTED CASE HEARING.

Considering directives to protect public health, the State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - November 22, 2021

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 161 803 1228

Password: TPDES1

or

To join the Zoom meeting via telephone:

(669) 254-5252 or (646) 828-7666

Meeting ID: 161 803 1228

Password: 440494

Visit the SOAH website for registration at: http://www.soah.texas.gov/

or call SOAH at (512) 475-4993.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on May 26, 2021. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the 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.

Further information may also be obtained from Marbac, L.L.C. at the address stated above or by calling Mr. Justin Baca at (713) 992-2907.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: January 14, 2022

TRD-202200158
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 14, 2022

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Notice of Hearing on Michael Cooke: SOAH Docket No. 582-22-0866; TCEQ Docket No. 2021-1413-LIC

APPLICATION.

Michael Cooke, 162 Carterhill Lane, Weatherford, Texas 76085, has applied to the Texas Commission on Environmental Quality (TCEQ) for an On-Site Sewage Facility (OSSF) Apprentice License. The Executive Director denied Mr. Cooke's application for cause. Mr. Cooke has requested a formal hearing on the Executive Director's decision. During the review of Mr. Cooke's application, the Executive Director discovered that Mr. Cooke was convicted of a First-Degree Felony in 2013. The Executive Director denied Mr. Cooke's application because Mr. Cooke was convicted of a sexually violent offense. In addition, Mr. Cooke was convicted of a crime that directly relates to the duties and responsibilities of the licensed occupation.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - February 10, 2022

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 161 352 4635

Password: WPz74H

or

To join the Zoom meeting via telephone:

(669) 254-5252

Meeting ID: 161 352 4635

Password: 421921

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, provide an opportunity for settlement discussions, and address other matters as determined by the administrative law judge. The preliminary hearing will be held unless all timely hearing requests are withdrawn or the parties agree to waive the preliminary hearing.

The evidentiary phase of the contested case hearing, to be held at a later date, will be a legal proceeding similar to a civil trial in state district court to determine whether Mr. Cooke should be issued an OSSF Apprentice License. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **If Michael Cooke fails to appear at the preliminary hearing or evidentiary hearing, the Executive Director will request that the hearing be canceled, and that appeal of the Executive Director's decision be dismissed.**

SOAH's rules allow for participation by telephone or videoconference. Permission must be obtained from SOAH at least ten days before the hearing.

Legal Authority: Texas Water Code Chapters 5 and 37; Texas Occupations Code Chapter 53; Texas Government Code, Chapter 2001; 30 Texas Administrative Code (TAC) Chapter 30, and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapters 70 and 80 and 1 TAC Chapter 155.

INFORMATION.

For information concerning the hearing process, please contact the TCEQ Office of Public Interest Counsel, MC 103, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6363. Further information regarding this hearing may be obtained by contacting Alicia Ramirez, Staff Attorney, TCEQ, Environmental Law Division, MC 173, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0133. General information about the TCEQ can be found at our website at www.tceq.texas.gov. General information about SOAH can be found on its website at www.soah.texas.gov/index.asp, or by calling (512) 475-4993.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: January 12, 2022

TRD-202200079
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 13, 2022

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Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 1, 2022.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 1, 2022.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing.**

(1) COMPANY: Michael Avalos dba ARA Transportation; DOCKET NUMBER: 2018-1035-MSW-E; TCEQ ID NUMBER: RN109739268; LOCATION: near United States Highway 290 at Mile Marker 632, Paige, Bastrop County; TYPE OF FACILITY: cargo and freight transporter company; RULE VIOLATED: 30 TAC §327.5(c), by failing to submit written information describing the details of a discharge or spill and supporting the adequacy of the response action to the appropriate TCEQ Regional Manager within 30 working days of the discovery of the reportable discharge or spill; PENALTY: $1,250; STAFF ATTORNEY: Barrett Hollingsworth, Litigation, MC 175, (512) 239-0657; REGIONAL OFFICE: Austin Regional Office,

12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

TRD-202200163
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: January 18, 2022

