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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-0442-KP

Requestor:

Ms. Amy F. Cook

Executive Director

Texas Racing Commission

Post Office Box 12080

Austin, Texas 78711-2080

Re: Permissible uses and distributions of escrowed purse funds by the Texas Greyhound Association under section 2028.202 of the Occupations Code (RQ-0442-KP)

Briefs requested by January 3, 2022

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

TRD-202104848

Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: December 7, 2021





EMERGENCY RULES

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

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 500. COVID-19 EMERGENCY

HEALTH CARE FACILITY LICENSING

SUBCHAPTER A. HOSPITALS

26 TAC §500.4

The Health and Human Services Commission is renewing the effectiveness of emergency new §500.4 for a 60-day period. The text of the emergency rule was originally published in the August 20, 2021, issue of the *Texas Register* (46 TexReg 5119).

Filed with the Office of the Secretary of State on December 2, 2021.

TRD-202104785

Nycia Deal

Attorney

Health and Human Services Commission

Original effective date: August 7, 2021

Expiration date: February 2, 2022

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



CHAPTER 551. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS

SUBCHAPTER C. STANDARDS FOR LICENSURE

26 TAC §551.46

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26, Part 1, Texas Administrative Code, Chapter 551, Subchapter C, new §551.46, concerning an emergency rule to mitigate and contain COVID-19 in an intermediate care facility for individuals with an intellectual disability (ICF/IID) or related condition. As authorized by Texas Government Code §2001.034, HHSC may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

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

To protect individuals receiving ICF/IID services and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to mitigate and contain COVID-19. The purpose of the new rule is to describe requirements for ICF/IID Provider Response to COVID-19.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §§252.031 - 252.033 and §242.043. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §§252.031 - 252.033 require the Executive Commissioner of HHSC to establish rules prescribing the minimum standards and process for licensure as an intermediate care facility. Texas Health and Safety Code §252.043 establishes HHSC's authority to conduct an inspection, survey, or investigation at an intermediate care facility to determine if the intermediate care facility is in compliance with the minimum acceptable levels of care for individuals who are living in an intermediate care facility, and the minimum acceptable life safety code and physical environment requirements.

The new rule implements Texas Government Code §531.0055 and §531.021 and Texas Human Resources Code §32.021.

§551.46. ICF/IID Provider Response to COVID-19 - Mitigation.

(a) The following words and terms, when used in this section, have the following meanings.

(1) Cohort--A group of individuals placed in rooms, halls, or sections of an intermediate care facility with others who have the same COVID-19 status or the act of grouping individuals with other individuals who have the same COVID-19 status.

(2) COVID-19 negative--A person who has tested negative for COVID-19, is not exhibiting symptoms of COVID-19, and has had no known exposure to the virus since the negative test.

(3) COVID-19 positive--A person who has tested positive for COVID-19 and does not yet meet Centers for Disease Control and Prevention (CDC) guidance for the discontinuation of transmission-based precautions.

(4) COVID-19 status--The status of a person based on COVID-19 test results, symptoms, or other factors that consider the person's potential for having the virus.

(5) Fully vaccinated person--A person who received the second dose in a two- dose series or a single dose of a one dose COVID-19 vaccine and 14 days have passed since this dose was received.

(6) Individual--A person enrolled in the ICF/IID Program.

(7) Isolation--The separation of people who have a COVID-19 positive status from those who have a COVID-19 negative status and those whose COVID-19 status is unknown.

(8) PPE--Personal protective equipment means specialized clothing or equipment worn by intermediate care facility staff for protection against transmission of infectious diseases such as COVID-19, including masks, goggles, face shields, gloves, and disposable gowns.

(9) Quarantine--The practice of keeping someone who might have been exposed to COVID-19 away from others. Quarantine helps prevent spread of disease that can occur before a person knows they are sick or if they are infected with the virus without experiencing symptoms.

(10) Unknown COVID-19 status--A person, except as provided by the CDC for an individual who is fully vaccinated for COVID-19 or recovered from COVID-19, who:

(A) is a new admission or readmission;

(B) has spent one or more nights away from the facility;

(C) has had known exposure or close contact with a person who is COVID-19 positive; or

(D) is exhibiting symptoms of COVID-19 while awaiting test results.

(b) An intermediate care facility must have a protocol in place, included in its COVID-19 response plan, that describes how, if the facility cannot successfully isolate the individual, the facility will transfer a COVID-19 positive individual to a facility capable of isolating and caring for the COVID-19 positive individual.

(1) An intermediate care facility must have contracts or agreements with alternative appropriate facilities to ensure care for COVID-19 positive individuals.

(2) An intermediate care facility must assist the individual and family members as needed to transfer the individual to the alternate facility.

(c) An intermediate care facility must have a COVID-19 response plan that includes:

(1) designated space for:

(A) COVID-19 negative individuals;

(B) individuals with unknown COVID-19 status; and

(C) COVID-19 positive individuals, when the facility is able to care for an individual at this level or until arrangements can be made to transfer the individual to a higher level of care;

(2) spaces for staff to don and doff PPE that minimize the movement of staff through other areas of the facility;

(3) individual transport protocols;

(4) plans for obtaining and maintaining a two-week supply of PPE, including surgical facemasks, gowns, gloves, and goggles or face shields; and

(5) if the facility houses COVID-19 positive individuals, an individual recovery plan for continuing care after an individual is recovering from COVID-19 as per CDC guidelines on recovery.

(d) An intermediate care facility must screen all individuals, staff, and people who come to the facility in accordance with HHSC guidance.

(e) An intermediate care facility must screen individuals according to HHSC guidance:

(1) upon admission or readmission to the facility; and

(2) at least once a day.

(f) An intermediate care facility must screen each employee or contractor in accordance with HHSC guidance before entering the facility at the start of their shift. Staff screenings must be documented in a log kept at the facility entrance, and must include the name of each person screened, the date and time of the evaluation, and the results of the evaluation. Staff who meet any of the criteria must not be permitted to enter the facility.

(g) An intermediate care facility must assign each individual to the appropriate cohort based on the individual's COVID-19 status.

(h) An individual with unknown COVID-19 status must be quarantined and monitored for fever and other symptoms of COVID-19 in accordance with CDC guidance.

(i) An individual with COVID-19 positive status must be isolated until the individual meets CDC guidelines for the discontinuation of transmission-based precautions, if cared for in the facility.

(j) If an individual with COVID-19 positive status must be transferred for a higher level of care, the facility must isolate the individual until the individual can be transferred.

(k) An intermediate care facility must implement a staffing policy requiring the following:

(1) staff must wear appropriate PPE based on the cohort with which they work;

(2) staff must inform the facility per facility policy prior to reporting for work if they have known exposure or symptoms;

(3) staff must perform self-monitoring on days they do not work; and

(4) the facility must develop and implement a policy regarding staff working with other long-term care (LTC) providers that limits the sharing of staff with other LTC providers and facilities, unless required in order to maintain adequate staffing at a facility.

(l) The facility must develop and enforce policies and procedures for infection control. The written standards, policies, and procedures for the facility's infection prevention and control program must include standard and transmission-based precautions to prevent the spread of COVID-19, including the appropriate use of PPE. All

facemasks and N95 masks must be in good functional condition as described in COVID-19 Response Plan for Intermediate Care Facilities.

(1) A facility must comply with CDC guidance on the optimization of PPE when supply limitations require PPE to be reused.

(2) A facility must document all efforts made to obtain PPE, including each organization contacted and the date of each attempt.

(m) COVID-19 activity must be reported to the Texas Health and Human Services Commission (HHSC) Complaint and Incident Intake as described below.

(1) A facility must report the first confirmed case of COVID-19 in staff or individuals, and the first confirmed case of COVID-19 after a facility has been without cases for 14 days or more, to HHSC Complaint and Incident Intake (CII) through TULIP, or by calling 1-800-458-9858, within 24 hours of the positive confirmation.

(2) A facility must submit a Form 3613-A Provider Investigation Report to HHSC Complaint and Incident Intake, through TULIP or by calling 1-800-458-9858, within five working days from the day a confirmed case is reported to CII.

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 December 6, 2021.

TRD-202104833

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: December 7, 2021

Expiration date: April 5, 2022

For further information, please call: (512) 438-3161



26 TAC §551.48

The Health and Human Services Commission is renewing the effectiveness of emergency new §551.48 for a 60-day period. The text of the emergency rule was originally published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5333).

Filed with the Office of the Secretary of State on December 2, 2021.

TRD-202104783

Nycia Deal

Attorney

Health and Human Services Commission

Original effective date: August 11, 2021

Expiration date: February 6, 2022

For further information, please call: (512) 438-3161



CHAPTER 553. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES SUBCHAPTER K. COVID-19 RESPONSE

26 TAC §553.2001

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC or Commission) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 553, Licensing Standards for Assisted Living Facilities, new §553.2001, concerning an emergency rule in response to COVID-19 and requiring assisted living facility actions to mitigate and contain COVID-19. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing if it finds that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

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

To protect assisted living facility residents and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to require assisted living facility actions to mitigate and contain COVID-19. The purpose of the new rule is to describe these requirements.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055, and Texas Health and Safety Code §247.025 and §247.026. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §247.026 requires the Executive Commissioner of HHSC to adopt rules prescribing minimum standards to protect the health and safety of assisted living residents. Texas Health and Safety Code §247.025 requires the Executive Commissioner of HHSC to adopt rules necessary to implement Texas Health and Safety Code Chapter 247 concerning assisted living facilities.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 247.

§553.2001. Assisted Living Facility COVID-19 Response.

(a) The following words and terms, when used in this section, have the following meanings.

(1) Cohort--A group of residents placed in rooms, halls, or sections of an assisted living facility with others who have the same COVID-19 status or the act of grouping residents with other residents who have the same COVID-19 status.

(2) COVID-19 negative--The status of a person who has tested negative for COVID-19, is not exhibiting symptoms of COVID-19, and has had no known exposure to the virus since the negative test.

(3) COVID-19 positive--The status of a person who has tested positive for COVID-19 and does not yet meet Centers for Disease Control and Prevention (CDC) guidance for the discontinuation of transmission-based precautions.

(4) COVID-19 status--The status of a person based on COVID-19 test results, symptoms, or other factors that consider the person's potential for having the virus.

(5) Fully vaccinated person--A person who received the second dose in a two-dose series or a single-dose of a one dose COVID-19 vaccine and 14 days have passed since this dose was received.

(6) Isolation--The separation of people who have COVID-19 positive status from those who have COVID-19 negative status and those whose COVID-19 status is unknown.

(7) PPE--Personal protective equipment means specialized clothing or equipment worn by assisted living facility staff for protection against transmission of infectious diseases such as COVID-19, including masks, goggles, face shields, gloves, and disposable gowns.

(8) Quarantine--The practice of keeping someone who might have been exposed to COVID-19 away from others. Quarantine helps prevent spread of the disease that can occur before a person knows they are sick or if they are infected with the virus without experiencing symptoms.

(9) Unknown COVID-19 status--The status of a person, except as provided by the CDC for fully vaccinated residents or residents who have recovered from COVID-19, who:

(A) is a new admission or readmission;

(B) has spent one or more nights away from the facility;

(C) has had known exposure or close contact with a person who is COVID-19 positive; or

(D) is exhibiting symptoms of COVID-19 while awaiting test results.

(b) An assisted living facility must have a protocol in place included in its COVID-19 response plan that describes how, if the facility cannot successfully isolate the individual, the facility will transfer a COVID-19 positive resident to another facility capable of isolating and caring for the COVID-19 positive resident.

(1) An assisted living facility must have contracts or agreements with alternative appropriate facilities for caring for COVID-19 positive residents.

(2) An assisted living facility must assist the resident and family members to transfer the resident to the alternate facility.

(c) An assisted living facility must have a COVID-19 response plan that includes:

(1) designated space for:

(A) COVID-19 negative residents;

(B) residents with unknown COVID-19 status; and

(C) COVID-19 positive residents, when the facility is able to care for a resident at this level or until arrangements can be made to transfer the resident to a higher level of care;

(2) spaces for staff to don and doff PPE that minimize the movement of staff through other areas of the facility;

(3) resident transport protocols;

(4) plans for obtaining and maintaining a two-week supply of PPE, including surgical facemasks, gowns, gloves, and goggles or face shields; and

(5) if the facility cares for or houses COVID-19 positive residents, a resident recovery plan for continuing care when a resident is recovering from COVID-19.

(d) An assisted living facility must screen all residents, staff, and people who come to the facility, in accordance with HHSC guidance.

(e) An assisted living facility must screen residents according to HHSC guidance:

(1) upon admission or readmission to the facility; and

(2) at least once a day in accordance with HHSC guidance.

(f) An assisted living facility must screen each employee or contractor for the criteria in subsection (d) of this section before entering the facility at the start of their shift. Staff screenings must be documented in a log kept at the facility entrance and must include the name of each person screened, the date and time of the evaluation, and the results of the evaluation. Staff who meet any of the criteria must not be permitted to enter the facility.

(g) An assisted living facility must assign each resident to the appropriate cohort based on the resident's COVID-19 status.

(h) A resident with unknown COVID-19 status must be quarantined and monitored for fever and symptoms of COVID-19 in accordance with CDC guidance.

(i) A resident with COVID-19 positive status must be isolated until the resident meets CDC guidelines for the discontinuation of transmission-based precautions, if cared for in the facility.

(j) If a resident with COVID-19 positive status must be transferred for a higher level of care, the facility must isolate the resident until the resident can be transferred.

(k) An assisted living facility must implement a staffing policy requiring the following:

(1) staff must inform the facility per facility policy prior to reporting for work if they have known exposure or symptoms;

(2) staff must perform self-monitoring on days they do not work; and

(3) the facility must develop and implement a policy regarding staff working with other long-term care (LTC) providers that limits the sharing of staff with other LTC providers and facilities, unless required in order to maintain adequate staffing at a facility.

(l) The facility must develop and enforce policies and procedures for infection control. The written standards, policies, and procedures for the facility's infection prevention and control program must include standard and transmission-based precautions to prevent the spread of COVID-19, including the appropriate use of PPE. All facemasks and N95 masks must be in good functional condition as described in the COVID Response Plan for Assisted Living Facilities.

(1) An assisted living facility must comply with CDC guidance on the optimization of PPE when supply limitations require PPE to be reused.

(2) An assisted living facility must document all efforts made to obtain PPE, including each organization contacted and the date of each attempt.

(m) An assisted living facility must report COVID-19 activity as required by §553.261(f) of this chapter (relating to Coordination of Care). COVID-19 activity must be reported to HHSC Complaint and Incident Intake as described below.

(1) A facility must report the first confirmed case of COVID-19 in staff or residents, and the first confirmed case of COVID-19 after a facility has been without cases for 14 days or more, to HHSC Complaint and Incident Intake through Texas Unified Licensure Information Portal (TULIP), or by calling 1-800-458-9858 within 24 hours of the positive confirmation.

(2) A facility must submit Form 3613-A, Provider Investigation Report, to HHSC Complaint and Incident Intake through TULIP or by calling 1-800-458-9858 within five working days from the day a confirmed case is reported.

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 December 2, 2021.

TRD-202104784

Karen Ray

Chief Counsel

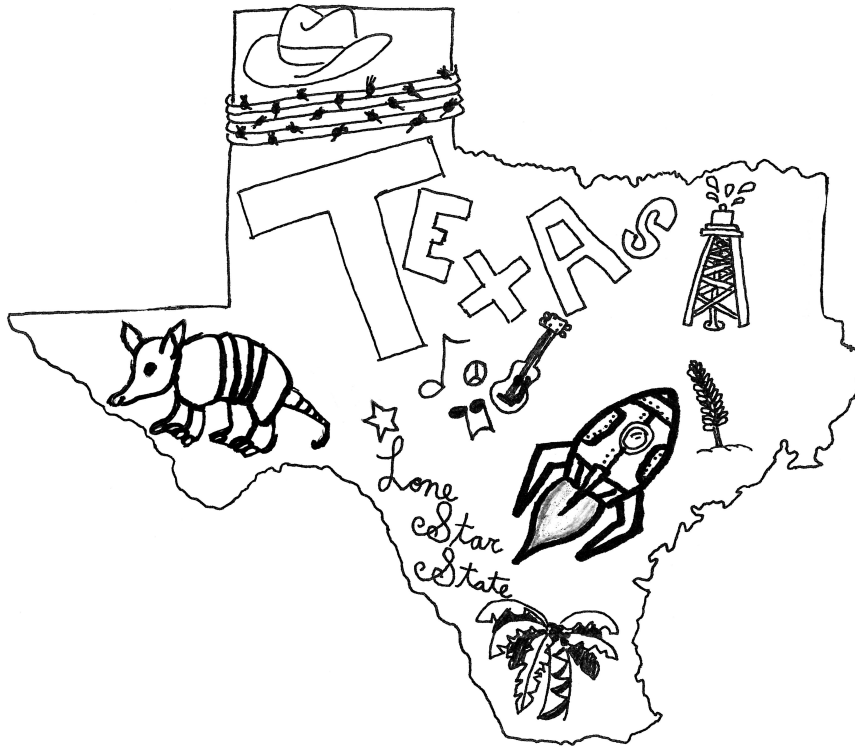
Health and Human Services Commission

Effective date: December 4, 2021

Expiration date: April 2, 2022

For further information, please call: (512) 438-3161

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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER M. INTERCEPT OF INSURANCE CLAIMS

1 TAC §§55.601 - 55.605

The Office of the Attorney General (OAG) Child Support Division proposes amendments to §§55.601 - 55.605, regarding insurance reporting and intercept of certain insurance settlements and awards for child support purposes pursuant to Texas Family Code §§231.003 and 231.015.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

These amendments implement changes made to Texas Family Code §231.015 by Senate Bill 1174, 84th Legislature, Regular Session (2015) and House Bill 3845, 85th Legislature, Regular Session (2017). Insurance industry stakeholders provided input on those changes. In addition, the Texas Department of Insurance provided feedback on the proposed rules.

The proposed rules prescribe how the OAG, a Title IV-D agency (Texas Family Code §231.001), will operate a program under which insurers shall cooperate with the OAG in (1) identifying obligors who owe child support arrearages and are subject to liens for child support arrearages, and (2) intercepting certain insurance settlements or awards for claims in satisfaction of the arrearage amounts. Following, Texas Family Code §231.015(a), the OAG encourages any other interested party who is a representative of the insurance industry in this State, to review the proposed rules and submit comments.

SECTION-BY-SECTION SUMMARY

The following paragraphs explain how the amendments are implemented.

Section 55.601. The proposed amendments to 1 TAC §55.601(c) reflect the changes made to Texas Family Code §231.015 during the 84th and 85th Legislative Sessions. The changes address concerns submitted by insurance industry stakeholders and clarify the economic benefits that do not need to be reported by insurers as described below.

The proposed amendments to 1 TAC §55.601(c)(1) reflect the language in Texas Family Code §231.015(c)(1) and pertain to certain first-party actual property damage claims. These claims consist of insurance policy benefits that arise out of covered

damage for actual repair, replacement, or loss of use of insured property, representing claims used to actually repair or replace property, such as repairing roof damage.

The proposed amendment to 1 TAC §55.601(c)(8) reflects the language of Texas Family Code §231.015(c)(4) and (c)(5) and addresses the concerns from insurance industry stakeholders that these claims should be excluded from the reporting requirement, regardless of the claim amount or period of days covered by the claim. The amendment deletes the language, "that do not exceed \$1,000 per person over a 30-day period," which triggered reporting of these claims.

The addition of 1 TAC §55.601(c)(11) reflects the language in Texas Family Code §231.015(c)(2), removing the requirement to report certain third-party property damage claims. These claims are typically not sought by the Child Support Division to pay child support arrears and consist of insurance policy benefits payable to a vendor, repair facility, or a claimant for payments made by the claimant to a vendor or repair facility for the actual repair, replacement, or loss of use of dwellings, vehicles, or other tangible property.

The addition of 1 TAC §55.601(c)(12) removes the requirement to report the payment of funds when benefits are paid or payable to a claimant under workers' compensation coverage, where the claimant has paid a healthcare provider's bill, and the payment is less than the amount owed. These type of funds are not typically sought by the Child Support Division to pay child support arrears.

The addition of 1 TAC §55.601(c)(13) reflects the language in Texas Family Code §231.015(c)(3) and addresses the concerns from the insurance industry stakeholders seeking a specific reporting exemption for small face-value insurance policies (also known as pre-need policies) designed to provide benefits payable to a funeral or burial provider for funeral or burial expenses. These type of funds are not typically sought by the Child Support Division to pay child support arrears.

The proposed amendments to 1 TAC §55.601(d) clarify insurers' matching and reporting requirements for life insurance policies and annuities issued to individuals who reside in Texas as well as for coverage to an insured party on a third-party claim that occurs in Texas. The amendments require that insurers must match and report when a life insurance policy or an annuity was issued to an individual who resides in Texas. This removes the "is located" provision because insurers do not have stored information on where an individual may be located other than his or her place of residence.

The amendments also clarify that liability insurers or eligible surplus lines insurers must match and report when they provide coverage to an insured for a third-party claim if the claim occurs in Texas. In addition, the amendments remove provisions that would require the insurer to match and report when the insurer

is authorized to provide liability insurance in Texas, but there is no known connection or link between the particular policy and Texas.

The proposed amendments to 1 TAC §55.601(i) provide current Child Support Division contact information to insurers who seek compliance exemption requests.

Overall, CSD anticipates that these amendments will result in fewer requests for specific exceptions under 1 TAC §55.601(i) and fewer reports of economic benefits already intended to be exceptions to the reporting requirements. However, the proposed amendments only pertain to reporting requirements and do not negate the Child Support Division's ability or statutory authority to file a lien against these types of economic benefits.

Section 55.602. The proposed amendment to the title of 1 TAC §55.602 reflects that insurers have multiple data matching options to match claims. As insurers have data matching options through the Child Support Lien Network (CSLN) or the federal Office of Child Support Enforcement (OCSE), the title has been revised from "Child Support Lien Network" to "Data Matching Options."

The proposed amendment to 1 TAC §55.602(b) revises the phrase, "Other Partners" to "Partners" to track the current section title on the OCSE website.

The addition of 1 TAC §55.602(c) paraphrases requirements previously included in 1 TAC §55.602(b) and addresses the request of some insurers to permit "bulk" data matching. If an insurer performs "bulk" data matching, a claim cannot be paid without the insurer first confirming with the Child Support Division that the match is still valid. In addition, an insurer must receive and process a notice of child support lien or an income withholding order to secure the payment of the past-due support amount or a release.

Section 55.603. The proposed amendments to 1 TAC §55.603, "Insurance Services Office Data Match," clarify that an insurer can conduct a data match of its pending claims against a list of delinquent child support obligors maintained by the Insurance Services Office (ISO). The ISO matches and claim reports may be performed manually or an automatic data match. As such, the title has been revised from "Automated Data Match" to "Insurance Services Office Data Match."

Section 55.604. The proposed amendment to 1 TAC §55.604(g) clarifies that a life insurer that uses the OCSE's website for claim matching and reporting must await a response from the Child Support Division before it issues a payment. CSLN provides a real time response, the OCSE's process does not. This clarification is necessary as insurers can utilize either the CSLN interactive option or the OCSE's option for matching and reporting.

Section 55.605. The proposed amendment to 1 TAC §55.605(b)(3) reflects the requests of the OAG and insurance industry stakeholders to simplify the payment process for insurers such that if a claimant has no attorney and the insurer has not received a copy of any signed agreement between the claimant and the Child Support Division, the insurer is required to remit the child support insurance lien payment to the OAG with the funds made payable to the OAG.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Ruth Anne Thornton, Director of Child Support (IV-D Director), has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for

state or local government as a result of enforcing or administering the amended sections.

PUBLIC BENEFIT AND COST

Ms. Thornton has also determined that for each year of the first five years the proposed amendments are in effect, the public will benefit from clarification of the process for intercept of insurance claims under Texas Family Code §231.015. In addition, 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.

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

Ms. Thornton has determined that there will be no adverse economic effect on small businesses, micro-businesses, and rural communities required to comply with the rule amendments as proposed.

LOCAL EMPLOYMENT OR ECONOMY IMPACT

Ms. Thornton has determined that the proposed rules do not have an impact on local employment or economies. Therefore, no local employment or economy impact statement is required under Texas Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with Texas Government Code §2001.0221, the OAG has prepared the following government growth impact statement. During the first five years the proposed amendments would be in effect, the proposed rule:

- will not create or eliminate a government;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create new regulations;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The OAG 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 Texas Government Code §2007.043.

PUBLIC COMMENT

For 30 days following the publication of this rule, the OAG will accept public comments regarding the review. Comments are due on Tuesday, January 18, 2022, by 5:00 p.m. CST. Comments should be directed to Rebecca Foster, Deputy Division Chief, Child Support Legal Services, Child Support Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas, 78741 or (mailing address)

P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017, CSD-Tex-Admin-Code@oag.texas.gov.

STATUTORY AUTHORITY. OAG proposes amendments to 1 TAC §§55.601, 55.602, 55.603, 55.604, and 55.605 under Texas Family Code §§231.001, 231.003, and 231.015. Section 231.003 authorizes the Title IV-D agency to by rule promulgate procedures for the implementation of Chapter 231. Section 231.051 provides that a Title IV-D agency shall operate a program by rule under which insurers shall cooperate with the OAG in (1) identifying obligors who owe child support arrearages and are subject to liens for child support arrearages, and (2) intercepting certain insurance settlements or awards for claims in satisfaction of the arrearage amounts.

CROSS-REFERENCE TO STATUTE. Amendments to §§55.601, 55.602, 55.603, 55.604, and 55.605 implement Texas Family Code §231.015 as authorized by §§231.001 and 231.003.

§55.601. *Scope.*

(a) Under Texas Family Code §231.015, the Child Support Division (CSD) of the Office of the Attorney General, in consultation with the Texas Department of Insurance and representatives of the insurance industry, is required to operate by rule a program under which insurers must cooperate with the CSD in matching the names of claimants with the names of child support obligors who owe past-due child support. When such an individual is identified, the insurer will receive either a notice of child support lien or an income withholding order to secure the payment of the amount of past-due support. This subchapter explains how the matching process and the reporting process work.

(b) Except as provided by subsection (c) of this section, as used in this subchapter, a "claim" that must be matched and must be reported is any which seeks an economic benefit for the claimant.

(1) An "economic benefit" under a life, accident, health policy or annuity is defined as a payment in which an individual is paid as the payee or co-payee:

(A) for a claim by a beneficiary under a life insurance policy;

(B) for the cash surrender value by an owner of a life insurance policy or annuity;

(C) for payments to an annuitant; or

(D) a payment to an individual as the payee or co-payee on a first-party [~~first party~~] claim as defined herein, unless excluded under subsection (c)(2) of this section . [;]

(2) An "economic benefit" under a property and casualty insurance policy is defined as a payment involving:

(A) a payment to an individual as the payee or co-payee on a first-party [~~first party~~] claim as defined herein, unless excluded under subsection (c)(1) of this section; payments involving third-party [~~third party~~] claims, as defined herein, where the individual would be entitled to compensations from an insured covered by a liability insurance policy or self-insurer including claims covering personal or bodily injury, lost wages, property damage, non-economic tort damages, wrongful death damages, or accidental death damages; or

(B) payments involving payments to individuals for employment or workers' compensation benefits covered by an insurance policy or certified self-insurer.

(3) The term "first-party [~~first party~~] claim" shall mean:

(A) a claim that is made by the insured or policyholder under an insurance policy or contract or by a beneficiary named in a life insurance policy or annuity; and

(B) the proceeds must be paid by the insurer directly to the insured or beneficiary.

(4) The term "third-party [~~third party~~] claim" shall mean a claim for bodily injury, property damage or other damages that is brought by third-party [~~third party~~] against an insured that is covered by a liability insurance policy or contract or by a self-insured.

(c) The following economic benefits are not considered economic benefits that require reporting [~~need not be reported~~]:

(1) "First-party actual property damage claims" defined as benefits payable under an insurance policy arising out of covered damage for actual repair, replacement, or loss of use of insured property. Examples include [a payment issued to]:

(A) physical damage coverage under a personal automobile policy for actual repair, replacement, loss of use, or other associated costs including, but not limited to towing, storage, vehicle rentals, or costs to an insured vehicle [and sent directly to a vendor or repair facility for the actual repair or replacement of the damaged property];

(B) coverage for loss of damage to an insured dwelling and contents under a residential, homeowners, farm and ranch owners, condominium owners, tenant property insurance policy, other similar policies including additional living expenses payable under such a policy [the claimant after the claimant presents a final bill or signed invoice from a vendor or repair facility showing payment made by the claimant for repair or replacement of the damaged property in an amount at least as much as the insurance payment]; or

(C) benefits paid to the mortgagee or lienholder of the property , including payments issued jointly to the insured and mortgagee; or [-]

(D) coverage for physical loss or damage to commercial property or business personal property insured under a commercial property, farm, inland marine, builder's risk or other similar policies.

(2) "Actual [~~actual~~] medical expenses" defined as a payment issued to:

(A) and sent directly to a healthcare provider; or

(B) the claimant after the claimant provides proof of the amount actually paid by the claimant to the healthcare provider or providers and the amount is at least as much as the insurance payment; but, does not include any amounts billed but not paid.

(3) A co-payable insurance payment mailed directly to a vendor, repair facility, or healthcare provider that includes the claimant as a co-payee under paragraph [~~subsection~~] (1) or (2) of this subsection [~~section~~].

(4) A loan against the cash value or surrender value of an insurance policy or annuity, including loans for premium payments.

(5) Dividends or other payments made under an insurance policy or annuity that are credited or retained by the insurer or that will not exceed \$1,200 over a 12-month period.

(6) Benefits payable directly to a creditor of a claimant under the terms of the policy.

(7) Benefits assigned to be paid to a healthcare provider or facility for "actual expenses" defined as the amount actually owed by the insured not otherwise paid or reimbursed.

(8) Limited benefits that include coverage for one or more specified diseases or illnesses; dental or vision benefits; hospital indemnity or other fixed indemnity insurance coverage; and, short-term major medical contracts, ~~[that do not exceed \$1,000 per person over a 30-day period.]~~ including any benefits to be paid under a plan or rider of accident insurance, accidental death or loss of limb coverage.

(9) Benefits paid in accordance with a "long term care benefit plan" as defined in §1651.003 of the Insurance Code.

(10) Benefits paid on behalf of an individual directly to a retirement plan or an accelerated death benefit as defined in Chapter 1111 of the Insurance Code.

(11) "Third-party property damage claims" defined as benefits paid or payable to:

(A) a vendor or repair facility for the actual repair, replacement, or loss of use of:

(i) a dwelling, condominium, or other improvements on real property;

(ii) a vehicle, including a motor vehicle, motorcycle, or recreational vehicle; or

(iii) other tangible property that has sustained actual damage or loss; or

(B) a claimant for reimbursement of the claimant for payments made by the claimant to a vendor or repair facility for the actual repair, replacement or loss of use of:

(i) a dwelling, condominium, or other improvements on real property;

(ii) a vehicle, including a motor vehicle, motorcycle, or recreational vehicle; or

(iii) other tangible property that has sustained actual damage or loss.

(12) Benefits paid or payable to a claimant under workers' compensation coverage where the claimant has paid a healthcare provider's bill and payment is no greater than the amount owed for the treatment rendered.

(13) A claim for benefits, or a portion of a claim for benefits, assigned to be paid to a funeral service provider or facility for actual funeral expenses owed by the insured that are not otherwise paid or reimbursed.

(d) All insurers are subject to the matching and reporting requirements under this subchapter and must match and report any claim seeking an economic benefit, in which:

(1) the owner of a life policy or annuity that was issued to an individual residing ~~[located or residing]~~ in Texas;

(2) the beneficiary making a claim on a life policy or annuity resides in Texas;

(3) a first-party ~~[first party]~~ claimant making a claim resides in Texas;

(4) a third-party ~~[third party]~~ claimant making a third-party ~~[third party]~~ claim, as defined in subsection (b)(4) of this section, resides in Texas; or

(5) a [the] liability insurer [providing coverage to an insured on a third-party claim is licensed] or [is] an eligible surplus lines insurer is providing coverage to an insured on a third-party claim and the claim occurs [authorized to provide liability insurance] in Texas.

(e) For a claim under subsection (d)(4) or (d)(5) of this section, the liability insurer shall comply with the match and reporting requirements if coverage to an insured would result in payments to the third-party ~~[third party]~~ claimant as a child support obligor based on the liability of the insured to the [third-party third party] claimant.

(f) To determine whether a recipient of funds paid under a claim owes child support arrearages or is subject to a lien for child support arrearages, insurers are encouraged to report all claims.

(g) As used in this subchapter, "insurer" means:

(1) a domestic, foreign, or alien company which provides insurance coverage of any kind, including:

(A) life insurance;

(B) health insurance;

(C) liability insurance for an occurrence;

(D) an annuity; or

(E) any combination of subparagraphs (A) - (D) of this paragraph; ~~[-]~~

(2) a Lloyd's plan;

(3) a reciprocal or interinsurance exchange;

(4) a fraternal benefit society;

(5) a mutual aid association, including a mutual insurance company;

(6) a surplus lines insurer;

(7) a certified self-insurer granted a certificate of authority as authorized by Labor Code Chapter 407;

(8) a certified self-insurer group granted a certificate of approval as authorized by Labor Code Chapter 407A; or

(9) a governmental entity that self-insures, either individually or collectively under an interlocal cooperation contract as authorized by Government Code Chapter 791.

(h) To assure the flexibility to accommodate the various types of operations of the entities subject to the rules, these rules will be given their most reasonable meaning taken in their total context.

(i) If compliance with these rules may result in an operational hardship or an injustice to any party, the rules may be suspended at the discretion of the Title IV-D Director. An exemption request under this provision must be sent to the Office of the Attorney General of Texas, Special Collections Unit, by mail: P.O. Box 12027, Austin, Texas 78711-2027, by FAX: (512) 433-4691 ~~[(512) 433-4679]~~, or by e-mail: txinsscu@oag.texas.gov, TXSCU@texasattorneygeneral.gov providing the basis or the hardship or injustice and the length of time needed to comply.

(j) The Title IV-D Director may delegate a power, duty, or responsibility under these rules to one or more persons in the Child Support Division.

§55.602. Data Matching Options. ~~[Child Support Lien Network.]~~

(a) The Child Support Division (CSD) ~~[CSD]~~ has contracted with the State of Rhode Island and Providence Plantations to participate in the Child Support Lien Network (CSLN). CSLN provides an insurer with two methods of matching: an Automated Data Match, or an Interactive Lookup. An insurer subject to the requirements of this subchapter may choose to provide or obtain matching information using either or both the CSLN Automated Data Match process and the CSLN Interactive Lookup.

(b) As an alternative to an automated data match with CSLN, an insurer can participate in a similar automated data match with the federal Office of Child Support Enforcement (OCSE). An insurer may obtain information about the OCSE match program, including enrollment in it, by going to the OCSE website at <http://www.acf.hhs.gov/programs/cse/> and opening "Insurance Companies" under "[Other] Partners" on the website's main page or the insurer may contact OCSE directly at insurancematch@acf.hhs.gov. An insurer or agent of an insurer participating in OCSE's automated, data match process may either submit information on claims to OCSE or receive a file from OCSE containing information about individuals who owe past-due support (delinquent obligor information) and generate a match file to OCSE. ~~[In lieu of performing an automated data match at the time a claim for economic benefits is submitted, an insurer can perform periodic data matching in advance of such claims. Advance periodic data matching shall occur no less frequently than quarterly. In the event of a match, the insurer will not process the claim without first confirming with CSD that the match is still valid and receiving and processing either a notice of child support lien, an income withholding order to secure payment of the amount of past-due support or a release.]~~

(c) A data match shall occur before any claim is paid. The data match shall be made at the time or after a claim is filed but before the claim has been paid. In addition to this match, an insurer can perform periodic data matching in advance of such claims. In the event of a match prior to a claim, the insurer will not pay the claim without first confirming with CSD that the match is still valid and without first receiving and processing either a notice of child support lien or an income withholding order to secure payment of the amount of past-due support or a release.

§55.603. Insurance Services Office [Automated] Data Match.

(a) An insurer can conduct an automatic data match of its pending claims against a list of delinquent child support obligors maintained by the Insurance Services [Service] Office (ISO). ISO is an industry service provider, located in New Jersey, which provides a claim search service to assist subscribing insurers in fraud detection. ISO can be contacted by email at njsupport@iso.com.

(b) An insurer participating in the automated data matching process must give ISO permission to match the insurer's claim data with Child Support Lien Network (CSLN) [CSLN] or the federal Office of Child Support Enforcement (OCSE) [OCSE].

(c) CSLN matches its list of child support obligors daily against the ISO claim data. ISO returns matches to OCSE to distribute to the State child support agency(ies) responsible for collecting past-due support.

(d) A participating insurer will receive a notice of child support lien (or withholding instrument for a workers' compensation claim) only on those claims that the insurer has registered with ISO and that match the name of an obligor who owes past-due child support. Claims information that does not match individuals who owe past-due support is discarded.

§55.604. Interactive Lookup.

(a) By accessing the Child Support Lien Network (CSLN) database, [CSLN data base] an insurer may determine whether a claimant owes past-due child support.

(b) To register for access to this database, an insurer must:

(1) go to the CSLN web page at <http://www.childsupport-liens.com>;

(2) click on the FAQ tab at the top of the web page and select the question regarding registration; and

(3) complete and electronically submit the registration form and confidentiality statement.

(c) Secure access to the CSLN database will be approved once the registration information and confidentiality statement have been received and reviewed. The insurer will be notified by e-mail of access approval and at that time will be provided with a user ID, the website [web site] address, and basic instructions.

(d) Unless the insurer is participating in the CSLN or the federal Office of the Child Support Enforcement (OCSE) [OCSE] Automated Data Match, the insurer must query the database prior to the payment of the claim.

(1) For claims involving periodic payments after the insurer has determined that benefits will be payable, the query must be made only prior to the initial payment after the insurer has determined that benefits are payable. No inquiry is required for each periodic payment for 12 months thereafter. Examples of these types of claims would include:

(A) periodic payments under a disability policy;

(B) workers' compensation policy;

(C) accident or health insurance policy involving periodic payments; or

(D) payments to an annuitant for an annuitization including systematic withdrawal.

(2) If additional information is required to be submitted to continue periodic payments, this shall not be considered a new claim if the information is provided within 12 months of the initial determination.

(3) A claim involving different benefits or coverages [coverages] will be considered a new claim and the data base must be queried.

(e) The insurer receives immediate notification of the status of the match:

(1) if there is no match, the insurer is informed;

(2) if there is a positive match, the insurer is informed and provided the basic match data;

(3) if there are multiple possible matches within one state, the insurer is asked to call CSLN to identify the correct obligor; and

(4) if there are multiple possible matches within more than one state, the insurer is notified that CSLN will work with the insurer and the affected states to determine the appropriate course of action.

(f) When an interactive match occurs, CSLN notifies the State child support enforcement agency of a match. CSLN or the State child support agency will send a notice of child support lien (or, in the case of workers' compensations claim, a withholding instrument) to the insurer.

(g) As an alternative to CSLN, a life insurance company can use OCSE's web-based application, the Debt Inquiry Service ~~[(DIS)]~~, to submit information about life insurance beneficiaries who have filed a claim prior to making a payout to determine if a beneficiary owes past-due support. The information may be provided through individual look-ups or by uploading a single file containing information about multiple individuals. The information provided by the life insurance companies is compared with individuals who owe past-due child support. If there is a match, the life insurance company receives the name of the State(s) where the individual owes past-due support and contact information for that State. If the match identifies an individual subject

to a child support order being enforced by the Child Support Division (CSD) [CSD], the life insurance company may either contact the CSD or await notice from the CSD concerning the match; however, no payout shall be made to the claimant unless authorized by the CSD.

(h) Apart from life insurance claims, the OCSE Debt Inquiry Services portal does not provide enough information to satisfy the insurance data match requirements under this subchapter.

§55.605. Protection from Liability; Remittance of Funds.

(a) An insurer that provides information required by this subchapter or acts in good faith to comply with procedures established by the Child Support Division (CSD) [CSD] for the operation of the program under this subchapter, including the remittance of funds as specified under this rule, or responds to a notice of child support lien or levy under Texas Family Code Chapter 157, Subchapter G, is not liable for those acts under any law to any person. This includes but is not limited to [; including, but not limited to,] any claims asserted under Chapter 541, Chapter 542, Chapter 601, or Chapter 602 of the Insurance Code; Chapter 17 of the Business and Commerce Code; Chapter 181 of the Health and Safety Code; or, an action for common law bad faith. However, an insurer who fails to comply with a child support lien, including the remittance of funds as specified under this rule, may be liable to the CSD as the child support lien claimant in an amount equal to the amount of funds payable under an insurance claim, not to exceed the amount of the child support arrearages for which the lien was issued. (See Texas Family Code §157.324.) An insurer who has questions or concerns about a child support lien, including the appropriate remittance of funds under a policy to which the lien attaches, must contact the Texas Special Collections Unit, P.O. Box 12027, Austin, Texas 78711-2027, before paying out any funds under the policy.

(b) An insurer should remit funds in satisfaction of a child support lien in one of the following ways:

(1) On receipt of a signed agreement between the CSD and a claimant and/or claimant's attorney, the insurer should remit the funds agreed to be paid to satisfy the child support lien to: Texas State Disbursement Unit, Insurance Intercept, P.O. Box 245996, San Antonio, Texas 78224-5996. The funds should be made payable to the Office of the Attorney General, and the remittance should identify the name of the claimant/obligor and the CSD's case number(s) as shown on the Notice of Lien.

(2) If the claimant is represented by an attorney but the insurer has not received a copy of any signed agreement between the attorney and the CSD, the insurer should remit all the funds directly to the claimant's attorney and must include the Office of the Attorney General as a co-payee and provide the Office of the Attorney General with written notice of the data and amount of the payment sent to the attorney.

(3) If the claimant has no attorney and the insurer has not received a copy of any signed agreement between the claimant and the CSD, the insurer must remit all the funds to the Texas State Disbursement Unit, Insurance Intercept, P.O. Box 245996, San Antonio, Texas 78224-5996 with the funds being made payable to [both] the Office of the Attorney General, [and the claimant] and the remittance should identify [providing] the name of the claimant/obligor and the CSD's case number(s) as shown on the Notice of Lien.

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

Filed with the Office of the Secretary of State on November 30, 2021.

TRD-202104762

Austin Kinghorn

General Counsel

Office of the Attorney General

Earliest possible date of adoption: January 16, 2022

For further information, please call: (512) 475-4093

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TITLE 16. ECONOMIC REGULATION

**PART 2. PUBLIC UTILITY
COMMISSION OF TEXAS**

**CHAPTER 25. SUBSTANTIVE RULES
APPLICABLE TO ELECTRIC SERVICE
PROVIDERS**

**SUBCHAPTER C. INFRASTRUCTURE AND
RELIABILITY**

The Public Utility Commission of Texas (commission) proposes the repeal of 16 Texas Administrative Code (TAC) §25.53, relating to Electric Service Emergency Operations Plans and proposes new 16 TAC §25.53, relating to Electric Service Emergency Operations Plans. New 16 TAC §25.53 will require utilities and other market participants to file an emergency operations plan (EOP) in its entirety with the commission and outlines the required contents of an EOP. The new rule will also require an entity to participate in drills to test its plan and provide status updates at the request of commission staff when the State Operations Center is activated.

New 16 TAC §25.53 implements §24 of Senate Bill 3 from the 87th Regular Session of the Texas Legislature, which amended Tex. Util. Code §186.007, relating to Public Utility Commission Weather Emergency Preparedness Reports.

Growth Impact Statement

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

- (1) the proposed rulemaking will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rulemaking will not require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed rulemaking will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed rulemaking will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rulemaking will not, in effect, create a new regulation, because it is replacing a similar regulation;
- (6) the proposed rulemaking will repeal an existing regulation, but it will replace that regulation with a similar regulation;
- (7) more individuals will be subject to the proposed new rule's applicability than were subject to the applicability of the rule it is

being proposed to replace, because the proposed new rule will apply to municipally owned utilities; and

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

MacKenzie Nunez, cyber security analyst with the critical infrastructure security & risk management division, has determined that for the first five-year period the proposed rulemaking is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the new section.