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Notice of Opportunity to Comment on an Agreed Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 1, 2022.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of the proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 1, 2022.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Aly Hussein Ezzedine; DOCKET NUMBER: 2020-0242-PST-E; TCEQ ID NUMBER: RN103761383; LOCATION: 810 West Broadway Street, Sweetwater, Nolan County; TYPE OF FACILITY: underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.7(d)(1)(A), (B), and (3), by failing to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition - specifically, the registration had not been updated to reflect the current owner and status of the UST system; 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons - specifically, the access points of tanks 1 and 2 were not secured during the investigation; and TWC, §26.3475(d) and 30 TAC §334.49(e) and §334.54(b)(3), by failing to maintain and/or produce records that the UST system was protected from corrosion; PENALTY: $2,625; STAFF ATTORNEY: Tracy Chandler, Litigation, MC 175, (512) 239-0629; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-202200162
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: January 18, 2022

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 114 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revision to Title 30 Texas Administrative Code (TAC) Chapter 114, Control of Air Pollution from Motor Vehicles, §114.622, and corresponding revisions to the State Implementation Plan (SIP) under the requirements of the Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and Title 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency (EPA) concerning SIPs.

The proposed rulemaking would implement House Bill 4472 from the 87th Texas Legislature, 2021, Regular Session, and align with the existing statute relating to the Diesel Emissions Reduction Incentive Program (DERIP) providing that the commission set the minimum percentage of annual hours of operation required for Texas Emission Reduction Plan-funded marine vessels or engines at 55% under the DERIP. Additionally, the proposed rule would establish that, over the life of the project, the marine vessels or engines must be operated in the intercoastal waterways or bays adjacent to a nonattainment area or affected county of this state by the percentage established by the commission. This rule project, if adopted, will be submitted to the EPA to revise the SIP.

Virtual Public Hearing

The commission will hold a virtual public hearing on this proposal on February 18, 2022, at 10:00 a.m. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the virtual hearing; however, commission staff will be available to discuss the proposal 30 minutes prior to the hearing.

Registration

The hearing will be conducted remotely using an internet meeting service. Individuals who plan to attend the hearing and want to provide oral comments and/or want their attendance on record must register by February 16, 2022. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on February 17, 2022, to those who register for the hearing.

Members of the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZDE2ZmVlYmQtZTdiYi00YjEwLTkyOWItZjI5ZTUwNGM1ZGI3%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%2230ec010b-ff0b-4618-bbc4-622a14f9cb18%22%2c%22IsBroadcastMeeting%22%3atrue%7d&btype=a&role=a

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RE-

LAY-TX (TDD). Requests should be made as far in advance as possible.

Written Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov.* Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2021-032-114-AI. The comment period closes February 28, 2022. Please choose one of the methods provided to submit your *written* comments.

Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Nate Hickman, Air Grants Division, (512) 239-4434.

TRD-202200116
Guy Henry
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 13, 2022

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Notice of Water Quality Application

The following notice was issued on January 12, 2022.

The following notice 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

Crystal Clear Special Utility District has applied for a minor amendment to the Texas Pollutant Discharge Elimination System Permit No. WQ0015266001 to authorize the addition of an Interim II phase. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located at 5975 Farm-to-Market Road 1102, in Comal County, Texas 78132.

TRD-202200077
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 12, 2022

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Notice of Water Rights Application

Notice Issued January 18, 2022

APPLICATION NO. 18-3839C; The City of Seguin, P.O. Box 591, Seguin, Texas 78156, seeks to amend Certificate of Adjudication No. 18-3839 to authorize use of the bed and banks of the Guadalupe River, Guadalupe River Basin, to convey 13,541 acre-feet of groundwater-based return flows per year, for subsequent diversion and use for municipal purposes in the City's service area in Guadalupe County. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on March 9, 2016. Additional information and fees were received on December 21, 2016, January 5, 2017, May 31, 2017, and February 5, 2021. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on July 11, 2017.