Public Benefits

Ms. Nunez has determined that for each year of the first five years the proposed new rule is in effect the public benefit anticipated as a result of enforcing the rule will be the improved transparency into the ability of the electric grid to withstand extreme weather events in the future. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this rule.

Local Employment Impact Statement

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

Costs to Regulated Persons

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

Public Hearing

The commission staff will conduct a public hearing on this rulemaking on January 11, 2022, at 9:00 a.m. in the Commissioners' Hearing Room, 7th floor, William B. Travis Building if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by January 4, 2022. If no request for public hearing is received and the commission staff cancels the hearing, it will file in this project a notification of the cancellation of the hearing prior to the scheduled date for the hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by January 4, 2022. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implement-

ation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 51841.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

16 TAC §25.53

Statutory Authority

The repeal is proposed under the following provisions of the Public Utility Regulatory Act (PURA) §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; and §14.002, which provides the commission with the authority to make, adopt, and enforce rules reasonably required in the exercise of its powers and jurisdiction. The repeal is also proposed under Tex. Util. Code §186.007, which requires the commission to analyze the EOPs developed by electric utilities, power generation companies, municipally owned utilities, and electric cooperatives that operate generation facilities in this state, and retail electric providers; prepare a weather emergency preparedness report; and require entities to submit updated EOPs if the EOP on file does not contain adequate information to determine whether the entity can provide adequate electric services.

Cross reference to statutes: PURA §14.001 and §14.002; Tex. Util. Code §186.007.

§25.53. Electric Service Emergency Operations Plans.

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 December 1, 2021.

TRD-202104778

Melissa Ethridge

Assistant Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: January 16, 2022

For further information, please call: (512) 936-7299



16 TAC §25.53

Statutory Authority

The rule is proposed under the following provisions of the Public Utility Regulatory Act (PURA) §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which provides the commission with the authority to make, adopt, and enforce rules reasonably required in the exercise of its powers and jurisdiction. The rule is also proposed under Tex. Util. Code §186.007, which requires the commis-

sion to analyze the EOPs developed by electric utilities, power generation companies, municipally owned utilities, and electric cooperatives that operate generation facilities in this state, and retail electric providers; prepare a weather emergency preparedness report; and require entities to submit updated EOPs if the EOP on file does not contain adequate information to determine whether the entity can provide adequate electric services.

Cross reference to statutes: PURA §14.001 and §14.002; Tex. Util. Code §186.007.

§25.53. Electric Service Emergency Operations Plans.

(a) Application. This section applies to each electric utility, transmission and distribution utility, power generation company (PGC), municipally owned utility, electric cooperative, and retail electric provider (REP), and to the Electric Reliability Council of Texas (ERCOT). The term "entity" as used in this section refers to the above-listed entities.

(b) Definitions.

(1) Annex--a section of an emergency operations plan (EOP) that addresses how an entity plans to respond to the incidence of a specific hazard or threat.

(2) Drill--an operations-based exercise that is a coordinated, supervised activity employed to test an entity's EOP. A drill may be used to develop or test new policies or procedures or to practice and maintain current skills.

(3) Emergency--any incident resulting from an imminent hazard or threat that endangers life or property or presents credible risk to the continuity of electric service. The term includes an emergency declared by local, state, or federal government; ERCOT; or a Reliability Coordinator that is applicable to the entity.

(4) Emergency operations plan--the plan and attached annexes, maintained on a continuous basis by an entity, intended to protect life and property and ensure continuity of adequate electric service in response to an emergency.

(5) Hazard--a natural, technological, or human-caused condition that is potentially dangerous or harmful to life, information, operations, the environment, or property.

(6) Threat--the intention and capability of an individual or organization to harm life, information, operations, the environment, or property.

(c) Filing requirements.

(1) An entity must file an EOP under this section by April 1, 2022. Beginning in 2023, an entity must annually file an EOP no later than February 15 in the manner prescribed by the commission.

(A) An entity must file with the commission its unredacted EOP in its entirety and a public, redacted EOP.

(B) For an entity with operations within the ERCOT power region, the entity must submit its unredacted EOP in its entirety to ERCOT.

(C) Beginning in 2023, the annual EOP must include, for each incident in the prior calendar year that required the entity to activate its EOP, a summary after-action report that includes lessons learned and an outline of changes the entity made to the EOP as a result.

(2) A person seeking registration as a PGC or certification as a REP must file an EOP with the commission at the time it applies for registration or certification with the commission, and must submit the EOP to ERCOT if it will operate in the ERCOT power region, no later

than ten days after the commission approves the person's certification or registration.

(3) Updated filings. An entity must file an updated EOP with the commission within 30 days under the following circumstances.

(A) An entity must file an updated EOP if commission staff determines that the entity's EOP on file does not contain sufficient information to determine whether the entity can provide adequate electric service through an emergency.

(B) An entity must file an updated EOP in response to feedback provided from commission staff.

(C) An entity must file an updated EOP if the entity makes a significant change to its EOP. A significant change to an EOP includes a change that has a material impact on how the entity would respond to an emergency. The entity must file the updated EOP with the commission no later than 30 days after the change takes effect.

(D) An entity with operations within the ERCOT power region must submit its updated EOP under subparagraphs (A) - (C) of this paragraph to ERCOT within 30 days of filing the updated EOP with the commission.

(4) Notwithstanding the other requirements of this subsection, ERCOT must maintain a current EOP in its entirety, consistent with the requirements of this section and available for review by the commission or the commission's designee.

(d) Information to be included in the emergency operations plan. An entity's EOP must address both common operational functions that can be used for every type of emergency and annexes that outline the entity's response to the types of emergencies specified in subsection (e) of this section. Each entity's EOP must include the following information if applicable. If a provision in this section does not apply to an entity, the entity must include in its EOP an explanation of why the provision does not apply.

(1) An approval and implementation section that:

(A) introduces the EOP and outlines its applicability;

(B) lists the individuals responsible for maintaining and implementing the EOP, and those who can change the EOP;

(C) provides a revision control summary which outlines and dates each change made to the EOP since the last time the EOP was adopted by the entity;

(D) provides a dated statement that the current EOP supersedes previous EOPs; and

(E) provides the date the EOP was most recently approved by the entity.

(2) A record of distribution that contains the following information in table format:

(A) titles and names of persons in the entity's organization receiving the EOP; and

(B) dates of distribution.

(3) A list of emergency contacts for the entity, including identification of single points of contact during an emergency.

(4) An affidavit from the entity's highest-ranking representative, official, or officer with binding authority over the entity affirming the following:

(A) relevant operating personnel are familiar with and have received training on the contents of the EOP, and such personnel

are committed to following the EOP except to the extent deviations are appropriate as a result of specific circumstances during the course of an emergency;

(B) the EOP has been reviewed and approved by the appropriate executives;

(C) required drills have been conducted;

(D) the EOP or an appropriate summary has been distributed to local jurisdictions as needed;

(E) the entity maintains a business continuity plan that addresses returning to normal operations after disruptions caused by an incident; and

(F) the entity's emergency management personnel who are designated to interact with local, state, and federal emergency management officials during emergency events have received National Incident Management System training, specifically IS-700.a, IS-800.b, IS-100.b, and IS-200.b.

(5) A communication plan.

(A) An entity with transmission or distribution service operations must describe the procedures for handling complaints and for communicating with the public; the media; customers; the commission; local and state governmental entities, officials, and emergency operations centers; the applicable Reliability Coordinator; and critical load customers directly served during an emergency.

(B) An entity with generation operations must describe the procedures for communicating with the public; the media; the commission; fuel suppliers; local and state governmental entities, officials, and emergency operations centers; and the applicable reliability coordinator.

(C) A REP must describe the procedures for communicating with the public, media, customers, and the commission and the procedures for handling complaints during an emergency.

(D) ERCOT must describe the procedures for communicating, in advance of and during an emergency, with the public, the media, the commission, governmental entities and officials, the state emergency operations center, and market participants.

(6) A plan to maintain pre-identified supplies for emergency response.

(7) A plan that addresses staffing during emergency response.

(8) A plan that addresses how an entity identifies weather-related hazards, including tornadoes, hurricanes, extreme cold weather, extreme hot weather, drought, and flooding, and the process the entity follows to activate the EOP.

(9) Each relevant annex as detailed in subsection (e) of this section and other annexes applicable to an entity.

(e) Annexes to be included in the emergency operations plan.

(1) An electric cooperative, an electric utility, a municipally owned utility, or a transmission and distribution utility must include in its EOP for its transmission and distribution facilities the following annexes:

(A) A cold weather emergency annex that includes:

(i) operational plans intended to mitigate the hazards of a cold weather emergency, separate and distinct from the weather preparation standards required under §25.55 of this title (relating to Weather Emergency Preparedness);

(ii) a checklist for transmission facility personnel to use during cold weather emergency response; and

(iii) a requirement for pre- and post-weather emergency meetings to review lessons learned from past cold weather emergency incidents and to ensure necessary supplies and personnel are available through the weather emergency.

(B) A hot weather emergency annex that includes:

(i) operational plans intended to mitigate the hazards of a hot weather emergency, separate and distinct from the weather preparation standards required under §25.55 of this title;

(ii) a checklist for transmission facility personnel to use during hot weather emergency response; and

(iii) a requirement for pre- and post-weather emergency meetings to review lessons learned from past hot weather emergency incidents and to ensure necessary supplies and personnel are available through the weather emergency.

(C) A load shed annex that must include:

(i) procedures for controlled shedding of load, whether caused by planned or forced interruption of service;

(ii) priorities for restoring shed load to service; and

(iii) a registry of critical load customers, directly served, if maintained by an electric utility, an electric cooperative, or a municipally owned utility. The registry must be updated as necessary but, at a minimum, annually. The registry must include the process for maintaining an accurate registry, the process for providing assistance to critical load customers in the event of an unplanned outage, the process for communicating with the critical load customers, and the process for training staff with respect to serving critical load customers.

(D) A pandemic and epidemic annex;

(E) A wildfire annex that addresses both response to a wildfire emergency and plans intended to mitigate the hazards of wildfire to the entity's facilities;

(F) A hurricane annex that includes evacuation and re-entry procedures if facilities are located within a hurricane evacuation zone, as defined by the Texas Division of Emergency Management (TDEM);

(G) A cyber security annex;

(H) A physical security incident annex; and

(I) Any additional annexes as needed or appropriate to the entity's particular circumstances.

(2) An electric utility or a municipally owned utility that operates a generation resource, an electric cooperative that operates a generation resource in Texas, and a PGC must include the following annexes for its generation resources:

(A) A cold weather emergency annex that includes:

(i) operational plans intended to mitigate the hazards of a cold weather emergency, separate and distinct from the weather preparations standards under §25.55 of this title;

(ii) verification of the adequacy and operability of fuel switching equipment, if installed;

(iii) a checklist for generation resource personnel to use during cold weather emergency response; and

(iv) a requirement for pre- and post-weather emergency meetings to review lessons learned from past cold weather emergency incidents and to ensure necessary supplies and personnel are available through the weather emergency.

(B) A hot weather emergency annex that includes:

(i) operational plans intended to mitigate the hazards of a hot weather emergency, separate and distinct from the weather preparation standards under §25.55 of this title;

(ii) a checklist for generation resource personnel to use during hot weather emergency response; and

(iii) a requirement for pre- and post-weather emergency meetings to review lessons learned from past hot weather emergency incidents and to ensure necessary supplies and personnel are available through the weather emergency.

(C) A water shortage annex that addresses supply shortages of water used in the generation of electricity;

(D) A restoration of service annex that identifies plans intended to restore to service a generation resource that failed to start or that tripped offline due to a hazard or threat;

(E) A pandemic and epidemic annex;

(F) A hurricane annex that includes evacuation and re-entry procedures if facilities are located within a hurricane evacuation zone, as defined by TDEM;

(G) A cyber security annex;

(H) A physical security incident annex; and

(I) Any additional annexes as needed or appropriate to the entity's particular circumstances.

(3) A REP must include in its EOP the following annexes:

(A) A pandemic and epidemic annex;

(B) A hurricane annex that includes evacuation and re-entry procedures if facilities are located within a hurricane evacuation zone, as defined by TDEM;

(C) A cyber security annex;

(D) A physical security incident annex; and

(E) Any additional annexes as needed or appropriate to the entity's particular circumstances.

(4) ERCOT must include the following annexes:

(A) A pandemic and epidemic annex;

(B) A weather emergency annex that addresses ERCOT's plans to ensure continuous market and grid management operations during weather emergencies, such as hurricanes, tornadoes, extreme cold weather, extreme hot weather, and flooding;

(C) A hurricane annex that includes evacuation and re-entry procedures if facilities are located within a hurricane evacuation zone, as defined by TDEM;

(D) A cyber security annex;

(E) A physical security incident annex; and

(F) Any additional annexes as needed or appropriate to ERCOT's particular circumstances.

(f) Drills. An entity must conduct or participate in one or more drills annually to test its EOP if its EOP has not been implemented in response to an incident within the last 12 months. If the entity operates

in a hurricane evacuation zone as defined by TDEM, at least one of the annual drills must include a test of its hurricane annex. Following the annual drills, the entity must assess the effectiveness of the drills and change its EOP as needed. An entity must notify commission staff, using the method and form prescribed by commission staff, as described on the commission's website, and the appropriate TDEM District Coordinators, by email or other written form, of the date, time, and location at least 30 days prior to the date of at least one drill each year.

(g) Reporting requirements. Upon request by commission staff during an activation of the State Operations Center by TDEM, an entity must provide updates on the status of operations, outages, and restoration efforts. Updates must continue until all incident-related outages are restored or unless otherwise notified by commission staff. After an emergency, commission staff may require an affected entity to provide an after action or lessons learned report and file it with the commission by a date specified by commission staff.

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 December 1, 2021.

TRD-202104779

Melissa Ethridge

Assistant Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: January 16, 2022

For further information, please call: (512) 936-7299



CHAPTER 27. RULES FOR ADMINISTRATIVE SERVICES

SUBCHAPTER E. ENHANCED CONTRACT MONITORING

16 TAC §27.170

The Public Utility Commission of Texas (commission) proposes amendments to existing 16 Texas Administrative Code (TAC) §27.170 relating to Enhanced Contract Monitoring Procedure. This proposed rule will clarify the procedure for identifying contracts that require enhanced contract monitoring under Texas Government Code §2261.253.

Growth Impact Statement

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

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

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

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

- (4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal an existing regulation;
- (7) the proposed rule will not change the number of individuals subject to the rule's applicability; and
- (8) the proposed rule will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

Mr. Jay Stone, Program Administrator, Budget & Fiscal Oversight Division, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Mr. Stone has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the higher level of monitoring associated with commission contracts that have a risk level of medium or high. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section.

Local Employment Impact Statement

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

Costs to Regulated Persons

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

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by January 4, 2022. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by January 4, 2022. Comments should be organized in a manner consistent with the organization of the proposed rules.

The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 52805.

Statutory Authority

The amended rule is proposed under PURA §14.002, which provides the Public Utility Commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. The amended rule is also proposed under Texas Government Code §2261.253, which requires each state agency to establish a procedure, by rule, to identify each contract that requires enhanced contract monitoring.

Cross Reference to Statute: Public Utility Regulatory Act §14.002 and Texas Government Code §2261.253.

§27.170. Enhanced Contract Monitoring Procedure.

(a) The commission will [~~shall~~] assess each contract to determine whether enhanced contract monitoring is necessary.

(1) The commission will [~~shall~~] use the following factors to determine whether enhanced contract monitoring is necessary:

(A) vendor performance history; [~~the complexity of the services;~~]

(B) the contract amount;[;]

(C) contract length; [~~whether the services or contractor are new or changed significantly;~~]

(D) impact on agency goals; and [~~whether the project involved is a high profile project;~~]

(E) any other factors that may impact the agency [~~project~~].

(2) Projects deemed medium or high-risk based on the factors under paragraph (1) of this subsection will [~~high risk shall~~] be co-monitored by contract and program staff and may involve additional team members such as legal, fiscal, and auditing staff members.

(b) If a contract is determined to need enhanced monitoring, the commission will require the vendor to provide specific programmatic information on a scheduled basis to determine whether [~~if~~] performance measures are being met.

(1) Programmatic reports must [~~shall~~] include information related to the performance measures in the contract, as well as any other deliverables.

(2) Enhanced monitoring may also include site visits, additional meetings with the vendor's staff or [~~and~~] other documentation relevant [~~determined~~] to assess progress toward [~~by the agency towards~~] meeting performance requirements.

(c) The director of the fiscal division must [~~shall~~] notify the agency governing board of contracts requiring [~~executive staff need-~~ing] enhanced monitoring through this process.

(d) This process does not apply to an interagency agreement, an interlocal agreement, a memorandum of understanding with another state agency, or a contract for which there is not a cost.

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 December 3, 2021.

TRD-202104802

Melissa Ethridge

Assistant Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: January 16, 2022

For further information, please call: (512) 936-7299



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 33. STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES

OF THE TEXAS PERMANENT SCHOOL FUND

SUBCHAPTER A. STATE BOARD OF

EDUCATION RULES

19 TAC §33.21

The State Board of Education (SBOE) proposes new §33.21, concerning the Texas Permanent School Fund (PSF) Corporation. The proposed new section would address the term length of SBOE members on the board of directors of the Texas PSF Corporation as required by Senate Bill (SB) 1232, 87th Texas Legislature, Regular Session, 2021.

BACKGROUND INFORMATION AND JUSTIFICATION: In accordance with statute, the rules in 19 TAC Chapter 33 establish investment objectives, policies, and guidelines for the Texas PSF.

SB 1232, 87th Texas Legislature, Regular Session, 2021, allows the SBOE to create the Texas PSF Corporation and delegate its authority to manage the PSF to the corporation. Specifically, SB 1232 added new TEC, §43.053, which establishes the composition of the board of directors of the Texas PSF Corporation and requires the SBOE to establish by rule the terms of SBOE members of the board of directors.

Proposed new §33.21 would specify that the term of office for an SBOE member who serves on the Texas PSF Corporation board of directors will end when that member no longer serves on the SBOE Committee on School Finance/Permanent School Fund.

The SBOE approved the proposed new section for first reading and filing authorization at its November 19, 2021 meeting.

FISCAL IMPACT: Mike Meyer, deputy commissioner for finance, has determined that there are no additional costs to state or local government 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 create a new regulation by adding provisions in alignment with recent statutory changes. The new provisions address the SBOE's responsibilities in relation to the PSF.

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 expand, 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. Meyer 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 aligning with statute and clarifying provisions supporting the management and investment of the PSF. 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 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 December 17, 2021, and ends at 5:00 p.m. on January 21, 2022. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_\(TAC\)/Proposed_State_Board_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in January 2022 in accordance with the SBOE board operating policies and procedures. 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 December 17, 2021.

STATUTORY AUTHORITY. The new section is proposed under Texas Constitution, Article VII, §5(a), which authorizes the State Board of Education (SBOE) to make distributions from the Permanent School Fund (PSF) to the available school fund with certain limits; Texas Constitution, Article VII, §5(f), which authorizes the SBOE to manage and invest the PSF according to the prudent investor standard and make investments it deems appropriate; Texas Education Code (TEC), §43.001, which describes the PSF as a perpetual endowment; and TEC, §43.053, as added by SB 1232, 87th Texas Legislature, Regular Session, 2021, which

establishes the composition of the board of directors of the Texas PSF Corporation and requires the SBOE to establish by rule the terms of SBOE members of the board of directors. SB 1232 allows the SBOE to create the Texas PSF Corporation and delegate its authority to manage the PSF and the charter district bond guarantee reserve fund to the corporation.

CROSS REFERENCE TO STATUTE. The new section implements Texas Constitution, Article VII, §5(a) and (f), and Texas Education Code, §43.001 and §43.053, as added by Senate Bill 1232, 87th Texas Legislature, Regular Session, 2021.

§33.21. Texas Permanent School Fund Corporation.

Terms of directors. Any State Board of Education (SBOE) member who is appointed to the Texas Permanent School Fund (PSF) Corporation board of directors pursuant to SBOE policy under Texas Education Code, §43.053(a)(1), shall cease to be a Texas PSF Corporation director upon the expiration of his or her term of service on or upon other separation from the SBOE Committee on School Finance/Permanent School Fund in accordance with the SBOE's rules and policies.

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 December 6, 2021.

TRD-202104814

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: January 16, 2022

For further information, please call: (512) 475-1497



CHAPTER 74. CURRICULUM REQUIREMENTS

The State Board of Education (SBOE) proposes the repeal of §§74.41-74.44 and §§74.51-74.54, concerning graduation requirements. The proposed repeals would remove high school graduation requirements that are outdated and no longer necessary.

BACKGROUND INFORMATION AND JUSTIFICATION: The rules in Chapter 74, Subchapter D, outline the graduation requirements for students who entered Grade 9 in the 2001-2002, 2002-2003, or 2003-2004 school years. Graduation requirements outlined in Chapter 74, Subchapter E, apply to students who entered Grade 9 in the 2004-2005, 2005-2006, or 2006-2007 school years. The rules are proposed for repeal as they are no longer needed.

The SBOE approved the proposed repeals for first reading and filing authorization at its November 19, 2021 meeting.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and support services, has determined that there are no additional costs to state or local government 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 repeal existing graduation requirements by removing Chapter 74, Subchapters D and E, since the rules are out of date and no longer necessary.

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 expand or limit 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: Ms. Martinez 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 removing rules that are out of date and no longer necessary. 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 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 December 17, 2021, and ends at 5:00 p.m. on January 21, 2022. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_\(TAC\)/Proposed_State_Board_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in January 2022 in accordance with the SBOE board operating policies and procedures. 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 December 17, 2021.

SUBCHAPTER D. GRADUATION REQUIREMENTS, BEGINNING WITH SCHOOL YEAR 2001-2002

19 TAC §§74.41 - 74.44

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; and TEC, §28.025, which requires the SBOE to determine by rule the curriculum requirements that are consistent with the required curriculum under the TEC, §28.002.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §7.102(c)(4) and §28.025.

§74.41. *High School Graduation Requirements.*

§74.42. *Minimum High School Program.*

§74.43. *Recommended High School Program.*

§74.44. *Distinguished Achievement High School Program--Advanced High School 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 December 6, 2021.