The Executive Director completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would contain special conditions including, but not limited to, maintenance of an accounting plan and streamflow restrictions. The application, technical memoranda, and Executive Director's draft amendment 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 February 22, 2022. 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 February 22, 2022. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by February 22, 2022.

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 ADJ 3839 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-202200181
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 18, 2022

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Request for Nominations - Water Utility Operator Licensing Advisory Committee (WUOLAC)

The Texas Commission on Environmental Quality (TCEQ or commission) is requesting nominations for a total of six individuals to serve on the TCEQ Water Utility Operator Licensing Advisory Committee (committee).

The committee membership represents various geographic areas of the state, ethnicities, businesses, governments, associations, and industries. If you have served on this advisory committee, nominated someone, or self-nominated in the past, you may do so again. When members' terms expire, the committee representation changes and individuals with varying backgrounds and geographic locations are needed to fill the vacancies.

The authority for the committee is found in 30 TAC Chapter 5, Advisory Committees and Groups. The 13-member committee's sole duty is to advise the commission regarding water and wastewater operator licensing and training issues and facilitate communication between the commission and the water and wastewater utility industries. The main objectives are to: 1) review training and educational materials to promote quality education and training; 2) review Job Task Analysis and exam validations; 3) advise and assist regarding licensing requirements; 4) assist with the review of rules, regulations, guidance documents, and policy statements; 5) represent a diversity of viewpoints; and 6) promote interaction with outside organizations.

All appointments will be made by the TCEQ commissioners. The committee meets, as needed, usually four times a year. Meetings are held at the TCEQ offices located at 12100 Park 35 Circle in Austin, Texas, or virtually. Meetings last approximately two to four hours. No financial compensation is available. Additional information regarding the Committee is available at the following website: *https://www.tceq.texas.gov/licensing/groups/wuoc_comm.html.*

To nominate an individual or to self-nominate, download and complete the Water Utility Operator Licensing Advisory Committee application from our website (previously listed), or contact us directly to request an application be mailed to you. You may submit a resume in addition to the application, but not in lieu of the application.

DEADLINE: Completed applications must be received at TCEQ by 5:00 p.m. on March 15, 2022. Applications may be delivered to by email licenses@tceq.texas.gov with the Subject line "WUOLAC Nomination"; faxed to (512) 239-6272; or via United States mail to: Training Specialist, Occupational Licensing Section, MC 178, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202200179
Guy Henry
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 18, 2022

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Texas Health and Human Services Commission

Public Notice - Texas State Plan for Medical Assistance Amendment effective March 1, 2022

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 proposed amendment is effective March 1, 2022.

The purpose of the amendment is to update the fee schedules in the current state plan by adjusting fees, rates, or charges for the following services:

Chemical Dependency Treatment;

Durable Medical Equipment, Prosthetics, Orthotics and Supplies;

Early and Periodic Screening, Diagnosis and Treatment Services;

Outpatient Hospital Services; and

Physicians and Other Practitioners.

The proposed amendment is estimated to result in an annual aggregate expenditure of $1,756,339 for federal fiscal year (FFY) 2022, consisting of $1,122,301 in federal funds and $634,038 in state general revenue. For FFY 2023, the estimated annual aggregate expenditure is $3,333,559, consisting of $1,995,802 in federal funds and $1,337,757 in state general revenue. For FFY 2024, the estimated annual aggregate expenditure is $3,871,363, consisting of $2,317,785 in federal funds and $1,553,578 in state general revenue.

Further detail on specific reimbursement rates and percentage changes is available on the HHSC Provider Finance website under the proposed effective date at: https://pfd.hhs.texas.gov/rate-packets.

Rate Hearings. A rate hearing was conducted both in person and online on November 19, 2021, at 1:00 p.m. Information about the proposed rate changes and the hearing were published in the October 29, 2021, issue of the *Texas Register* (46 TexReg 7449). The notice of hearing can be found at http://www.sos.state.tx.us/texreg/index.shtml.

A rate hearing was also conducted both in person and online on December 13, 2021, at 9:30 a.m. Information about the proposed rate changes and the hearing were published in the December 3, 2021, issue of the *Texas Register* (46 TexReg 8271). The notice of hearing can be found at http://www.sos.state.tx.us/texreg/index.shtml.

Copy of Proposed Amendment. Interested parties may obtain additional information and/or a free copy of the proposed amendment by contacting Shaneqwea James, 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) 487-3349; by facsimile at (512) 730-7472; or by e-mail 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 HHSC, (which were formerly the local offices of the Texas Department of Aging and Disability Services).

Written Comments. Written comments about the proposed amendment 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

Texas Health and Human Services Commission

Attention: Provider Finance Department

Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Provider Finance Department

North Austin Complex

Mail Code H-400

4601 W Guadalupe St.

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax

Attention: Provider Finance at (512) 730-7475

Email

PFDAcuteCare@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 this state plan amendment.

TRD-202200176
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: January 18, 2022

♦ ♦ ♦

Texas Department of Insurance

Notice of Texas Windstorm Insurance Association--Application Form Filings

Reference Nos. P-0122-01, P-0122-02, P-0122-03, P-0122-04, P-0122-05

SERFF State Tracking Nos. S698105, S698106, S698107, S698108, S698109

In accordance with 28 TAC §5.4911, the Texas Windstorm Insurance Association (TWIA) has filed revised commercial application forms with the Texas Department of Insurance for approval:

--Builder's Risk

--Condo Building Master

--Habitational (Not Condo)

--Business Property Only

--Building and Business Personal Property

TWIA is implementing an upgraded policy administration system and intends to use these applications in the upgraded system. As a part of this process, TWIA is transitioning from electronic applications to printable applications. TWIA explains that the applications will still be filled out electronically but will result in printable final products that are easier for agents and policyholders to review. TWIA notes that the information captured in the revised application forms will be substantially similar to the information captured in the existing application forms. This transition is part of TWIA's policy administration system upgrades, planned for release at the end of April 2022.

You can see the revised application forms, TWIA's description of the filings, and other supporting information online at www.tdi.texas.gov/submissions/indextwia.html#form. You can also get a copy of the filings from the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

Public Comment: Send comments on the application form filings 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 by 5:00 p.m., central time, on February 28, 2022.

Hearing Requests: To request a public hearing about the application form filings, you must submit a request separately by 5:00 p.m., central time, on February 17, 2022. Send the hearing request by email to ChiefClerk@tdi.texas.gov or by mail to the Texas Department of Insurance, Office of the Chief Clerk, MC-GC-CCO, P.O. Box 12030, Austin, Texas 78711-2030.

TRD-202200109
James Person
General Counsel
Texas Department of Insurance
Filed: January 13, 2022

♦ ♦ ♦

Texas Lottery Commission

Scratch Ticket Game Number 2411 "ULTIMATE 7s"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2411 is "ULTIMATE 7s". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2411 shall be $20.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2411.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 08, 09, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 69, 7 SYMBOL, 77 SYMBOL, 777 SYMBOL, $20.00, $25.00, $50.00, $100, $300, $500, $1,000, $10,000, $100,000 and $1,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2411 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
28	TWET
29	TWNI
30	TRTY

31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX
58	FFET
59	FFNI
60	SXTY
61	SXON
62	SXTO

63	SXTH
64	SXFR
65	SXFV
66	SXSX
68	SXET
69	SXNI
7 SYMBOL	TRP
77 SYMBOL	WINX5
777 SYMBOL	WINALL
$20.00	TWY$
$25.00	TWFV$
$50.00	FFTY$
$100	ONHN
$300	THHN
$500	FVHN
$1,000	ONTH
$10,000	10TH
$100,000	100TH
$1,000,000	TPPZ

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2411), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2411-0000001-001.