TRD-202104815

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: January 16, 2022

For further information, please call: (512) 475-1497



SUBCHAPTER E. GRADUATION REQUIREMENTS, BEGINNING WITH SCHOOL YEAR 2004-2005

19 TAC §§74.51 - 74.54

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; and TEC, §28.025, which requires the SBOE to determine by rule the curriculum requirements that are consistent with the required curriculum under the TEC, §28.002.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §7.102(c)(4) and §28.025.

§74.51. *High School Graduation Requirements.*

§74.52. *Minimum High School Program.*

§74.53. *Recommended High School Program.*

§74.54. *Distinguished Achievement High School Program--Advanced High School Program.*

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

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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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CHAPTER 127. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER DEVELOPMENT AND CAREER AND TECHNICAL EDUCATION

The State Board of Education (SBOE) proposes new §§127.309-127.314, 127.402-127.415, 127.468-127.480, 127.625-127.648, and 127.742-127.776, concerning Texas Essential Knowledge and Skills (TEKS) for career development. The proposed new sections would move existing career and technical education (CTE) TEKS from subchapters in 19 TAC Chapter 130 that are being revised in order to keep all the TEKS for revised subchapters together in administrative rule and avoid confusion.

BACKGROUND INFORMATION AND JUSTIFICATION: Currently, CTE TEKS for career development courses for middle and high school are codified in Chapter 127, Subchapters A and B. The TEKS for courses associated with 17 CTE career clusters are codified by subchapter in Chapter 130, Subchapters A-Q. In December 2020, the SBOE began initial steps to prepare for the review and revision of CTE courses in programs of study in the education and training; health science; and science, technology, engineering, and mathematics career clusters. Two additional courses eligible to satisfy a graduation requirement in science are also part of the review. At the November 2021 SBOE meeting, the board approved for second reading and final adoption the new TEKS for these courses.

Due to the current structure of Chapter 130, there are not enough sections to add the new CTE courses under consideration in their assigned subchapters. To accommodate the addition of new and future courses, the CTE TEKS in Chapter 130 are being moved to existing Chapter 127, which will be renamed "Texas Essential Knowledge and Skills for Career Development and Career and Technical Education." Consequently, the TEKS for existing CTE courses from the subchapters under revision will be repealed from Chapter 130 and moved into their new subchapters in Chapter 127 in order to keep all the TEKS for revised subchapters together in administrative rule and avoid confusion.

The proposed new courses would move the courses repealed from Chapter 130, Subchapters E, G, H, I, L, and O, and related implementation language to Chapter 127, Subchapters G, I, J, M, and O. No changes are being proposed to the existing CTE courses as part of the move to Chapter 127. However, the related implementation sections will be updated to reflect new course numbers.

The SBOE approved the proposed new sections for first reading and filing authorization at its November 19, 2021 meeting.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and support services, has determined that there are no additional costs to state or local government 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 add new regulations in order to transfer existing CTE TEKS from Chapter 130 to Chapter 127.

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 expand, 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: Ms. Martinez 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 improved access to and organization of the CTE TEKS and the avoidance of confusion regarding the revised TEKS. 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 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 December 17, 2021, and ends at 5:00 p.m. on January 21, 2022. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_\(TAC\)/Proposed_State_Board_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in January 2022 in accordance with the SBOE board operating policies and procedures. 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 December 17, 2021.

SUBCHAPTER G. EDUCATION AND TRAINING

19 TAC §§127.309 - 127.314

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used

in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(n), which allows the SBOE to by rule develop and implement a plan designed to incorporate foundation curriculum requirements into the career and technical education (CTE) curriculum required in TEC, §28.002; TEC, §28.002(o), which requires the SBOE to determine that at least 50% of the approved CTE courses are cost effective for a school district to implement; TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002; TEC, §28.025(b-2), which requires the SBOE to by rule allow a student to comply with the curriculum requirements for the third and fourth mathematics credits under TEC, §28.025(b-1)(2), or the third and fourth science credits under TEC, §28.025(b-1)(3), by successfully completing a CTE course designated by the SBOE as containing substantially similar and rigorous content; and TEC, §28.025(b-17), which requires the SBOE by rule to ensure that a student may comply with curriculum requirements under TEC, §28.025(b-1)(6), by successfully completing an advanced CTE course, including a course that may lead to an industry-recognized credential or certificate or an associate degree.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (n), and (o); and 28.025(a), (b-2), and (b-17).

§127.309. Implementation of Texas Essential Knowledge and Skills for Education and Training, Adopted 2015.

(a) The provisions of this subchapter shall be implemented by school districts beginning with the 2017-2018 school year.

(b) No later than August 31, 2016, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills for career and technical education as adopted in §§127.310-127.314 of this subchapter.

(c) If the commissioner makes the determination that instructional materials funding has been made available under subsection (b) of this section, §§127.310-127.314 of this subchapter shall be implemented beginning with the 2017-2018 school year and apply to the 2017-2018 and subsequent school years.

(d) If the commissioner does not make the determination that instructional materials funding has been made available under subsection (b) of this section, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that §§127.310-127.314 of this subchapter shall be implemented for the following school year.

§127.310. Principles of Education and Training (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 9 and 10. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Education and Training Career Cluster focuses on planning, managing, and providing education and training services and related learning support services.

(3) Principles of Education and Training is designed to introduce learners to the various careers available within the Education and Training Career Cluster. Students use self-knowledge as well as educational and career information to analyze various careers within the Education and Training Career Cluster. Students will develop a graduation plan that leads to a specific career choice in the student's interest area.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate written communication;

(B) perform job-appropriate numerical and arithmetic application;

(C) practice various forms of communication such as verbal and non-verbal communication used in educational and career settings;

(D) exhibit teamwork skills;

(E) apply decision-making skills;

(F) implement problem-solving techniques;

(G) acquire conflict management skills;

(H) develop leadership skills;

(I) demonstrate professionalism; and

(J) develop effective work ethic practices.

(2) The student explores education and training careers by such means as shadowing, interviewing, career interest inventory, researching, and/or self-reflection. The student is expected to:

(A) identify and investigate the three Education and Training Programs of Study: Teaching/Training, Professional Support Services, and Administration and Administrative Support;

(B) analyze transferable skills among a variety of careers within the Education and Training Career Cluster;

(C) recognize the impact of career choice on personal lifestyle;

(D) develop productive work habits such as organization, time management, and initiative; and

(E) analyze assessment results such as an interest and ability inventory as relative to those necessary for success in education and training.

(3) The student explains societal impacts within the education and training career cluster. The student is expected to:

(A) investigate trends or issues that have influenced the development of education across the United States such as historical, societal, cultural, and political trends and issues; and

(B) predict the Education and Training Career Cluster job market by using information from sources such as labor market information, technology, and societal or economic trends.

(4) The student explores careers in the teaching and training program of study. The student is expected to:

(A) summarize the various roles and responsibilities of professionals in the fields of teaching and training;

(B) describe typical personal characteristics, qualities, and aptitudes of professionals in the field of teaching and training;

(C) investigate education or training alternatives after high school for a career choice within the student's interest areas; and

(D) examine education or training degree plans for various occupations within the field of teaching and training.

(5) The student explores careers in the professional support services program of study. The student is expected to:

(A) summarize the various roles and responsibilities of professionals in the field of professional support services;

(B) describe typical personal characteristics, qualities, and aptitudes of professionals in the field of professional support services;

(C) investigate education and training alternatives after high school for a career choice within the student's interest areas; and

(D) examine education and training degree plans for various occupations within the field of professional support services.

(6) The student explores careers in the administration and administrative support program of study. The student is expected to:

(A) summarize the various roles and responsibilities of professionals in the field of administration and administrative support;

(B) describe typical personal characteristics, qualities, and aptitudes of professionals in the field of administration and administrative support;

(C) investigate education and training alternatives after high school for a career choice within the student's interest areas; and

(D) examine education and training degree plans for various occupations within the fields of administration and administrative support.

(7) The student experiences authentic education and training opportunities. The student is expected to:

(A) experience educator duties and responsibilities through activities such as assisting, shadowing, or observing;

(B) develop instructional materials such as visuals, teacher aids, manipulatives, lesson components, and mini lessons; and

(C) formulate a personal set of beliefs relevant to education in preparation of developing a philosophy of education.

(8) The student explores options in education and career planning. The student is expected to:

(A) develop a graduation plan that leads to a specific career choice in the area of interest;

(B) identify high school and dual enrollment courses related to specific career cluster programs of study;

(C) identify and compare technical and community college programs that align with interest areas; and

(D) identify and compare university programs and institutions that align with interest areas.

(9) The student documents technical knowledge and skills. The student is expected to:

(A) assemble basic professional portfolio components such as basic resume, samples of work, service learning log, assessment results, and mock scholarship applications; and

(B) present the portfolio to interested stakeholders.

§127.311. Human Growth and Development (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisite: Principles of Education and Training. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Education and Training Career Cluster focuses on planning, managing, and providing education and training services and related learning support services.

(3) Human Growth and Development is an examination of human development across the lifespan with emphasis on research, theoretical perspectives, and common physical, cognitive, emotional, and social developmental milestones. The course covers material that is generally taught in a postsecondary, one-semester introductory course in developmental psychology or human development.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate written communication;

(B) perform job-appropriate numerical and arithmetic application;

(C) practice various forms of communication such as verbal and non-verbal communication used in educational and career settings;

(D) exhibit teamwork skills;

(E) apply decision-making skills;

(F) implement problem-solving techniques;

(G) acquire conflict management skills;

(H) develop leadership skills;

(I) demonstrate professionalism; and

(J) develop effective work ethic practices.

(2) The student understands historical, theoretical, and research perspectives of human growth and development throughout the lifespan. The student is expected to:

(A) explain the role of theories in understanding human development;

(B) describe theoretical perspectives that influence human development throughout the lifespan;

(C) summarize historical influences on modern theories of human development;

(D) compare and contrast the research methods commonly used to study human development; and

(E) compare and contrast pedagogy and andragogy.

(3) The student understands the importance of prenatal care in the development of a child. The student is expected to:

(A) describe nutritional needs prior to and during pregnancy;

(B) analyze reasons for medical care and good health practices prior to and during pregnancy;

(C) outline stages of prenatal development;

(D) discuss the role of genetics in prenatal development; and

(E) determine environmental factors affecting development of the fetus.

(4) The student understands the development of children ages newborn through two years. The student is expected to:

(A) analyze the physical, emotional, social, and cognitive development of infants and toddlers;

(B) analyze various developmental theories relating to infants and toddlers;

(C) discuss the influences of the family and society on the infant and toddler;

(D) summarize strategies for optimizing the development of infants and toddlers, including those with special needs;

(E) determine techniques that promote the health and safety of infants and toddlers; and

(F) determine developmentally appropriate guidance techniques for children in the first two years of life.

(5) The student understands the development of children ages three through five years. The student is expected to:

(A) analyze the physical, emotional, social, and cognitive development of preschoolers;

(B) analyze various developmental theories relating to preschoolers;

(C) discuss the influences of the family and society on preschoolers;

(D) summarize strategies for optimizing the development of preschoolers, including those with special needs;

(E) determine techniques that promote the health and safety of preschoolers; and

(F) determine developmentally appropriate guidance techniques for preschoolers.

(6) The student understands the development of children ages six through ten years. The student is expected to:

(A) analyze the physical, emotional, social, and cognitive development of children in the early to middle childhood stage of development;

(B) analyze various developmental theories relating to children in the early to middle childhood stage of development;

(C) discuss the influences of the family and society on children in the early to middle childhood stage of development;

(D) summarize strategies for optimizing the development of children in the early to middle childhood stage of development, including those with special needs;

(E) determine techniques that promote the health and safety of children in the early to middle childhood stage of development; and

(F) determine developmentally appropriate guidance techniques for children in the early to middle childhood stage of development.

(7) The student understands the development of adolescents ages 11 through 19 years. The student is expected to:

(A) analyze the biological and cognitive development of adolescents;

(B) analyze the emotional and social development of adolescents;

(C) discuss various theoretical perspectives relevant to adolescent growth and development;

(D) discuss the influences of the family and society on adolescents;

(E) summarize strategies for optimizing the development of the adolescent;

(F) determine techniques that promote the health and safety of the adolescent; and

(G) determine developmentally appropriate guidance techniques for adolescents.

(8) The student understands the importance of care and protection of children and adolescents. The student is expected to:

(A) determine services provided by agencies that protect the rights of children and adolescents;

(B) summarize various resources focusing on children and adolescents;

(C) predict the impact of changing demographics and cultural diversity on the health and welfare of children and adolescents;

(D) analyze forms, causes, effects, prevention, and treatment of child abuse;

(E) explain the impact of appropriate health care and importance of safety for children and adolescents; and

(F) discuss responsibilities of citizens, legislation, and public policies affecting children and adolescents.

(9) The student understands the development of adults ages 20 through 39 years. The student is expected to:

(A) analyze various development theories relating to early adults, including biological and cognitive development;

(B) analyze various development theories relating to early adults, including emotional, moral, and psychosocial development;

(C) discuss the influences of society and culture on early adults; and

(D) discuss the importance of family, human relationships, and social interaction for early adults.

(10) The student understands the development of adults ages 40 through 65 years. The student is expected to:

(A) analyze various development theories relating to middle adults, including biological and cognitive development;

(B) analyze various development theories relating to middle adults, including emotional, moral, and psychosocial development;

(C) discuss the influences of society and culture on middle adults; and

(D) discuss the importance of family, human relationships, and social interaction for middle adults.

(11) The student understands the development of adults ages 66 years and older. The student is expected to:

(A) analyze various development theories relating to those within the stage of late adulthood, including biological and cognitive development;

(B) analyze various development theories relating to those within the stage of late adulthood, including emotional, moral, and psychosocial development;

(C) discuss the influences of society and culture on those within the stage of late adulthood; and

(D) discuss the importance of family, human relationships, and social interaction for those within the stage of late adulthood.

(12) The student explores opportunities available in education and training. The student is expected to:

(A) assess personal interests, aptitudes, and abilities as related to the various stages of human growth and development;

(B) evaluate employment and entrepreneurial opportunities, including education requirements in the educational field of interest;

(C) propose short-term and long-term education and career goals; and

(D) demonstrate effective methods and obligations for securing, maintaining, and terminating employment.

(13) The student documents technical knowledge and skills. The student is expected to:

(A) update professional portfolio components such as resume, samples of work, service learning log, assessment results, and mock scholarship applications; and

(B) present the portfolio to interested stakeholders.

§127.312. Instructional Practices (Two Credits), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 11 and 12. Recommended prerequisites: Principles of Education and Training and Human Growth and Development. Students shall be awarded two credits for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Education and Training Career Cluster focuses on planning, managing, and providing education and training services and related learning support services.

(3) Instructional Practices is a field-based (practicum) internship that provides students with background knowledge of child and adolescent development as well as principles of effective teaching and training practices. Students work under the joint direction and supervision of both a teacher with knowledge of early childhood, middle childhood, and adolescence education and exemplary educators or trainers in direct instructional roles with elementary-, middle school-, and high school-aged students. Students learn to plan and direct individualized instruction and group activities, prepare instructional materials, develop materials for educational environments, assist with record keeping, and complete other responsibilities of teachers, trainers, paraprofessionals, or other educational personnel.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

- (A) demonstrate written communication;
- (B) perform job-appropriate numerical and arithmetic application;
- (C) practice various forms of communication such as verbal and non-verbal communication skills used in educational and career settings;
- (D) exhibit teamwork skills;
- (E) apply decision-making skills;
- (F) implement problem-solving techniques;
- (G) acquire conflict management skills;
- (H) develop leadership skills;
- (I) demonstrate professionalism; and
- (J) develop effective work ethic practices.

(2) The student explores the teaching and training profession. The student is expected to:

- (A) demonstrate an understanding of the historical foundations of education and training in the United States;
- (B) determine and implement knowledge and skills needed by teaching and training professionals;
- (C) demonstrate and implement personal characteristics needed by teaching and training professionals;
- (D) identify qualities of effective schools;

(E) investigate possible career options in the field of education and training;

(F) discuss teaching and training in non-traditional setting such as those in corporations, community outreach, nonprofits, and government entities; and

(G) formulate a professional philosophy of education based on a personal set of beliefs.

(3) The student understands the learner and the learning process. The student is expected to:

(A) relate and implement principles and theories of human development to teaching and training situations;

(B) relate and implement principles and theories about the learning process to teaching and training situations;

(C) demonstrate and implement behaviors and skills that facilitate the learning process; and

(D) explain the relationship between effective instructional practices and learning differences, learner exceptionality, and special-needs conditions.

(4) The student interacts effectively in the role of an educator. The student is expected to:

(A) demonstrate effective interaction skills with stakeholders such as students, educators, parents/guardians, community members, and other professionals; and

(B) demonstrate techniques promoting literacy.

(5) The student plans and develops effective instruction. The student is expected to:

(A) explain the role of the Texas Essential Knowledge and Skills in planning and evaluating instruction;

(B) explain the rationale for having a fundamental knowledge of the subject matter in order to plan, prepare, and deliver effective instruction;

(C) explain the rationale for and process of instructional planning;

(D) describe principles and theories that impact instructional planning;

(E) create clear short-term and long-term learning objectives that are developmentally appropriate for students; and

(F) demonstrate lesson planning to meet instructional goals.

(6) The student creates an effective learning environment. The student is expected to:

(A) describe and implement a safe and an effective learning environment;

(B) demonstrate teacher and trainer characteristics that promote an effective learning environment;

(C) identify classroom-management techniques that promote an effective learning environment; and

(D) demonstrate conflict-management and mediation techniques supportive of an effective learning environment.

(7) The student assesses teaching and learning. The student is expected to:

(A) describe the role of assessment as part of the learning process;

(B) analyze the assessment process; and

(C) use appropriate assessment strategies in an instructional setting.

(8) The student understands the relationship between school and society. The student is expected to:

(A) explain the relationship between school and society;

(B) recognize and use resources for professional growth such as family, school, and community resources; and

(C) collaborate with stakeholders such as family, school, and community to promote learning.

(9) The student develops technology skills. The student is expected to:

(A) describe the role of technology in the instructional process;

(B) use technology applications appropriate for specific subject matter and student needs; and

(C) demonstrate skillful use of technology as a tool for instruction, evaluation, and management.

(10) The student understands the professional, ethical, and legal responsibilities in teaching and training. The student is expected to:

(A) describe teacher and trainer characteristics that promote professional and ethical conduct;

(B) analyze professional and ethical standards that apply to educators and trainers;

(C) analyze situations requiring decisions based on professional, ethical, and legal considerations; and

(D) analyze expected effects of compliance and non-compliance with Texas teacher code of conduct.

(11) The student participates in field-based experiences in education and training. The student is expected to:

(A) apply instructional strategies and concepts within a local educational or training facility; and

(B) document, assess, and reflect on instructional experiences.

(12) The student documents technical knowledge and skills. The student is expected to:

(A) update professional portfolio components such as resume, samples of work, service learning log, assessment results, and mock scholarship applications; and

(B) present the portfolio to interested stakeholders.

§127.313. Practicum in Education and Training (Two Credits), Adopted 2015.

(a) General requirements. This course is recommended for students in Grade 12. Prerequisite: Instructional Practices. Recommended prerequisites: Principles of Education and Training and Human Growth and Development. Students shall be awarded two credits for successful completion of this course. A student may repeat this course once for credit provided that the student is experiencing differ-

ent aspects of the industry and demonstrating proficiency in additional and more advanced knowledge and skills.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Education and Training Career Cluster focuses on planning, managing, and providing education and training services and related learning support services.

(3) Practicum in Education and Training is a field-based internship that provides students background knowledge of child and adolescent development principles as well as principles of effective teaching and training practices. Students in the course work under the joint direction and supervision of both a teacher with knowledge of early childhood, middle childhood, and adolescence education and exemplary educators in direct instructional roles with elementary-, middle school-, and high school-aged students. Students learn to plan and direct individualized instruction and group activities, prepare instructional materials, assist with record keeping, make physical arrangements, and complete other responsibilities of classroom teachers, trainers, paraprofessionals, or other educational personnel.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate written communication;

(B) perform job-appropriate numerical and arithmetic application;

(C) practice various forms of communication such as verbal and non-verbal communication used in educational and career settings;

(D) exhibit teamwork skills;

(E) apply decision-making skills;

(F) implement problem-solving techniques;

(G) acquire conflict management skills;

(H) develop leadership skills;

(I) demonstrate professionalism; and

(J) develop effective work ethic practices.

(2) The student explores the teaching and training profession. The student is expected to:

(A) analyze current trends and issues that impact education such as political, societal, and economic trends and issues;

(B) demonstrate and implement knowledge and skills needed by the teaching and training profession;

(C) update assessment of personal characteristics needed to work in the teaching and training profession;

- (D) explore qualities of effective schools;
 - (E) refine professional philosophy of education based on a personal set of beliefs;
 - (F) explore the educational/academic requirements and possible degree/certifications available in education;
 - (G) refine personal career plan in preparation for a career in the field of education or training;
 - (H) explore teaching and training in non-traditional setting such as those in corporations, community outreach, nonprofits, and government entities; and
 - (I) explore educational high-needs and teacher-shortage areas.
- (3) The student understands the learner and learning process. The student is expected to:
- (A) apply principles and theories of human development appropriate to specific teaching or training situations;
 - (B) apply principles and theories about the learning process to specific teaching or training situations;
 - (C) analyze the dynamics of personal and student behaviors that facilitate the learning process;
 - (D) analyze teaching skills that facilitate the learning process; and
 - (E) demonstrate and evaluate effective instructional practices to accommodate diversity such as learning differences, learner exceptionality, and special-needs considerations.
- (4) The student interacts effectively in the role of an educator. The student is expected to:
- (A) demonstrate and evaluate effective interaction skills with stakeholders such as students, educators, parents/guardians, community members, and other professionals; and
 - (B) demonstrate and evaluate techniques promoting literacy.
- (5) The student plans and uses effective instruction. The student is expected to:
- (A) apply principles and theories that impact instructional planning;
 - (B) develop instructional materials that align with the Texas Essential Knowledge and Skills;
 - (C) demonstrate competency in core and non-core subject areas;
 - (D) create lessons plans that meet instructional goals;
 - (E) analyze concepts for developing effective instructional strategies;
 - (F) evaluate and analyze effectiveness of lessons plans and instructional strategies; and
 - (G) explain how learner and professional feedback is used to guide selection and adjustment of instructional strategies.
- (6) The student creates and maintains an effective learning environment. The student is expected to:
- (A) create and maintain a safe and an effective learning environment;

- (B) integrate teacher or trainer characteristics that promote an effective learning environment;
 - (C) apply classroom management techniques that promote an effective learning environment; and
 - (D) demonstrate specific conflict management and mediation techniques supportive of an effective learning environment.
- (7) The student assesses instruction and learning. The student is expected to:
- (A) develop and apply assessments to foster student learning;
 - (B) use assessment strategies to promote personal growth and teaching or training improvement; and
 - (C) use reflective techniques to promote personal growth and teaching or training improvement.
- (8) The student understands the relationship between school and society. The student is expected to:
- (A) identify and support learning through advocacy;
 - (B) select family, school, and community resources for professional growth; and
 - (C) promote learning and build support through positive school partnership activities with stakeholders such as families, schools, communities, and business/industry.
- (9) The student develops technology skills. The student is expected to:
- (A) access and use current technology applications appropriate for specific subject matter and student needs; and
 - (B) integrate the skillful use of technology as a tool for instruction, evaluation, and management.
- (10) The student understands the professional, ethical, and legal responsibilities in teaching and training. The student is expected to:
- (A) develop teacher and trainer characteristics that promote professional and ethical conduct;
 - (B) analyze professional and ethical standards that apply to educators and trainers;
 - (C) analyze situations requiring decisions based on professional, ethical, and legal considerations; and
 - (D) analyze expected effects of compliance and non-compliance with Texas teacher code of conduct.
- (11) The student explores the need and opportunities for continued professional development for educators and trainers. The student is expected to:
- (A) identify strategies and resources for the professional development of educators or trainers such as research and assessment;
 - (B) demonstrate teacher or trainer characteristics that promote ongoing professional development and lifelong learning; and
 - (C) plan for professional growth.
- (12) The student continues to participate in field-based experiences in education or training. The student is expected to:
- (A) apply instructional strategies and concepts within a local educational or training facility; and

(B) document, assess, and reflect on instructional experiences.

(13) The student documents technical knowledge and skills. The student is expected to:

(A) gather artifacts and documentation that support attainment of technical skill competencies;

(B) update a professional portfolio to include components such as a resume, samples of work, service learning log, recognitions, awards, scholarship essays, letters of recommendation, certifications, and evaluations; and

(C) present the portfolio to interested stakeholders.

§127.314. Extended Practicum in Education and Training (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grade 12. The practicum course is a paid or unpaid capstone experience for students participating in a coherent sequence of career and technical education courses in the Education and Training Career Cluster. Prerequisite: Instructional Practices. Recommended prerequisites: Principles of Education and Training and Human Growth and Development. Corequisite: Practicum in Education and Training. This course must be taken concurrently with Practicum in Education and Training and may not be taken as a stand-alone course. Students shall be awarded one credit for successful completion of this course. A student may repeat this course once for credit provided that the student is experiencing different aspects of the industry and demonstrating proficiency in additional and more advanced knowledge and skills.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Education and Training Career Cluster focuses on planning, managing, and providing education and training services and related learning support services.

(3) Extended Practicum in Education and Training is a field-based internship that provides students background knowledge of child and adolescent development principles as well as principles of effective teaching and training practices. Students in the course work under the joint direction and supervision of both a teacher with knowledge of early childhood, middle childhood, and adolescence education and exemplary educators in direct instructional roles with elementary-, middle school-, and high school-aged students. Students learn to plan and direct individualized instruction and group activities, prepare instructional materials, assist with record keeping, make physical arrangements, and complete other responsibilities of classroom teachers, trainers, paraprofessionals, or other educational personnel.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) participate in a paid or unpaid, laboratory- or work-based application of previously studied knowledge and skills related to education and training;

(B) participate in training, education, or preparation for licensure, certification, or other relevant credentials to prepare for employment;

(C) demonstrate professional standards and personal qualities needed to be employable such as leadership, appreciation for diversity, conflict management, work ethic, and adaptability with increased fluency;

(D) demonstrate technology applications skills such as effective use of social media, email, Internet, publishing tools, presentation tools, spreadsheets, or databases with increased fluency to enhance work products; and

(E) employ planning and time-management skills and tools with increased fluency to enhance results and complete work tasks.

(2) The student applies professional communications strategies. The student is expected to:

(A) demonstrate verbal and non-verbal communication consistently in a clear, concise, and effective manner;

(B) effectively present information formally and informally;

(C) analyze, interpret, and effectively communicate information; and

(D) apply active listening skills to obtain and clarify information.

(3) The student implements advanced problem-solving methods. The student is expected to employ critical-thinking skills with increased fluency both independently and in groups to solve problems and make decisions.

(4) The student understands the professional, ethical, and legal responsibilities in education and training. The student is expected to:

(A) demonstrate a positive, productive work ethic by performing assigned tasks as directed;

(B) show integrity by choosing the ethical course of action when making decisions;

(C) demonstrate proper etiquette and knowledge of acceptable-use policies when using networks, especially resources on the Internet and intranet; and

(D) comply with all applicable rules, laws, and regulations in a consistent manner.

(5) The student continues to participate in field-based experiences in education and training. The student is expected to:

(A) apply instructional strategies and concepts with increased fluency within a local educational or training facility;

(B) apply principles and theories that impact instructional planning;

(C) develop curriculum and related materials to support instruction that align with the Texas Essential Knowledge and Skills;

(D) demonstrate competency in foundation and enrichment subject areas;

(E) create lessons plans that meet instructional goals;

(F) document, assess, and reflect on instructional experiences; and

(G) collect representative work samples.

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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Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



SUBCHAPTER I. HEALTH SCIENCE

19 TAC §§127.402 - 127.415

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(n), which allows the SBOE to by rule develop and implement a plan designed to incorporate foundation curriculum requirements into the career and technical education (CTE) curriculum required in TEC, §28.002; TEC, §28.002(o), which requires the SBOE to determine that at least 50% of the approved CTE courses are cost effective for a school district to implement; TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002; TEC, §28.025(b-2), which requires the SBOE to by rule allow a student to comply with the curriculum requirements for the third and fourth mathematics credits under TEC, §28.025(b-1)(2), or the third and fourth science credits under TEC, §28.025(b-1)(3), by successfully completing a CTE course designated by the SBOE as containing substantially similar and rigorous content; and TEC, §28.025(b-17), which requires the SBOE by rule to ensure that a student may comply with curriculum requirements under TEC, §28.025(b-1)(6), by successfully completing an advanced CTE course, including a course that may lead to an industry-recognized credential or certificate or an associate degree.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (n), and (o); and 28.025(a), (b-2), and (b-17).

§127.402. Implementation of Texas Essential Knowledge and Skills for Health Science, Adopted 2015.

(a) The provisions of this subchapter shall be implemented by school districts beginning with the 2017-2018 school year.

(b) No later than August 31, 2016, the commissioner of education shall determine whether instructional materials funding has been

made available to Texas public schools for materials that cover the essential knowledge and skills for career and technical education as adopted in §§127.403-127.415 of this subchapter.

(c) If the commissioner makes the determination that instructional materials funding has been made available under subsection (b) of this section, §§127.403-127.415 of this subchapter shall be implemented beginning with the 2017-2018 school year and apply to the 2017-2018 and subsequent school years.

(d) If the commissioner does not make the determination that instructional materials funding has been made available under subsection (b) of this section, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that §§127.403-127.415 of this subchapter shall be implemented for the following school year.

§127.403. Principles of Health Science (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 9 and 10. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Health Science Career Cluster focuses on planning, managing, and providing therapeutic services, diagnostics services, health informatics, support services, and biotechnology research and development.

(3) The Principles of Health Science course is designed to provide an overview of the therapeutic, diagnostic, health informatics, support services, and biotechnology research and development systems of the health care industry.

(4) To pursue a career in the health science industry, students should learn to reason, think critically, make decisions, solve problems, and communicate effectively. Students should recognize that quality health care depends on the ability to work well with others.

(5) Professional integrity in the health science industry is dependent on acceptance of ethical and legal responsibilities. Students are expected to employ their ethical and legal responsibilities, recognize limitations, and understand the implications of their actions.

(6) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(7) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) express ideas in a clear, concise, and effective manner;

(B) exhibit the ability to cooperate, contribute, and collaborate as a member of a team; and

(C) identify employer expectations such as punctuality, attendance, time management, communication, organizational skills, and productive work habits.

(2) The student applies mathematics, science, English language arts, and social studies in health science. The student is expected to:

(A) convert units between systems of measurement;

(B) apply data from tables, charts, and graphs to provide solutions to health-related problems;

(C) interpret technical material related to the health science industry;

(D) organize, compile, and write ideas into reports and summaries;

(E) plan and prepare effective oral presentations;

(F) formulate responses using precise language to communicate ideas;

(G) describe biological and chemical processes that maintain homeostasis;

(H) identify and analyze principles of body mechanics and movement such as forces and the effects of movement, torque, tension, and elasticity on the human body;

(I) identify human needs according to Maslow's Hierarchy of Human Needs;

(J) describe the stages of development related to the life span;

(K) identify the concepts of health and wellness throughout the life span;

(L) analyze and evaluate communication skills for maintaining healthy relationships throughout the life span;

(M) research the historical significance of health care;

(N) describe the impact of health services on the economy;

(O) analyze the impact of local, state, and national government on the health science industry;

(P) identify diverse and cultural influences that have impacted contemporary aspects of health care delivery; and

(Q) research and compare practices used by various cultures and societies to solve problems related to health.

(3) The student uses verbal and nonverbal communication skills. The student is expected to:

(A) identify components of effective and non-effective communication;

(B) demonstrate effective communication skills for responding to the needs of individuals in a diverse society;

(C) evaluate the effectiveness of conflict-resolution techniques in various situations; and

(D) accurately interpret, transcribe, and communicate medical vocabulary using appropriate technology.

(4) The student implements the leadership skills necessary to function in a democratic society. The student is expected to:

(A) identify traits of a leader;

(B) demonstrate leadership skills, characteristics, and responsibilities of leaders such as goal-setting and team building; and

(C) demonstrate the ability to effectively conduct and participate in meetings.

(5) The student assesses career options and the preparation necessary for employment in the health science industry. The student is expected to:

(A) locate, evaluate, and interpret career options and employment information; and

(B) recognize the impact of career decisions, including the causes and effects of changing employment situations.

(6) The student identifies academic preparation and skills necessary for employment as defined by the health science industry. The student is expected to identify academic requirements for professional advancement such as certification, licensure, registration, continuing education, and advanced degrees.

(7) The student identifies the career pathways related to health science. The student is expected to:

(A) compare health science careers within the diagnostic, therapeutic, health informatics, support services, and biotechnology research and development systems; and

(B) identify the collaborative role of team members between systems to deliver quality health care.

(8) The student examines the role of the multidisciplinary team in providing health care. The student is expected to:

(A) explain the concept of teaming to provide quality health care; and

(B) examine the role of professional organizations in the preparation and governance of credentialing and certification.

(9) The student interprets ethical behavior standards and legal responsibilities. The student is expected to:

(A) compare published professional codes of ethics and scope of practice;

(B) explain principles of ethical behavior and confidentiality, including the consequences of breach of confidentiality;

(C) discuss ethical issues related to health care, including implications of technological advances;

(D) examine issues related to malpractice, negligence, and liability; and

(E) research laws governing the health science industry.

(10) The student recognizes the rights and choices of the individual. The student is expected to:

(A) identify situations related to autonomy;

(B) identify wellness strategies for the prevention of disease;

(C) evaluate positive and negative effects of relationships on physical and emotional health such as peers, family, and friends in promoting a healthy community;

(D) review documentation related to rights and choices; and

(E) demonstrate an understanding of diversity and cultural practices influencing contemporary aspects of health care.

(11) The student recognizes the importance of maintaining a safe environment and eliminating hazardous situations. The student is expected to:

(A) identify governing regulatory agencies such as the World Health Organization, Centers for Disease Control and Prevention, Occupational Safety and Health Administration, U.S. Food and Drug Administration, Joint Commission, and National Institute of Health;

(B) identify industry safety standards such as standard precautions, fire prevention and safety practices, and appropriate actions to emergency situations; and

(C) relate safety practices in the health science industry.

(12) The student identifies the technology used in the diagnostic, therapeutic, health informatics, support services, and biotechnology research and development systems. The student is expected to:

(A) research and identify technological equipment used in the diagnostic, therapeutic, health informatics, support services, and biotechnology research and development systems;

(B) identify potential malfunctions of technological equipment; and

(C) recognize and explain the process for reporting equipment or technology malfunctions.

§127.404. Medical Terminology (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 9-12. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Health Science Career Cluster focuses on planning, managing, and providing therapeutic services, diagnostics services, health informatics, support services, and biotechnology research and development.

(3) The Medical Terminology course is designed to introduce students to the structure of medical terms, including prefixes, suffixes, word roots, singular and plural forms, and medical abbreviations. The course allows students to achieve comprehension of medical vocabulary appropriate to medical procedures, human anatomy and physiology, and pathophysiology.

(4) To pursue a career in the health science industry, students should learn to reason, think critically, make decisions, solve problems, and communicate effectively. Students should recognize that quality health care depends on the ability to work well with others.

(5) The health science industry is comprised of diagnostic, therapeutic, health informatics, support services, and biotechnology research and development systems that function individually and collaboratively to provide comprehensive health care. Students should identify the employment opportunities, technology, and safety requirements of each system. Students are expected to learn the knowledge and skills necessary to pursue a health science career through further education and employment.

(6) Professional integrity in the health science industry is dependent on acceptance of ethical and legal responsibilities. Students are expected to employ their ethical and legal responsibilities, recognize limitations, and understand the implications of their actions.

(7) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(8) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) express ideas in a clear, concise, and effective manner; and

(B) exhibit the ability to cooperate, contribute, and collaborate as a member of a team.

(2) The student recognizes the terminology related to the health science industry. The student is expected to:

(A) identify abbreviations, acronyms, and symbols related to the health science industry;

(B) identify the basic structure of medical words;

(C) practice word-building skills;

(D) research the origins of eponyms;

(E) recall directional terms and anatomical planes related to body structure;

(F) define and accurately spell occupationally specific terms such as those relating to the body systems, surgical and diagnostic procedures, diseases, and treatment; and

(G) use prior knowledge and experiences to understand the meaning of terms as they relate to the health science industry.

(3) The student demonstrates communication skills using the terminology applicable to the health science industry. The student is expected to:

(A) demonstrate appropriate verbal and written strategies such as correct pronunciation of medical terms and spelling in a variety of health science scenarios;

(B) employ increasingly precise language to communicate; and

(C) translate technical material related to the health science industry.

(4) The student examines available resources. The student is expected to:

(A) examine medical and dental dictionaries and multimedia resources;

(B) integrate resources to interpret technical materials; and

(C) investigate electronic media with appropriate supervision.

(5) The student interprets medical abbreviations. The student is expected to:

(A) distinguish medical abbreviations used throughout the health science industry; and

(B) translate medical abbreviations in simulated technical material such as physician progress notes, radiological reports, and laboratory reports.

(6) The student appropriately translates health science industry terms. The student is expected to:

(A) interpret, transcribe, and communicate vocabulary related to the health science industry;

(B) translate medical terms to conversational language to facilitate communication;

(C) distinguish medical terminology associated with medical specialists such as geneticists, pathologists, and oncologists;

(D) summarize observations using medical terminology; and

(E) interpret contents of medical scenarios correctly.

§127.405. *Anatomy and Physiology (One Credit), Adopted 2015.*

(a) General requirements. This course is recommended for students in Grades 10-12. Prerequisite: Biology and a second science credit. Recommended prerequisite: a course from the Health Science Career Cluster. Students must meet the 40% laboratory and fieldwork requirement. This course satisfies a high school science graduation requirement. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Health Science Career Cluster focuses on planning, managing, and providing therapeutic services, diagnostic services, health informatics, support services, and biotechnology research and development.

(3) The Anatomy and Physiology course is designed for students to conduct laboratory and field investigations, use scientific methods during investigations, and make informed decisions using critical thinking and scientific problem solving. Students in Anatomy and Physiology will study a variety of topics, including the structure and function of the human body and the interaction of body systems for maintaining homeostasis.

(4) Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not scientifically testable.

(5) Scientific inquiry is the planned and deliberate investigation of the natural world. Scientific methods of investigation are experimental, descriptive, or comparative. The method chosen should be appropriate to the question being asked.

(6) Scientific decision making is a way of answering questions about the natural world. Students should be able to distinguish between scientific decision-making methods (scientific methods) and ethical and social decisions that involve science (the application of scientific information).

(7) A system is a collection of cycles, structures, and processes that interact. All systems have basic properties that can be de-

scribed in space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically tested. Students should analyze a system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(8) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(9) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate verbal and non-verbal communication in a clear, concise, and effective manner; and

(B) exhibit the ability to cooperate, contribute, and collaborate as a member of a team.

(2) The student, for at least 40% of instructional time, conducts field and laboratory investigations using safe, environmentally appropriate, and ethical practices. These investigations must involve actively obtaining and analyzing data with physical equipment, but may also involve experimentation in a simulated environment as well as field observations that extend beyond the classroom. The student is expected to:

(A) demonstrate safe practices during laboratory and field investigations; and

(B) demonstrate an understanding of the use and conservation of resources and the proper disposal or recycling of materials.

(3) The student uses scientific methods and equipment during laboratory and field investigations. The student is expected to:

(A) know the definition of science and understand that it has limitations, as specified in subsection (b)(4) of this section;

(B) know that hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power that have been tested over a wide variety of conditions are incorporated into theories;

(C) know that scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers. Unlike hypotheses, scientific theories are well-established and highly-reliable explanations, but they may be subject to change as new areas of science are created and new technologies emerge;

(D) distinguish between scientific hypotheses and scientific theories;

(E) plan and implement descriptive, comparative, and experimental investigations, including asking questions, formulating testable hypotheses, and selecting equipment and technology;

(F) collect and organize qualitative and quantitative data and make measurements with accuracy and precision using tools such as calculators, spreadsheet software, data-collecting probes, computers, standard laboratory glassware, microscopes, various prepared slides, stereoscopes, metric rulers, electronic balances, gel

electrophoresis apparatuses, micropipettors, hand lenses, Celsius thermometers, hot plates, lab notebooks or journals, timing devices, Petri dishes, lab incubators, dissection equipment, meter sticks, and models, diagrams, or samples of biological specimens or structures;

(G) analyze, evaluate, make inferences, and predict trends from data; and

(H) communicate valid conclusions supported by the data through methods such as lab reports, labeled drawings, graphic organizers, journals, summaries, oral reports, and technology-based reports.

(4) The student uses critical thinking, scientific reasoning, and problem solving to make informed decisions within and outside the classroom. The student is expected to:

(A) in all fields of science, analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, including examining all sides of scientific evidence of those scientific explanations, so as to encourage critical thinking;

(B) communicate and apply scientific information extracted from various sources such as accredited scientific journals, institutions of higher learning, current events, news reports, published journal articles, and marketing materials;

(C) draw inferences based on data related to promotional materials for products and services;

(D) evaluate the impact of scientific research on society and the environment;

(E) evaluate models according to their limitations in representing biological objects or events; and

(F) research and describe the history of science and contributions of scientists.

(5) The student evaluates the energy needs of the human body and the processes through which these needs are fulfilled. The student is expected to:

(A) analyze the chemical reactions that provide energy for the body;

(B) evaluate the modes, including the structure and function of the digestive system, by which energy is processed and stored within the body;

(C) analyze the effects of energy deficiencies in malabsorption disorders as they relate to body systems such as Crohn's disease and cystic fibrosis; and

(D) analyze the effects of energy excess in disorders as they relate to body systems such as cardiovascular, endocrine, muscular, skeletal, and pulmonary.

(6) The student differentiates the responses of the human body to internal and external forces. The student is expected to:

(A) explain the coordination of muscles, bones, and joints that allows movement of the body;

(B) investigate and report the uses of various diagnostic and therapeutic technologies;

(C) interpret normal and abnormal contractility conditions such as in edema, glaucoma, aneurysms, and hemorrhage;

(D) analyze and describe the effects of pressure, movement, torque, tension, and elasticity on the human body; and

(E) perform an investigation to determine causes and effects of force variance and communicate findings.

(7) The student examines the body processes that maintain homeostasis. The student is expected to:

(A) investigate and describe the integration of the chemical and physical processes, including equilibrium, temperature, pH balance, chemical reactions, passive transport, active transport, and biofeedback, that contribute to homeostasis; and

(B) determine the consequences of the failure to maintain homeostasis.

(8) The student examines the electrical conduction processes and interactions. The student is expected to:

(A) illustrate conduction systems such as nerve transmission or muscle stimulation;

(B) investigate the therapeutic uses and effects of external sources of electricity on the body system; and

(C) evaluate the application of advanced technologies such as electroencephalogram, electrocardiogram, bionics, transcutaneous electrical nerve stimulation, and cardioversion.

(9) The student explores the body's transport systems. The student is expected to:

(A) analyze the physical, chemical, and biological properties of transport systems, including circulatory, respiratory, and excretory;

(B) determine the factors that alter the normal functions of transport systems; and

(C) contrast the interactions among the transport systems.

(10) The student investigates environmental factors that affect the human body. The student is expected to:

(A) identify the effects of environmental factors such as climate, pollution, radioactivity, chemicals, electromagnetic fields, pathogens, carcinogens, and drugs on body systems; and

(B) explore measures to minimize harmful environmental factors on body systems.

(11) The student investigates the structure and function of the human body. The student is expected to:

(A) analyze the relationships between the anatomical structures and physiological functions of systems, including the integumentary, nervous, skeletal, muscular, cardiovascular, respiratory, digestive, urinary, immune, endocrine, and reproductive systems;

(B) evaluate the cause and effect of disease, trauma, and congenital defects on the structure and function of cells, tissues, organs, and systems;

(C) research technological advances and limitations in the treatment of system disorders; and

(D) examine characteristics of the aging process on body systems.

(12) The student describes the process of reproduction and growth and development. The student is expected to:

(A) explain embryological development of cells, tissues, organs, and systems;

(B) identify the functions of the male and female reproductive systems; and

(C) summarize the human growth and development cycle.