H. Pack - A Pack of the "ULTIMATE 7s" Scratch Ticket Game contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 025 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 025 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "ULTIMATE 7s" Scratch Ticket Game No. 2411.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "ULTIMATE 7s" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose sixty-two (62) Play Symbols. KEY NUMBER MATCH: If a player matches any of the YOUR NUMBERS Play Symbols to any

of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "7" Play Symbol, the player wins TRIPLE the prize for that symbol. If the player reveals a "77" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "777" Play Symbol, the player WINS ALL 25 PRIZES INSTANTLY! BONUS: If the player reveals 2 matching prize amounts in the BONUS Play Area, the player wins that amount. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly sixty-two (62) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly sixty-two (62) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the sixty-two (62) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the sixty-two (62) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: A Ticket can win up to twenty-six (26) times in accordance with the approved prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. KEY NUMBER MATCH: Each Ticket will have ten (10) different WINNING NUMBERS Play Symbols.

E. KEY NUMBER MATCH: Non-winning YOUR NUMBERS Play Symbols will all be different.

F. KEY NUMBER MATCH: Non-winning Prize Symbols will never appear more than four (4) times.

G. KEY NUMBER MATCH: The "7" (TRP), "77" (WINX5) and "777" (WINALL) Play Symbols will never appear in the WINNING NUMBERS Play Symbol spots.

H. KEY NUMBER MATCH: The "7" (TRP), "77" (WINX5) and "777" (WINALL) Play Symbols will only appear on winning Tickets as dictated by the prize structure.

I. KEY NUMBER MATCH: On Tickets that contain the "777" (WINALL) Play Symbol, none of the WINNING NUMBERS Play Symbols will match any of the YOUR NUMBERS Play Symbols, and the "7" (TRP) and the "77" (WINX5) Play Symbols will not appear.

J. KEY NUMBER MATCH: Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

K. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and $20).

L. BONUS: The "7" (TRP), "77" (WINX5) and "777" (WINALL) Play Symbols will never appear in the BONUS play area.

M. BONUS: Matching Prize Symbols will only appear in the BONUS play area on winning Tickets.

2.3 Procedure for Claiming Prizes.

A. To claim a "ULTIMATE 7s" Scratch Ticket Game prize of $20.00, $25.00, $50.00, $100, $300 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $50.00, $100, $300 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "ULTIMATE 7s" Scratch Ticket Game prize of $1,000, $10,000, $100,000 or $1,000,000 the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "ULTIMATE 7s" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "ULTIMATE 7s" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "ULTIMATE 7s" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 8,040,000 Scratch Tickets in Scratch Ticket Game No. 2411. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2411 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$20.00	964,800	8.33
$25.00	321,600	25.00
$50.00	643,200	12.50
$100	289,775	27.75
$300	53,600	150.00
$500	22,110	363.64
$1,000	335	24,000.00
$10,000	20	402,000.00
$100,000	6	1,340,000.00
$1,000,000	4	2,010,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.50. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2411 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2411, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202200193
Bob Biard
General Counsel
Texas Lottery Commission
Filed: January 19, 2022

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Texas Windstorm Insurance Association

Request for Proposal Posted - Office Space Project Manager

TWIA invites all qualified Respondents to submit proposals in accordance with the requirements outlined in our Request for Proposals (RFP). The purpose of the RFP is to obtain proposals from qualified Respondents for Project Management services related to construction and/or development of office space as described in the RFP.

For more information on the requirements for proposals to be submitted by interested Respondents, please download and read the full document, which can be found at www.twia.org.

Important deadlines pertaining to this RFP are as follows:

February 4, 2022 - Submission of Written Questions

February 8, 2022 - Responses to Written Questions Provided by TWIA

February 11, 2022 - Deadline for Submission of Proposals

February 18, 2022 - Anticipated Contract Award.

For more information, or for questions regarding submission of proposals, please contact space@twia.org.

All deadlines are subject to change at our discretion.

TRD-202200200

Sonya Palmer
Staff Attorney
Texas Windstorm Insurance Association
Filed: January 19, 2022

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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 47 (2022) is cited as follows: 47 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 "47 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 47 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)*

SALES AND CUSTOMER SUPPORT

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