(13) The student recognizes emerging technological advances in science. The student is expected to:

(A) recognize advances in stem cell research such as cord blood use; and

(B) recognize advances in bioengineering and transplant technology.

§127.406. Medical Microbiology (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 10-12. Prerequisites: Biology and Chemistry. Recommended prerequisite: a course from the Health Science Career Cluster. Students must meet the 40% laboratory and fieldwork requirement. This course satisfies a high school science graduation requirement. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Health Science Career Cluster focuses on planning, managing, and providing therapeutic services, diagnostic services, health informatics, support services, and biotechnology research and development.

(3) The Medical Microbiology course is designed to explore the microbial world, studying topics such as pathogenic and non-pathogenic microorganisms, laboratory procedures, identifying microorganisms, drug resistant organisms, and emerging diseases.

(4) Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not scientifically testable.

(5) Scientific inquiry is the planned and deliberate investigation of the natural world. Scientific methods of investigation are experimental, descriptive, or comparative. The method chosen should be appropriate to the question being asked.

(6) Scientific decision making is a way of answering questions about the natural world. Students should be able to distinguish between scientific decision-making methods (scientific methods) and ethical and social decisions that involve science (the application of scientific information).

(7) A system is a collection of cycles, structures, and processes that interact. All systems have basic properties that can be described in space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically tested. Students should analyze a system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(8) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(9) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate verbal and non-verbal communication in a clear, concise, and effective manner; and

(B) exhibit the ability to cooperate, contribute, and collaborate as a member of a team.

(2) The student, for at least 40% of instructional time, conducts field and laboratory investigations using safe, environmentally appropriate, and ethical practices. These investigations must involve actively obtaining and analyzing data with physical equipment, but may also involve experimentation in a simulated environment as well as field observations that extend beyond the classroom. The student is expected to:

(A) demonstrate safe practices during laboratory and field investigations; and

(B) demonstrate an understanding of the use and conservation of resources and the proper disposal or recycling of materials.

(3) The student uses scientific methods and equipment during laboratory and field investigations. The student is expected to:

(A) know the definition of science and understand that it has limitations, as specified in subsection (b)(4) of this section;

(B) know that hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power that have been tested over a wide variety of conditions are incorporated into theories;

(C) know that scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers. Unlike hypotheses, scientific theories are well-established and highly-reliable explanations, but they may be subject to change as new areas of science are created and new technologies emerge;

(D) distinguish between scientific hypothesis and scientific theories;

(E) plan and implement descriptive, comparative, and experimental investigations, including asking questions, formulating testable hypotheses, and selecting equipment and technology;

(F) collect and organize qualitative and quantitative data and make measurements with accuracy and precision using tools such as calculators, spreadsheet software, data-collecting probes, computers, standard laboratory glassware, microscopes, various prepared slides, stereoscopes, metric rulers, electronic balances, gel electrophoresis apparatuses, micropipettors, hand lenses, Celsius thermometers, hot plates, lab notebooks or journals, timing devices, Petri dishes, lab incubators, dissection equipment, meter sticks, and models, diagrams, or samples of biological specimens or structures;

(G) analyze, evaluate, make inferences, and predict trends from data;

(H) communicate valid conclusions supported by the data through methods such as lab reports, labeled drawings, graphic organizers, journals, summaries, oral reports, and technology-based reports;

(I) dispose of all biological material in the proper biohazard containers; and

(J) employ standard precautions, including proper protective equipment during all laboratory exercises.

(4) The student uses critical thinking, scientific reasoning, and problem solving to make informed decisions within and outside the classroom. The student is expected to:

(A) in all fields of science, analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, including examining all sides of scientific evidence of those scientific explanations, so as to encourage critical thinking;

(B) communicate and apply scientific information extracted from various sources such as accredited scientific journals, institutions of higher learning, current events, news reports, published journal articles, and marketing materials;

(C) draw inferences based on data related to promotional materials for products and services;

(D) evaluate the impact of scientific research on society and the environment;

(E) evaluate models according to their limitations in representing biological objects or events; and

(F) research and describe the history of science and contributions of scientists.

(5) The student describes the relationships between microorganisms and health and wellness in the human body. The student is expected to:

(A) research and describe the historical development of microbiology as it relates to health care of an individual; and

(B) research roles, functions, and responsibilities of agencies governing infectious disease control.

(6) The student is expected to perform and analyze results in the microbiology laboratory. The student is expected to:

(A) classify microorganisms using a dichotomous key;

(B) explain the difference between Gram positive and Gram negative bacteria regarding the bacterial cell wall;

(C) identify chemical processes of microorganisms;

(D) recognize the factors required for microbial reproduction and growth;

(E) identify the normal flora microorganisms of the human body;

(F) distinguish between pathogens, opportunistic pathogens, hospital-acquired infections, and colonizing microorganisms;

(G) describe the colony morphology of microorganisms;

(H) interpret Gram stain results;

(I) discuss the results of laboratory procedures such as biochemical reactions that are used to identify microorganisms; and

(J) explain the role of the sensitivity report provided to the clinician by the microbiology department.

(7) The student examines the role of microorganisms in infectious diseases. The student is expected to:

(A) outline the infectious process, including how pathogenic microorganisms affect human body systems;

(B) categorize diseases caused by bacteria, fungi, viruses, protozoa, rickettsias, arthropods, and helminths;

(C) explain the body's immune response and defenses against infection;

(D) evaluate the effects of anti-microbial agents such as narrow and broad spectrum antibiotics;

(E) examine reemergence of diseases such as malaria, tuberculosis, and polio;

(F) identify common bacterial infections from hospital-acquired infection and community-acquired infections such as *Clostridium difficile* and *Staphylococcus aureus*;

(G) investigate drug-resistant microorganisms such as carbapenem-resistant *Enterobacteriaceae*, methicillin-resistant *Staphylococcus aureus*, vancomycin-intermediate/resistant *Staphylococci aureus*, vancomycin-resistant enterococci, and emergent antibiotic-resistant superbugs; and

(H) outline the role of the governing agencies in monitoring and establishing guidelines based on the spread of infectious diseases.

§127.407. World Health Research (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 11 and 12. Prerequisites: Biology and Chemistry. Recommended prerequisite: a course in the Health Science Career Cluster. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Health Science Career Cluster focuses on planning, managing, and providing therapeutic services, diagnostic services, health informatics, support services, and biotechnology research and development.

(3) The World Health Research course is designed to examine major world health problems and emerging technologies as solutions to these medical concerns. It is designed to improve students' understanding of the cultural, infrastructural, political, educational, and technological constraints and inspire ideas for appropriate technological solutions to global medical care issues.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate verbal and non-verbal communication in a clear, concise, and effective manner; and

(B) exhibit the ability to cooperate, contribute, and collaborate as a member of a team.

(2) The student explores and discusses current major human health problems in the world. The student is expected to:

(A) describe the pathophysiology of the three leading causes of death in developing and developed countries;

(B) discuss history of diseases and the evolution of medical technology over time;

(C) contrast health problems in developing and developed countries;

(D) describe the function of the World Health Organization;

(E) define and calculate incidence, morbidity, and mortality; and

(F) identify and describe the challenges in global health that can have the greatest impact on health in developing nations.

(3) The student explains who pays for health care in the world today. The student is expected to:

(A) compare the availability of health care in developing and developed countries;

(B) discuss and contrast the four basic health care system models, including the Beveridge Model, Bismarck Model, National Health Insurance Model, and the Out-of-Pocket Model;

(C) explain how countries such as the United Kingdom, Japan, Germany, Taiwan, Switzerland, and the United States of America pay for health care;

(D) describe how health care expenditures have changed over time; and

(E) identify the major contributors to the rising health science industry costs.

(4) The student describes the engineering technologies developed to address clinical needs. The student is expected to:

(A) describe technologies that support the prevention and treatment of infectious diseases;

(B) explain the implication of vaccines on the immune system;

(C) investigate technologies used for the early detection of cancer;

(D) investigate technologies used for the treatment of several different types of cancers;

(E) explain the cardiovascular system and the technologies used in the diagnosis and treatment of heart disease; and

(F) describe and discuss technologies developed to support vital organ failure.

(5) The student explores how human clinical trials are designed, conducted, and evaluated. The student is expected to:

(A) identify types of clinical trials;

(B) define and calculate a sample size; and

(C) analyze quantitative methods used to describe clinical trials.

(6) The student recognizes the ethics involved in clinical research. The student is expected to:

(A) define informed consent;

(B) explain who can give informed consent;

(C) identify issues in research that influence the development of ethical principles and legal requirements currently governing research with human subjects; and

(D) explain the ethical guidelines for the conduct of research involving human subjects.

(7) The student explains how medical technologies are managed. The student is expected to:

(A) describe how health science research is funded;

(B) explain the role of the U.S. Food and Drug Administration in approving new drugs and medical devices; and

(C) analyze factors that affect the dissemination of new medical technologies.

(8) The student applies research principles to create a project that addresses a major health problem. The student is expected to:

(A) facilitate data analysis and communicate experimental results clearly and effectively using technology by constructing charts and graphs; and

(B) present the project to classmates, health professionals, parents, or instructors.

§127.408. Pathophysiology (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 11 and 12. Prerequisites: Biology and Chemistry. Recommended prerequisite: a course from the Health Science Career Cluster. Students must meet the 40% laboratory and fieldwork. This course satisfies a high school science graduation requirement. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Health Science Career Cluster focuses on planning, managing, and providing therapeutic services, diagnostic services, health informatics, support services, and biotechnology research and development.

(3) The Pathophysiology course is designed for students to conduct laboratory and field investigations, use scientific methods during investigations, and make informed decisions using critical thinking and scientific problem solving. Students in Pathophysiology will study disease processes and how humans are affected. Emphasis is placed on prevention and treatment of disease. Students will differentiate between normal and abnormal physiology.

(4) Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and concep-

tual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not scientifically testable.

(5) Scientific inquiry is the planned and deliberate investigation of the natural world. Scientific methods of investigation are experimental, descriptive, or comparative. The method chosen should be appropriate to the question being asked.

(6) Scientific decision making is a way of answering questions about the natural world. Students should be able to distinguish between scientific decision-making methods (scientific methods) and ethical and social decisions that involve science (the application of scientific information).

(7) A system is a collection of cycles, structures, and processes that interact. All systems have basic properties that can be described in space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically tested. Students should analyze a system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(8) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(9) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate verbal and non-verbal communication in a clear, concise, and effective manner; and

(B) exhibit the ability to cooperate, contribute, and collaborate as a member of a team.

(2) The student, for at least 40% of instructional time, conducts field and laboratory investigations using safe, environmentally appropriate, and ethical practices. These investigations must involve actively obtaining and analyzing data with physical equipment, but may also involve experimentation in a simulated environment as well as field observations that extend beyond the classroom. The student is expected to:

(A) demonstrate safe practices during laboratory and field investigations; and

(B) demonstrate an understanding of the use and conservation of resources and the proper disposal or recycling of materials.

(3) The student uses scientific methods and equipment during laboratory and field investigations. The student is expected to:

(A) know the definition of science and understand that it has limitations, as specified in subsection (b)(4) of this section;

(B) know that hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power that have been tested over a variety of conditions are incorporated into theories;

(C) know that scientific theories are based on natural and physical phenomena and are capable of being tested by multi-

ple independent researchers. Unlike hypotheses, scientific theories are well-established and highly-reliable explanations, but they may be subject to change as new areas of science are created and new technologies emerge;

(D) distinguish and differentiate between scientific hypothesis and scientific theories;

(E) plan and implement descriptive, comparative, and experimental investigations, including asking questions, formulating testable hypotheses, and selecting equipment and technology;

(F) collect and organize qualitative and quantitative data and make measurements with accuracy and precision using tools such as calculators, spreadsheet software, data-collecting probes, computers, standard laboratory glassware, microscopes, various prepared slides, stereoscopes, metric rulers, electronic balances, gel electrophoresis apparatuses, micropipettors, hand lenses, Celsius thermometers, hot plates, lab notebooks or journals, timing devices, Petri dishes, lab incubators, dissection equipment, meter sticks, and models, diagrams, or samples of biological specimens or structures;

(G) analyze, evaluate, make inferences, and predict trends from data; and

(H) communicate valid conclusions supported by the data through methods such as lab reports, labeled drawings, graphic organizers, journals, summaries, oral reports, and technology-based reports.

(4) The student uses critical thinking, scientific reasoning, and problem solving to make informed decisions within and outside the classroom. The student is expected to:

(A) in all fields of science, analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, including examining all sides of scientific evidence of those scientific explanations, so as to encourage critical thinking;

(B) communicate and apply scientific information extracted from various sources such as accredited scientific journals, institutions of higher learning, current events, news reports, published journal articles, and marketing materials;

(C) draw inferences based on data related to promotional materials for products and services;

(D) evaluate the impact of scientific research on society and the environment;

(E) evaluate models according to their limitations in representing biological objects or events; and

(F) research and describe the history of science and contributions of scientists.

(5) The student analyzes the mechanisms of pathology. The student is expected to:

(A) identify biological and chemical processes at the cellular level;

(B) detect changes resulting from mutations and neoplasms by examining cells, tissues, organs, and systems;

(C) identify factors that contribute to disease such as age, gender, environment, lifestyle, and heredity;

(D) examine the body's compensating mechanisms occurring under various conditions; and

(E) analyze how the body attempts to maintain homeostasis when changes occur.

(6) The student examines the process of pathogenesis. The student is expected to:

(A) identify pathogenic organisms using microbiological techniques;

(B) differentiate the stages of pathogenesis, including incubation period, prodromal period, and exacerbation or remission;

(C) analyze the body's natural defense systems against infection such as barriers, the inflammatory response, and the immune response;

(D) evaluate the effects of chemical agents, environmental pollution, and trauma on the disease process; and

(E) research stages in the progression of disease.

(7) The student examines a variety of human diseases. The student is expected to:

(A) describe the nature of diseases, including the etiology, signs and symptoms, diagnosis, prognosis, and treatment options for diseases;

(B) explore advanced technologies for the diagnosis and treatment of disease;

(C) examine reemergence of diseases such as malaria, tuberculosis, and polio;

(D) differentiate between hospital-acquired infections and community-acquired infections;

(E) examine antibiotic-resistant diseases such as methicillin resistant *Staphylococcus aureus*;

(F) differentiate between congenital disorders and childhood diseases; and

(G) investigate ways diseases affect multiple body systems.

(8) The student integrates the effects of disease prevention and control. The student is expected to:

(A) evaluate public health issues related to asepsis, isolation, immunization, and quarantine;

(B) analyze the effects of stress and aging on the body;

(C) evaluate treatment options for diseases;

(D) investigate diseases that threaten world health and propose intervention strategies; and

(E) develop a plan for personal health and wellness.

§127.409. Health Informatics (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 11 and 12. Prerequisites: Business Information Management I and Medical Terminology. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Health Science Career Cluster focuses on planning, managing, and providing therapeutic services, diagnostic services,

health informatics, support services, and biotechnology research and development.

(3) The Health Informatics course is designed to provide knowledge of one of the fastest growing areas in both academic and professional fields. The large gap between state of the art computer technologies and the state of affairs in health care information technology has generated demand for information and health professionals who can effectively design, develop, and use technologies such as electronic medical records, patient monitoring systems, and digital libraries, while managing the vast amount of data generated by these systems.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate verbal and non-verbal communication in a clear, concise, and effective manner;

(B) demonstrate adaptability skills such as problem solving and creative thinking;

(C) develop a career plan;

(D) employ teamwork;

(E) create a job-specific resume; and

(F) appraise the characteristics desired by employers such as work ethics and professionalism.

(2) The student interprets fundamental knowledge of concepts of health information systems technology and the tools for collecting, storing, and retrieving health care data. The student is expected to:

(A) discuss and define the common information systems;

(B) differentiate between the six types of information systems;

(C) explain how each of the six information systems support the administrative, financial, clinical, and research needs of a health care enterprise;

(D) describe the components of an information system; and

(E) implement the concepts of health informatics by creating a culminating project.

(3) The student employs the various types of databases in relation to health informatics. The student is expected to:

(A) define the function of a database management system;

(B) identify the purpose of data modeling;

(C) define the customary steps in the data modeling process;

(D) differentiate between entities, attributes, and relationships in a data model; and

(E) explain various types of organizational databases.

(4) The student distinguishes between data and information. The student is expected to:

(A) discuss the importance of data security, accuracy, integrity, and validity; and

(B) demonstrate an understanding of data information concepts for health information systems and electronic health records.

(5) The student examines the evolution of the health information system. The student is expected to:

(A) evaluate the growing role of the electronic health record;

(B) review the progress of the development of the electronic health record; and

(C) explain functional requirements for electronic health records.

(6) The student examines the process of medical diagnostic and coding concepts as well as current procedural practices. The student is expected to:

(A) examine Health Insurance Portability and Accountability Act (HIPAA) guidelines for confidentiality, privacy, and security of a patient's information within the medical record;

(B) differentiate between insurance fraud and insurance abuse;

(C) discuss the linkage between current procedural technology (CPT) codes, International Classification of Diseases, 10th revision, clinical modification (ICD-10-CM) codes, and medical necessity for reimbursement for charges billed;

(D) search ICD-10-CM code system for correct diagnosis code using patient information;

(E) identify the two types of codes in the health care common procedure coding system (HCPCS); and

(F) explain how medical coding affects the payment process.

(7) The student identifies agencies involved in the health insurance claims process. The student is expected to:

(A) define Medicaid and Medicare;

(B) discuss health care benefit programs such as TRICARE and CHAMPVA;

(C) explain how to manage a worker's compensation case;

(D) complete a current health insurance claim form such as the Centers for Medicare and Medicaid Service (CMS-1500) form; and

(E) identify three ways to transmit electronic claims.

§127.410. Mathematics for Medical Professionals (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for student in Grades 11 and 12. Prerequisites: Geometry and Algebra II. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Health Science Career Cluster focuses on planning, managing, and providing therapeutic services, diagnostic services, health informatics, support services, and biotechnology research and development.

(3) The Mathematics for Medical Professionals course is designed to serve as the driving force behind the Texas essential knowledge and skills for mathematics, guided by the college and career readiness standards. By embedding statistics, probability, and finance, while focusing on fluency and solid understanding in medical mathematics, students will extend and apply mathematical skills necessary for health science professions. Course content consists primarily of high school level mathematics concepts and their applications to health science professions.

(4) The mathematical process standards describe ways in which students are expected to engage in the content. The placement of the process standards at the beginning of the knowledge and skills listed for each grade and course is intentional. The process standards weave the other knowledge and skills together so that students may be successful problem solvers and use mathematics efficiently and effectively in daily life. The process standards are integrated at every grade level and course. When possible, students will apply mathematics to problems arising in everyday life, society, and the workplace. Students will use a problem-solving model that incorporates analyzing given information, formulating a plan or strategy, determining a solution, justifying the solution, and evaluating the problem-solving process and the reasonableness of the solution. Students will select appropriate tools such as real objects, manipulatives, paper and pencil, and technology and techniques such as mental math, estimation, and number sense to solve problems. Students will effectively communicate mathematical ideas, reasoning, and their implications using multiple representations such as symbols, diagrams, graphs, and language. Students will use mathematical relationships to generate solutions and make connections and predictions. Students will analyze mathematical relationships to connect and communicate mathematical ideas. Students will display, explain, or justify mathematical ideas and arguments using precise mathematical language in written or oral communication.

(5) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(6) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) express ideas in a clear, concise, and effective manner;

(B) exhibit the ability to cooperate, contribute, and collaborate as a member of a team; and

(C) demonstrate adaptability skills such as problem solving and creative thinking.

(2) The student uses mathematical processes to acquire and demonstrate mathematical understanding. The student is expected to:

(A) apply mathematics to problems arising in health science professions;

(B) use a problem-solving model that incorporates analyzing given information, formulating a plan or strategy, determining a solution, justifying the solution, and evaluating the problem-solving process and the reasonableness of the solution;

(C) select tools, including real objects, manipulatives, paper and pencil, and technology as appropriate, and techniques, including mental math, estimation, and number sense as appropriate, to solve problems in health science professions;

(D) communicate mathematical ideas, reasoning, and their implications to the health science field using multiple representations, including symbols, diagrams, graphs, and language as appropriate;

(E) create and use representations to organize, record, and communicate mathematical ideas in health science professions;

(F) analyze mathematical relationships to connect and communicate mathematical ideas in health science professions; and

(G) display, explain, and justify mathematical ideas and arguments using precise mathematical language in written or oral communication as it applies to health science professions.

(3) The student generates deeper mathematical understandings through problems involving numerical data that arise in health science professions. The student extends existing knowledge and skills to analyze real-world clinical situations. The student is expected to:

(A) add, subtract, multiply, and divide rational numbers fluently in problem-solving situations related to health science professions;

(B) keep track of and manage inventory using the First In, Last Out (FILO) concept;

(C) solve health science related problems involving ratios, rates, and percentages accurately and precisely, including lab analysis, body fluid analysis, vital signs, medication dosages and administration, growth charts, body surface area, parenteral solutions and data collection related to homeostasis;

(D) learn to read and use military time fluently for health science situations, including medication administration, scheduling, and documentation;

(E) apply appropriate estimation techniques used in health science professions to estimate percent and then confirm those estimates with calculations; and

(F) read and determine accurate numerical value of Roman numerals as used in the health science professions, including cranial nerves.

(4) The student applies the process standards in mathematics to create and analyze mathematical models of health science situations to make informed decisions related to improved health care outcomes by appropriate, proficient, and efficient use of tools, including technology. The student judges the validity of a prediction and uses mathematical models to represent, analyze, and solve dynamic health care problems. The student is expected to:

(A) collect data to create a scatterplot and apply various functions to model the data in an effort to interpret results and make predictions in health science situations such as interpreting growth charts, interpreting disease and mortality rates, and diagnosing and determining treatment modalities;

(B) create, represent, and analyze appropriate mathematical functions such as linear, quadratic, exponential, logarithmic, and sinusoidal functions used to model, interpret and predict situations that occur in health science professions such as supply and demand, inventory control, and cost analysis within clinical situations;

(C) determine or analyze an appropriate sinusoidal model for health science situations that can be modeled with periodic functions, including those related to electrocardiograms (EKG), repolarization of the heart, and medication dosage and administration;

(D) write and solve systems of equations, especially those representing mixtures, which apply to health science situations, including intravenous (IV) solutions and medication dosages;

(E) use properties of logarithmic and exponential functions to solve equations related to health science situations such as determining the pH of a solution, the concentration of hydrogen ions (H⁺) given the pH, calculating the absorbance and transmittance, and determining exponential growth and decay; and

(F) calculate accurate and precise unit rates used in health science situations.

(5) The student applies mathematical process standards to obtain accurate and precise measurements. The student is expected to:

(A) define each of the health science professions that require a unique set of measurement or calculation standards and explain or identify the importance of each measurement system (apothecary, metric, household systems);

(B) explain the necessity of obtaining accurate measurements in the health science professions;

(C) use dimensional analysis with precision and accuracy in performing unit conversions from one measurement system to another, including the use of proportions and unit rates in pharmacology;

(D) classify the specific system to which a given unit belongs and explain its similarity or differences to units in other measurement systems;

(E) select and use appropriate measurement tools used in health science professions such as rulers, tape measures, thermometers, syringes, scales, and sphygmomanometer gauges to obtain accurate and precise measurements; and

(F) select and use appropriate measurement techniques used in health science professions to obtain accurate and precise measurements, including determining measures for medication, nutrition, fluids, and homeostasis.

(6) The student applies mathematical process standards to analyze statistical information used in health science professions. The student is expected to:

(A) obtain and analyze lab reports to evaluate if values lie outside normal parameters;

(B) obtain and analyze vital signs by comparing to normal parameters;

(C) calculate and apply measures of central tendency in application problems in the health science field;

(D) demonstrate an understanding of the significance of the normal distribution;

(E) demonstrate an understanding of and apply the Empirical Rule to find probabilities from normal distributions;

(F) calculate and use the z-score to calculate standard deviation of a normal distribution using a formula;

(G) calculate the percentile rank for a given score using a formula;

(H) describe characteristics of well-designed and well-conducted experiments, observational studies, and surveys in the health science field, including the ethical issues associated with each;

(I) distinguish between populations and samples;

(J) explain placebo and placebo effect; and

(K) define epidemiology and its extension of statistical procedures to public health issues.

(7) The student applies mathematical process standards to solve geometric problems arising in health science professions. The student is expected to:

(A) calculate volumes of various liquids and solids encountered in health science professions, including irregularly shaped solids, using formulas and geometric reasoning;

(B) calculate surface area of various surfaces encountered in health science professions, including body surface area, using formulas and geometric reasoning;

(C) calculate appropriate angles encountered in health science professions such as medication administration, body positioning, and physical therapy using geometric reasoning; and

(D) calculate and analyze range of motion using a goniometer.

§127.411. Pharmacology (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 11 and 12. Prerequisites: Biology and Chemistry. Recommended prerequisite: a course from the Health Science Career Cluster. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Health Science Career Cluster focuses on planning, managing, and providing therapeutic services, diagnostic services, health informatics, support services, and biotechnology research and development.

(3) The Pharmacology course is designed to study how natural and synthetic chemical agents such as drugs affect biological systems. Knowledge of the properties of therapeutic agents is vital in providing quality health care. It is an ever-changing, growing body of information that continually demands greater amounts of time and education from health care workers.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate verbal and non-verbal communication in a clear, concise, and effective manner;

(B) demonstrate adaptability skills such as problem solving and creative thinking;

(C) develop a career plan;

(D) employ teamwork;

(E) create a job-specific resume; and

(F) appraise the characteristics desired by employers.

(2) The student explores the field of pharmacology and foundation of pharmacology. The student is expected to:

(A) define pharmacology and its major subdivisions, including pharmacodynamics, pharmacokinetics, and pharmacotherapeutics;

(B) explain the difference between therapeutic effects, side effects, and toxic effects;

(C) identify a drug receptor in the human body;

(D) trace the interaction and antagonist receptors;

(E) explain the relationship among drug dosage, drug response, and time;

(F) explain drug safety and therapeutic index;

(G) describe three names by which drugs are known; and

(H) list two common drug reference books.

(3) The student identifies individuals and careers associated with manufacturing, dispensing, and administering pharmaceuticals. The student is expected to:

(A) identify career pathways related to pharmacology;

(B) define the role of the pharmacy team;

(C) research and describe emerging pharmacy career opportunities;

(D) analyze the impact of pharmaceuticals on the costs of health care; and

(E) evaluate the impact of pharmaceuticals on the costs of society.

(4) The student explains the ethical and legal responsibilities of pharmacists and pharmacy technicians. The student is expected to:

(A) describe the legal terms and consequences associated with prescription errors;

(B) differentiate between negligence, product liability, contributory negligence, and regulatory law;

(C) evaluate the effect of medication errors related to the pharmacy and the industry;

(D) discuss the elements of a lawsuit; and

(E) define professional liability.

(5) The student uses a comprehensive medical vocabulary in order to communicate effectively with other health care professionals. The student is expected to:

(A) identify the various routes of drug medication;

(B) differentiate among the various classes of drugs;

(C) properly use common terms associated with pharmacology; and

(D) analyze unfamiliar terms using the knowledge of word roots, suffixes, and prefixes.

(6) The student demonstrates mathematical knowledge and skills to solve problems with systems of measurement used in the pharmacy. The student is expected to:

(A) analyze medication calculations, including metric, apothecary, and household systems;

(B) convert a measurement expressed in one standard unit within a system to a measurement expressed in another unit within the same system; and

(C) convert a measurement expressed in one system to a unit of the same measurement in a different system.

(7) The student recognizes the effectiveness of a pharmaceutical agent, its form, and its route of administration. The student is expected to:

(A) differentiate between solid, semi-solid, and liquid dosage forms;

(B) name forms in which drugs are manufactured, including their subcategories;

(C) list examples of drugs in each dosage form; and

(D) define medical terms associated with drug forms.

(8) The student must be able to select appropriate equipment and instruments and use technology for specific tasks. The student is expected to:

(A) identify technology components used in the pharmacy;

(B) describe how technology applications improve efficiency in the pharmacy; and

(C) analyze the use of technology in the pharmacy.

(9) The student is expected to practice safety in dispensing and administering pharmaceutical agents and prevent personal and client illness or injury. The student is expected to:

(A) employ safety standards;

(B) interpret rules associated with pharmacy standards;

(C) examine unsafe practices;

(D) observe safe procedures in the administration of client care; and

(E) demonstrate these safe procedures in the clinical setting.

§127.412. Health Science Theory (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 10-12. Prerequisite: Biology. Recommended corequisite: Health Science Clinical. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Health Science Career Cluster focuses on planning, managing, and providing therapeutic services, diagnostic services, health informatics, support services, and biotechnology research and development.

(3) The Health Science Theory course is designed to provide for the development of advanced knowledge and skills related to a wide variety of health careers. Students will employ hands-on experiences for continued knowledge and skill development.

(4) To pursue a career in the health science industry, students should recognize, learn to reason, think critically, make decisions, solve problems, and communicate effectively. Students should recognize that quality health care depends on the ability to work well with others.

(5) The health science industry is comprised of diagnostic, therapeutic, health informatics, support services, and biotechnology research and development systems that function individually and collaboratively to provide comprehensive health care. Students should identify the employment opportunities, technology, and safety requirements of each system. Students are expected to apply the knowledge and skills necessary to pursue a health science career through further education and employment.

(6) Professional integrity in the health science industry is dependent on acceptance of ethical and legal responsibilities. Students are expected to employ their ethical and legal responsibilities, recognize limitations, and understand the implications of their actions.

(7) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(8) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) express ideas in a clear, concise, and effective manner; and

(B) exhibit the ability to cooperate, contribute, and collaborate as a member of a team.

(2) The student applies mathematics, science, English language arts, and social studies in health science. The student is expected to:

(A) solve mathematical calculations appropriate to situations in a health-related environment;

(B) communicate using medical terminology;

(C) express ideas in writing and develop skills in documentation;

(D) interpret complex technical material related to the health science industry;

(E) summarize biological and chemical processes that maintain homeostasis;

(F) explain the changes in structure and function due to trauma and disease; and

(G) research the global impact of disease prevention and cost containment.

(3) The student displays verbal and non-verbal communication skills. The student is expected to:

(A) demonstrate therapeutic communication appropriate to the situation;

(B) execute verbal and nonverbal skills when communicating with persons with sensory loss and language barriers in a simulated setting; and

(C) use electronic communication devices with appropriate supervision in the classroom setting such as facsimile, scanner, electronic mail, and telephone.

(4) The student analyzes and evaluates communication skills for maintaining healthy relationships throughout the life span. The student is expected to:

(A) evaluate how healthy relationships influence career goals;

(B) demonstrate communication skills in building and maintaining healthy relationships;

(C) demonstrate strategies for communicating needs, wants, and emotions; and

(D) evaluate the effectiveness of conflict resolution techniques in various simulated situations.

(5) The student relates appropriate information to the proper authority in a simulated classroom setting. The student is expected to:

(A) identify and retrieve reportable information; and

(B) report simulated information according to facility policy.

(6) The student identifies documents integrated into the permanent record of the health informatics system. The student is expected to:

(A) research document formats; and

(B) compile and record data according to industry-based standards.

(7) The student describes academic requirements necessary for employment in the health science industry. The student is expected to:

(A) research specific health science careers; and

(B) examine employment procedures for a specific health science career.

(8) The student identifies problems and participates in the decision-making process. The student is expected to:

(A) analyze systematic procedures for problem solving;

(B) evaluate the impact of decisions; and

(C) suggest modifications based on decision outcomes.

(9) The student implements the knowledge and skills of a health science professional in the classroom setting. The student is expected to:

(A) comply with specific industry standards related to safety and substance abuse;

(B) model industry expectations of professional conduct such as attendance, punctuality, personal appearance, hygiene, and time management;

(C) articulate comprehension of assignment;

(D) employ medical vocabulary specific to the health care setting;

(E) perform admission, discharge, and transfer functions in a simulated setting;

(F) demonstrate skills related to activities of daily living in rehabilitative care such as range of motion, positioning, and ambulation according to the health science industry standards, regulatory agency standards, and professional guidelines;

(G) role play techniques used in stressful situations such as trauma and chronic and terminal illness;

(H) demonstrate first aid, vital signs, cardiopulmonary resuscitation, and automated external defibrillator skills in a laboratory setting; and

(I) perform skills specific to a health science professional such as medical assistant, dental assistant, emergency medical technician-basic, phlebotomy technician, and pharmacy technician.

(10) The student evaluates ethical behavioral standards and legal responsibilities. The student is expected to:

(A) research and describe the role of professional associations and regulatory agencies;

(B) examine legal and ethical behavior standards such as Patient Bill of Rights, Advanced Directives, and the Health Insurance Portability and Accountability Act; and

(C) investigate the legal and ethical ramifications of unacceptable behavior.

(11) The student exhibits the leadership skills necessary to function in a democratic society. The student is expected to:

(A) identify leadership skills of health science professionals;

(B) participate in group dynamics; and

(C) integrate consensus-building techniques.

(12) The student maintains a safe environment. The student is expected to:

(A) conform to governmental regulations and guidelines from entities such as the World Health Organization, Centers for Disease Control and Prevention, Occupational Safety and Health Administration, U.S. Food and Drug Administration, Joint Commission, and National Institute of Health;

(B) explain protocol related to hazardous materials and situations;

(C) observe and report unsafe conditions; and

(D) support recycling and waste management for cost containment and environmental protection.

(13) The student assesses wellness strategies for the prevention of disease. The student is expected to:

(A) research wellness strategies for the prevention of disease;

(B) evaluate positive and negative effects of relationships on physical and emotional health;

(C) explain the benefits of positive relationships among community health professionals in promoting a healthy community;

(D) research and analyze the effects of access to quality health care; and

(E) research alternative health practices and therapies.

§127.413. Health Science Clinical (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 10-12. Prerequisite: Biology. Corequisite: Health Science Theory. This course must be taken concurrently with Health Science Theory and may not be taken as a stand-alone course. Districts are encouraged to offer this course in a consecutive block with Health Science Theory to allow students sufficient time to master the content of both courses. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Health Science Career Cluster focuses on planning, managing, and providing therapeutic services, diagnostic services, health informatics, support services, and biotechnology research and development.

(3) The Health Science Clinical course is designed to provide for the development of advanced knowledge and skills related to a wide variety of health careers. Students will employ hands-on experiences for continued knowledge and skill development.

(4) To pursue a career in the health science industry, students should recognize, learn to reason, think critically, make decisions, solve problems, and communicate effectively. Students should recognize that quality health care depends on the ability to work well with others.

(5) The health science industry is comprised of diagnostic, therapeutic, health informatics, support services, and biotechnology research and development systems that function individually and collaboratively to provide comprehensive health care. Students should identify the employment opportunities, technology, and safety requirements of each system. Students are expected to apply the knowledge and skills necessary to pursue a health science career through further education and employment.

(6) Professional integrity in the health science industry is dependent on acceptance of ethical and legal responsibilities. Students are expected to employ their ethical and legal responsibilities, recognize limitations, and understand the implications of their actions.

(7) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(8) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) express ideas in a clear, concise, and effective manner; and

(B) exhibit the ability to cooperate, contribute, and collaborate as a member of a team.

(2) The student applies mathematics, science, English language arts, and social studies in health science. The student is expected to:

(A) solve mathematical calculations appropriate to situations in a health-related environment;

(B) communicate using medical terminology;

(C) express ideas in writing and develop skills in documentation;

(D) interpret complex technical material related to the health science industry;

(E) summarize biological and chemical processes that maintain homeostasis;

(F) explain the changes in structure and function due to trauma and disease; and

(G) research the global impact of disease prevention and cost containment.

(3) The student displays verbal and non-verbal communication skills. The student is expected to:

(A) demonstrate therapeutic communication appropriate to the situation;

(B) execute verbal and nonverbal skills when communicating with persons with sensory loss and language barriers; and

(C) use electronic communication devices with appropriate supervision such as facsimile, scanner, electronic mail, and telephone.

(4) The student analyzes and evaluates communication skills for maintaining healthy relationships throughout the life span. The student is expected to:

(A) evaluate how a healthy relationship influences career goals;

(B) demonstrate communication skills in building and maintaining healthy relationships;

(C) demonstrate strategies for communicating needs, wants, and emotions; and

(D) evaluate the effectiveness of conflict resolution techniques in various practical situations.

(5) The student relates appropriate information in the practical setting to the proper authority. The student is expected to:

(A) identify and retrieve reportable information; and

(B) report information according to facility policy in the practical setting.

(6) The student identifies documents integrated into the permanent record of the health informatics system. The student is expected to:

(A) research and describe document formats; and

(B) compile and record data according to industry based standards.

(7) The student describes academic requirements necessary for employment in the health science industry. The student is expected to:

(A) research specific health science careers; and

(B) review employment procedures for a specific health science career.

(8) The student identifies problems and participates in the decision-making process. The student is expected to:

(A) analyze systematic procedures for problem solving;

(B) evaluate the impact of decisions; and

(C) suggest modifications based on decision outcomes.

(9) The student implements the knowledge and skills of a health science professional in the clinical setting. The student is expected to:

(A) comply with specific industry standards related to safety and substance abuse;

(B) model industry expectations of professional conduct such as attendance, punctuality, personal appearance, hygiene, and time management;

(C) articulate comprehension of assignment;

(D) employ medical vocabulary specific to the health care setting;

(E) perform admission, discharge, and transfer functions in a simulated setting;

(F) demonstrate skills related to activities of daily living in rehabilitative care such as range of motion, positioning, and ambulation according to the health science industry standards, regulatory agency standards, and professional guidelines;

(G) role play techniques used in stressful situations such as trauma, chronic, and terminal illness;

(H) demonstrate first aid, vital signs, cardiopulmonary resuscitation, and automated external defibrillator skills in a laboratory setting; and

(I) perform skills specific to a health science professional such as medical assistant, dental assistant, emergency medical technician-basic, phlebotomy technician, and pharmacy technician.

(10) The student evaluates ethical behavioral standards and legal responsibilities. The student is expected to:

(A) research and describe the role of professional associations and regulatory agencies;

(B) examine legal and ethical behavior standards such as Patient Bill of Rights, Advanced Directives, and the Health Insurance Portability and Accountability Act;

(C) investigate the legal and ethical ramifications of unacceptable behavior; and

(D) perform within the designated scope of practice.

(11) The student exhibits the leadership skills necessary to function in a democratic society. The student is expected to:

(A) identify leadership skills of health science professionals;

(B) participate in group dynamics; and

(C) integrate consensus-building techniques.

(12) The student maintains a safe environment. The student is expected to:

(A) conform to governmental regulations and guidelines from entities such as the World Health Organization, Centers for Disease Control and Prevention, Occupational Safety and Health Administration, U.S. Food and Drug Administration, Joint Commission, and National Institute of Health;

(B) explain protocol related to hazardous materials and situations such as material safety data sheets;

(C) observe and report unsafe conditions; and

(D) practice recycling and waste management for cost containment and environmental protection.

(13) The student assesses wellness strategies for the prevention of disease. The student is expected to:

(A) research wellness strategies for the prevention of disease;

(B) evaluate positive and negative effects of relationships on physical and emotional health;

(C) explain the benefits of positive relationships among community health professionals in promoting a healthy community;

(D) research and analyze access to quality health care; and

(E) research alternative health practices and therapies.

§127.414. Practicum in Health Science (Two Credits), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 11 and 12. Prerequisites: Health Science Theory and Biology. Students shall be awarded two credits for successful completion of this course. A student may repeat this course once for credit provided that the student is experiencing different aspects of the industry and demonstrating proficiency in additional and more advanced knowledge and skills.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Health Science Career Cluster focuses on planning, managing, and providing therapeutic services, diagnostic services, health informatics, support services, and biotechnology research and development.

(3) The Practicum in Health Science course is designed to give students practical application of previously studied knowledge and skills. Practicum experiences can occur in a variety of locations appropriate to the nature and level of experience.

(4) To pursue a career in the health care industry, students should learn to reason, think critically, make decisions, solve problems, and communicate effectively. Students should recognize that quality health care depends on the ability to work well with others.

(5) The health care industry is comprised of diagnostic, therapeutic, health informatics, support services, and biotechnology research and development systems that function individually and collaboratively to provide comprehensive health care. Students recognize the employment opportunities, technology, and safety requirements of each system. Students are expected to apply the knowledge and skills necessary to pursue a health science certification or licensure through further education and employment.

(6) Professional integrity in the health care industry is dependent on acceptance of ethical and legal responsibilities. Students are expected to employ their ethical and legal responsibilities, recognize limitations, and understand the implications of their actions.

(7) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(8) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate verbal and non-verbal communication in a clear, concise, and effective manner; and

(B) exhibit the ability to cooperate, contribute, and collaborate as a member of a team.

(2) The student applies mathematics, science, English language arts, and social sciences in health science. The student is expected to:

(A) interpret data from various sources in formulating conclusions;

(B) compile information from a variety of sources to create a technical report;

(C) plan, prepare, and deliver a presentation;

(D) examine the environmental factors that affect homeostasis;

(E) relate anatomical structure to physiological functions; and

(F) distinguish atypical anatomy and physiology in the human body systems.

(3) The student uses verbal and non-verbal communication skills. The student is expected to:

(A) accurately report information according to facility policies and procedures;

(B) demonstrate therapeutic communication skills to provide quality care; and

(C) employ therapeutic measures to minimize communication barriers.

(4) The student implements the knowledge and skills of a health care professional necessary to acquire and retain employment. The student is expected to:

(A) demonstrate proficiency in medical terminology and skills related to the health care of an individual;

(B) develop new problem-solving strategies based on previous knowledge and skills; and

(C) evaluate performance for continuous improvement and advancement in health care.

(5) The student employs ethical behavior standards and legal responsibilities. The student is expected to:

(A) identify individual ethical and legal behavior standards according to professional regulatory agencies; and

(B) research case studies related to unethical behavior in the health care industry.

(6) The student employs a safe environment to prevent hazardous situations. The student is expected to:

(A) integrate regulatory standards such as standard precautions and safe patient handling;

(B) evaluate hazardous materials according to the material safety data sheets; and

(C) apply principles of infection control and body mechanics in all aspects of the health care industry.

(7) The student explores the knowledge and skill levels necessary for advancing in the health science professions. The student is expected to:

(A) identify knowledge and skills that are transferable among health science professions; and

(B) research career pathways pertaining to the health care industry.

(8) The student implements skills in monitoring individual health status during therapeutic or diagnostic procedures. The student is expected to:

(A) identify care indicators of health status; and

(B) record health status according to facility protocol.

(9) The student recognizes the importance of participation in extended learning experiences. The student is expected to:

(A) participate in extended learning experiences such as community service, career and technical student organizations, and professional organizations; and

(B) create a plan of action targeting the career and technical student organization's community service goal.

§127.415. Extended Practicum in Health Science (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 11 and 12. The practicum course is a paid or unpaid capstone experience for students participating in a coherent sequence of career and technical education courses in the Health Science Career Cluster. Prerequisites: Health Science Theory and Biology. Corequisite: Practicum in Health Science. This course must be taken concurrently with Practicum in Health Science and may not be taken as a stand-alone course. Students shall be awarded one credit for successful completion of this course. A student may repeat this course once for credit provided that the student is experiencing different aspects of the industry and demonstrating proficiency in additional and more advanced knowledge and skills.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Health Science Career Cluster focuses on planning, managing, and providing therapeutic services, diagnostic services, health informatics, support services, and biotechnology research and development.

(3) The Extended Practicum in Health Science course is designed to give students practical application of previously studied

knowledge and skills. Practicum experiences can occur in a variety of locations appropriate to the nature and level of experience.

(4) To pursue a career in the health science industry, students should learn to reason, think critically, make decisions, solve problems, and communicate effectively. Students should recognize that quality health care depends on the ability to work well with others.

(5) The health science industry is comprised of diagnostic, therapeutic, health informatics, support services, and biotechnology research and development systems that function individually and collaboratively to provide comprehensive health care. Students should identify the employment opportunities, technology, and safety requirements of each system. Students are expected to apply the knowledge and skills necessary to pursue a health science career through further education and employment.

(6) Professional integrity in the health science industry is dependent on acceptance of ethical and legal responsibilities. Students are expected to employ their ethical and legal responsibilities, recognize limitations, and understand the implications of their actions.

(7) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(8) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) participate in a paid or unpaid, laboratory- or work-based application of previously studied knowledge and skills related to health science;

(B) participate in training, education, or preparation for licensure, certification, or other relevant credentials to prepare for employment;

(C) demonstrate professional standards and personal qualities needed to be employable such as self-discipline, positive attitude, integrity, commitment, leadership, appreciation for diversity, customer service, and adaptability with increased fluency;

(D) employ teamwork and conflict-management skills with increased fluency to achieve collective goals; and

(E) employ planning and time-management skills and tools with increased fluency to enhance results and complete work tasks.

(2) The student applies professional communications strategies. The student is expected to:

(A) demonstrate verbal and non-verbal communication consistently in a clear, concise, and effective manner;

(B) report information according to facility policies and procedures accurately;

(C) demonstrate therapeutic communication skills with increased fluency to provide quality care;

(D) analyze, interpret, and effectively communicate information, data, and observations;

(E) apply active listening skills to obtain and clarify information; and

(F) observe and interpret verbal and nonverbal cues and behaviors to enhance communication.

(3) The student implements advanced problem-solving methods. The student is expected to employ critical-thinking skills with increased fluency both independently and in groups to solve problems and make decisions.

(4) The student understands and applies proper safety techniques in the workplace to prevent hazardous situations. The student is expected to:

(A) demonstrate an understanding of and follow workplace safety rules and regulations;

(B) implement regulatory standards such as standard precautions and safe patient handling with increased fluency;

(C) evaluate hazardous materials according to the material safety data sheets in a consistent manner; and

(D) apply principles of infection control and body mechanics in all aspects of the health care industry.

(5) The student understands the professional, ethical, and legal responsibilities in health science. The student is expected to:

(A) demonstrate a positive, productive work ethic by performing assigned tasks as directed;

(B) implement individual ethical and legal behavior standards according to professional regulatory agencies;

(C) show integrity by choosing the ethical course of action when making decisions; and

(D) comply with all applicable rules, laws, and regulations in a consistent manner.

(6) The student implements the knowledge and skills of a health care professional necessary to acquire and retain employment. The student is expected to demonstrate proficiency in medical terminology and skills related to the health care of an individual.

(7) The student participates in a supervised health science experience. The student is expected to:

(A) conduct, document, and evaluate learning activities in a supervised health science experience;

(B) develop advanced technical knowledge and skills related to a personal occupational objective;

(C) evaluate strengths and weaknesses in technical skill proficiency; and

(D) collect representative work samples.

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 December 6, 2021.

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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



SUBCHAPTER J. HOSPITALITY AND TOURISM

19 TAC §§127.468 - 127.480

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(n), which allows the SBOE to by rule develop and implement a plan designed to incorporate foundation curriculum requirements into the career and technical education (CTE) curriculum required in TEC, §28.002; TEC, §28.002(o), which requires the SBOE to determine that at least 50% of the approved CTE courses are cost effective for a school district to implement; TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002; TEC, §28.025(b-2), which requires the SBOE to by rule allow a student to comply with the curriculum requirements for the third and fourth mathematics credits under TEC, §28.025(b-1)(2), or the third and fourth science credits under TEC, §28.025(b-1)(3), by successfully completing a CTE course designated by the SBOE as containing substantially similar and rigorous content; and TEC, §28.025(b-17), which requires the SBOE by rule to ensure that a student may comply with curriculum requirements under TEC, §28.025(b-1)(6), by successfully completing an advanced CTE course, including a course that may lead to an industry-recognized credential or certificate or an associate degree.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (n), and (o); and 28.025(a), (b-2), and (b-17).

§127.468. Implementation of Texas Essential Knowledge and Skills for Hospitality and Tourism, Adopted 2015.

(a) The provisions of this subchapter shall be implemented by school districts beginning with the 2017-2018 school year.

(b) No later than August 31, 2016, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills for career and technical education as adopted in §§127.469-127.480 of this subchapter.

(c) If the commissioner makes the determination that instructional materials funding has been made available under subsection (b) of this section, §§127.469-127.480 of this subchapter shall be implemented beginning with the 2017-2018 school year and apply to the 2017-2018 and subsequent school years.

(d) If the commissioner does not make the determination that instructional materials funding has been made available under subsection (b) of this section, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that §§127.469-127.480 of this subchapter shall be implemented for the following school year.

§127.469. Principles of Hospitality and Tourism (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 9-12. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Hospitality and Tourism Career Cluster focuses on the management, marketing, and operations of restaurants and other food/beverage services, lodging, attractions, recreation events, and travel-related services.

(3) Principles of Hospitality and Tourism introduces students to an industry that encompasses lodging, travel and tourism, recreation, amusements, attractions, and food/beverage operations. Students learn knowledge and skills focusing on communication, time management, and customer service that meet industry standards. Students will explore the history of the hospitality and tourism industry and examine characteristics needed for success in that industry.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) write effectively using standard English and correct grammar;

(B) use a variety of credible resources;

(C) recognize appropriate professional documents used in the hospitality and tourism industry;

(D) calculate accurate measurements, numerical concepts such as percentages, and estimations; and

(E) understand how scientific principles are used in the hospitality and tourism industry.

(2) The student uses verbal and nonverbal communication to provide a positive experience for guests and employees. The student is expected to:

(A) develop and execute formal and informal presentations; and

(B) practice customer service skills.

(3) The student understands that personal success depends on personal effort. The student is expected to:

(A) demonstrate self-responsibility and self-management;

(B) explain the characteristics of personal values, ethics, and fundamental principles;

(C) display positive attitudes and good work habits;

(D) develop strategies for achieving accuracy; and

(E) develop organizational skills.

(4) The student develops an understanding of time management, decision making, and prioritization. The student is expected to:

(A) identify and apply effective practices for managing time;

(B) analyze the benefits of balancing career and home life;

(C) learn and apply steps in the decision-making process; and

(D) work independently.

(5) The student researches, analyzes, and explores lifestyle and career goals. The student is expected to:

(A) prioritize career goals and ways to achieve those goals in the hospitality and tourism industry;

(B) compare and contrast education or training and certifications needed for careers in the hospitality and tourism industry;

(C) examine related community service opportunities; and

(D) describe the components and importance of a career portfolio.

(6) The student uses technology to gather information. The student is expected to:

(A) understand the need for computer applications to perform workplace tasks;

(B) recognize that types of computerized systems are used to manage operations and guest services in the hospitality and tourism industry; and

(C) discuss why computerized systems are used in operations and guest services in the hospitality and tourism industry.

(7) The student demonstrates leadership, citizenship, and teamwork skills required for success. The student is expected to:

(A) develop team-building skills;

(B) develop decision-making and problem-solving skills;

(C) conduct and participate in effective meetings;

(D) identify leadership and teamwork qualities that create a pleasant working atmosphere; and

(E) identify community service activities related to the hospitality and tourism industry.

(8) The student explains how resources (employees, guests, and property) are managed to minimize losses or liabilities in the hospitality and tourism industry. The student is expected to:

(A) identify and explain job safety and security practices;

(B) recognize and implement the basics of sanitation;

(C) understand and demonstrate procedures for cleaning, sanitizing, and storing equipment and tools; and

(D) determine how environmental issues and trends affect the hospitality and tourism industry.

(9) The student explores the history of the hospitality and tourism industry. The student is expected to:

(A) examine the varied operations required within the hospitality and tourism industry;

(B) understand the job qualifications for various careers in the hospitality and tourism industry; and

(C) differentiate amongst lodging, travel and tourism, recreation amusements, attractions and resorts, and food and beverage service.

(10) The student demonstrates research skills applicable to the hospitality and tourism industry. The student is expected to:

(A) develop technical vocabulary of the hospitality and tourism industry;

(B) design a customized product for the hospitality and tourism industry; and

(C) identify local and regional trends and issues in the hospitality and tourism industry.

(11) The student understands the importance of customer service. The student is expected to:

(A) determine ways to provide quality customer service;

(B) analyze how guests are affected by employee attitude, appearance, and actions; and

(C) examine different types of service across the industry.

§127.470. Introduction to Culinary Arts (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 9 and 10. Recommended prerequisite: Principles of Hospitality and Tourism. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Hospitality and Tourism Career Cluster focuses on the management, marketing, and operations of restaurants and other food/beverage services, lodging, attractions, recreation events, and travel-related services.

(3) Introduction to Culinary Arts will emphasize the principles of planning, organizing, staffing, directing, and controlling the management of a variety of food service operations. The course will provide insight into the operation of a well-run restaurant. Introduction to Culinary Arts will provide insight into food production skills, various levels of industry management, and hospitality skills. This is an entry level course for students interested in pursuing a career in the food service industry. This course is offered as a classroom and laboratory-based course.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

- (A) model effective oral and written communication;
 - (B) practice professional grooming and hygiene standards;
 - (C) exercise punctuality and time-management skills;
 - (D) demonstrate self-respect and respect for others;
 - (E) demonstrate effective teamwork and leadership;
- and
- (F) employ initiative, adaptability, and problem-solving techniques in practical applications.

(2) The student gains academic knowledge and skills required to pursue the full range of career and postsecondary education opportunities within the restaurant food service industry. The student is expected to:

- (A) organize oral and written information;
- (B) compose a variety of written documents such as menus, presentations, and advertisements;
- (C) calculate numerical concepts such as weights, measurements, and percentages;
- (D) identify how scientific principles are used in the food service industry; and
- (E) use mathematics and science knowledge and skills to produce quality food products.

(3) The student uses verbal and nonverbal communication skills to create, express, and interpret information to establish a positive work environment. The student is expected to:

- (A) develop and deliver presentations;
- (B) identify various marketing strategies used by the food service industry such as traditional and innovative marketing strategies;
- (C) demonstrate proper techniques for answering restaurant phones;
- (D) relate interpersonal communications such as verbal and nonverbal cues to enhance communication with coworkers, employers, customers, and clients; and
- (E) demonstrate active listening skills to obtain and clarify information.

(4) The student solves problems using critical thinking, innovation, and creativity independently and in teams. The student is expected to:

- (A) generate creative ideas to solve problems by brainstorming possible solutions; and
- (B) employ critical-thinking and interpersonal skills to resolve conflicts with individuals such as coworkers, customers, clients, and employers.

(5) The student uses information technology tools specific to restaurant management to access, manage, integrate, and interpret information. The student is expected to:

- (A) use information technology tools and applications to perform workplace responsibilities;

(B) demonstrate knowledge and use of point-of-sale systems; and

- (C) evaluate Internet resources for information.

(6) The student understands roles within teams, work units, departments, organizations, and the larger environment of the food service industry. The student is expected to:

- (A) explain the different types and functions of kitchen, front-of-the-house, and support roles;
- (B) investigate quality-control standards and practices;
- (C) differentiate between various styles of restaurant services such as table, buffet, fast food, fast casual, and quick service;
- (D) illustrate various place settings using proper placement of dining utensils; and
- (E) demonstrate the proper service techniques in food service operations.

(7) The student understands the importance of health, safety, and environmental management systems in organizations and their importance to organizational performance and regulatory compliance. The student is expected to:

- (A) assess workplace conditions with regard to safety and health;
- (B) analyze potential effects caused by common chemicals and hazardous materials;
- (C) demonstrate first aid and cardiopulmonary resuscitation skills;
- (D) apply safety and sanitation standards common to the workplace;

(E) research sources of food-borne illness and determine ways to prevent them;

(F) determine professional attire and personal hygiene for restaurant employees; and

(G) prepare for a state or national food sanitation certification or other appropriate certifications.

(8) The student uses leadership and teamwork skills in collaborating with others to accomplish organizational goals and objectives. The student is expected to:

- (A) apply team-building skills;
- (B) apply decision-making and problem-solving skills;
- (C) determine leadership and teamwork qualities to aid in creating a pleasant working atmosphere; and
- (D) participate in community leadership and teamwork opportunities to enhance professional skills.

(9) The student knows and understands the importance of professional ethics and legal responsibilities within the food service industry. The student is expected to:

- (A) demonstrate ethical reasoning in a variety of workplace situations in order to make decisions;
- (B) interpret and explain written organizational policies and procedures to help employees perform their jobs; and
- (C) develop guidelines for professional conduct.

(10) The student demonstrates an understanding that personal success depends on personal effort. The student is expected to:

(A) demonstrate a proactive understanding of self-responsibility and self-management;

(B) identify behaviors needed to be employable and maintain employment such as positive work ethics and positive personal qualities;

(C) identify and evaluate the effects of exercise, nutritional dietary habits, and emotional factors such as stress, fatigue, or anxiety on job performance;

(D) implement stress-management techniques; and

(E) follow directions and procedures independently.

(11) The student develops principles in time management, decision making, effective communication, and prioritization. The student is expected to:

(A) apply effective practices for managing time and energy;

(B) analyze various steps in the career decision-making process; and

(C) discuss the importance of balancing a career, family, and leisure activities.

(12) The student knows and understands the importance of employability skills. The student is expected to:

(A) demonstrate skills related to seeking employment in the food service industry;

(B) identify the required training and educational requirements that lead toward appropriate career goals;

(C) select educational and work history highlights to include in a career portfolio;

(D) create and update a personal career portfolio;

(E) recognize required employment forms and their functions such as I-9, work visa, W-4, and licensures to meet employment requirements;

(F) research the local and regional labor workforce market to determine opportunities for advancement;

(G) investigate professional development training opportunities to keep current on relevant trends and information within the industry; and

(H) recognize entrepreneurship opportunities.

(13) The student understands the use of technical knowledge and skills required to pursue careers in the restaurant food service industry, including knowledge of design, operation, and maintenance of technological systems. The student is expected to:

(A) define job-specific technical vocabulary;

(B) analyze customer comments to formulate improvements in services and products and training of staff;

(C) detail ways to achieve high rates of customer satisfaction;

(D) use different types of payment options to facilitate customer payments for services; and

(E) demonstrate technical skills used in producing quality food service.

(14) The student understands factors that affect the food service industry. The student is expected to:

(A) outline the history and growth of the food service industry;

(B) identify an entrepreneur who has made significant contributions to the food service industry; and

(C) explain cultural globalization and its influence on food.

(15) The student evaluates and determines equipment, ingredients, and procedures in a professional food setting. The student is expected to:

(A) identify the role of mise en place;

(B) identify and use large and small equipment in the professional food service setting;

(C) identify the types of knives and proper usage in a commercial kitchen;

(D) demonstrate proper knife safety, handling, cleaning, and storage;

(E) differentiate between different types of produce and identify factors such as grading, purchasing, storage, and usage;

(F) differentiate between dry goods and identify factors such as purchasing and storage;

(G) differentiate between proteins and identify factors such as types, grades, purchasing, and storage;

(H) describe the methods of cooking, including dry heat, moist heat, and combination heat; and

(I) differentiate between common baking methods and identify common ingredients used in baking.

§127.471. Culinary Arts (Two Credits), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisites: Principles of Hospitality and Tourism and Introduction to Culinary Arts. Students shall be awarded two credits for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Hospitality and Tourism Career Cluster focuses on the management, marketing, and operations of restaurants and other food/beverage services, lodging, attractions, recreation events, and travel-related services.

(3) Culinary Arts begins with the fundamentals and principles of the art of cooking and the science of baking and includes management and production skills and techniques. Students can pursue a national sanitation certification or other appropriate industry certifications. This course is offered as a laboratory-based course.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

- (A) model effective oral and written communication;
 - (B) practice professional grooming and hygiene standards;
 - (C) exercise punctuality and time-management skills;
 - (D) demonstrate self-respect and respect for others;
 - (E) demonstrate effective teamwork and leadership;
- and
- (F) employ initiative, adaptability, and problem-solving techniques in practical applications.

(2) The student applies advanced reading, writing, mathematics, and science skills for the food service industry. The student is expected to:

- (A) compose industry appropriate documents such as purchasing specifications and purchase orders;
- (B) comprehend a variety of texts such as operations and training manuals;
- (C) calculate numerical concepts such as percentages and estimations in practical situations, including weight and measures;
- (D) understand scientific principles used in culinary arts;
- (E) read and comprehend standardized recipes;
- (F) write and convert standardized recipes; and
- (G) calculate and manage food costs.

(3) The student integrates listening, writing, and speaking skills using verbal and nonverbal communication to enhance operations, guest satisfaction, and professional development. The student is expected to:

- (A) create formal or informal presentations;
- (B) properly answer business phones;
- (C) write instructions for a specific restaurant for a culinary procedure or the use of a piece of equipment; and
- (D) attend and participate in an industry-focused staff meeting.

(4) The student demonstrates an understanding that personal success depends on personal effort. The student is expected to:

- (A) demonstrate a proactive understanding of self-responsibility and self-management;
- (B) explain the characteristics of personal values and principles;
- (C) demonstrate positive attitudes and work habits;
- (D) demonstrate exemplary appearance and personal hygiene; and
- (E) identify and manage the effects of exercise, dietary habits, and emotional factors such as stress, fatigue, or anxiety on job performance.

(5) The student develops principles in time management, decision making, effective communication, and prioritization. The student is expected to:

- (A) apply effective practices for managing time and energy; and
- (B) analyze various steps in the decision-making process.

(6) The student researches, analyzes, and explores lifestyle and career goals. The student examines jobs available in the food service industry and accesses career opportunities. The student is expected to:

- (A) research the major job duties and qualifications for various positions in the food service industry to facilitate selection of career choices in culinary arts;
- (B) update a personal career portfolio;
- (C) demonstrate proper interview techniques; and
- (D) establish personal short- and long-term goals.

(7) The student understands factors that affect the food service industry. The student is expected to:

- (A) research how historical and current trends in society affect the food service industry;
- (B) identify global cultures and traditions related to food;
- (C) research famous chefs from history; and
- (D) summarize historical entrepreneurs who influenced food service in the United States.

(8) The student evaluates and determines equipment, ingredients, and procedures used in a professional food setting. The student is expected to:

- (A) identify and demonstrate the role of mise en place in the professional food service setting;
- (B) identify and use large and small equipment in a commercial kitchen;
- (C) develop and practice food production and presentation techniques;
- (D) identify and use the appropriate application of moist, dry, and combination cookery methods;

(E) demonstrate the preparation skills of items commonly prepared in food service operations such as breakfast cookery, salads and dressings, soups and sandwiches, stocks and sauces, appetizers, seafood, poultry, meat, pastas and grains, and fruits and vegetables; and

(F) demonstrate baking techniques such as yeast breads and rolls, quick breads, and desserts.

(9) The student understands the various food service operations such as quick service, fast casual, casual, fine dining, institutional, and beverage service. The student is expected to:

- (A) explain quality customer service;
- (B) demonstrate types of table setting, dining, and service skills;
- (C) differentiate between service styles; and
- (D) compare and contrast the roles of the front of the house and the back of the house in the various food service operations.

(10) The student uses technology and computer applications to manage food service operations. The student is expected to:

- (A) use technology tools appropriate for the industry;
- (B) operate technology applications to perform work-
place tasks;
- (C) explain and use point-of-sale systems in various
food service operations;
- (D) demonstrate knowledge in computer programs used
for food management;
- (E) evaluate information sources for culinary arts; and
- (F) interpret data such as spreadsheets, databases, and
sales reports.

(11) The student demonstrates leadership, citizenship, and
teamwork skills required for success. The student is expected to:

- (A) apply team-building skills;
- (B) apply decision-making and problem-solving skills;
- (C) determine leadership and teamwork qualities in cre-
ating a pleasant working atmosphere; and
- (D) participate in community leadership and teamwork
opportunities to enhance professional skills.

(12) The student explains how employees, guests, and
property are protected to minimize losses or liabilities. The student is
expected to:

- (A) determine the basics of safety in culinary arts;
- (B) assess workplace conditions and identify safety
hazards;
- (C) determine the basics of sanitation in a professional
kitchen;
- (D) determine proper receiving, storage, and distribu-
tion techniques;
- (E) demonstrate proper cleaning of equipment and
maintenance in the commercial kitchen;
- (F) assess food hazards and determine ways to prevent
food hazards; and
- (G) prepare for a state or national food sanitation certi-
fication or other appropriate certifications.

(13) The student recognizes and models work ethics and
legal responsibilities. The student is expected to:

- (A) understand and comply with laws and regulations
specific to the food service industry; and
- (B) demonstrate a positive work ethic.

§127.472. Advanced Culinary Arts (Two Credits), Adopted 2015.

(a) General requirements. This course is recommended for
students in Grades 10-12. Prerequisite: Culinary Arts. Students shall
be awarded two credits for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides
content aligned with challenging academic standards and relevant
technical knowledge and skills for students to further their education
and succeed in current or emerging professions.

(2) The Hospitality and Tourism Career Cluster focuses on
the management, marketing, and operations of restaurants and other
food/beverage services, lodging, attractions, recreation events, and
travel-related services.

(3) Advanced Culinary Arts will extend content and
enhance skills introduced in Culinary Arts by in-depth instruction of
industry-driven standards in order to prepare students for success in
higher education, certifications, and/or immediate employment.

(4) Students are encouraged to participate in extended
learning experiences such as career and technical student organizations
and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference
content that must be mastered, while those containing the phrase "such
as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/em-
ployability skills as required by business and industry. The student is
expected to:

- (A) model effective oral and written communication;
- (B) practice professional grooming and hygiene stan-
dards;
- (C) exercise punctuality and time-management skills;
- (D) demonstrate self-respect and respect for others;
- (E) demonstrate effective teamwork and leadership;

and

(F) employ initiative, adaptability, and problem-solving
techniques in practical applications.

(2) The student researches, analyzes, and designs a path
to achieve career goals. The student examines jobs available in the
food service industry and accesses career opportunities. The student is
expected to:

- (A) demonstrate major duties and qualifications for all
staff and managerial positions to facilitate selection of career choices
in the food service industry;
- (B) model proper interview techniques;
- (C) critique personal and short-term goals; and
- (D) create and update a career portfolio.

(3) The student explains how employees, guests, and prop-
erty are protected to minimize losses or liabilities. The student is ex-
pected to:

- (A) determine the basics of safety in culinary arts;
- (B) assess workplace conditions and identify safety
hazards;
- (C) determine the basics of sanitation in a professional
kitchen;
- (D) determine proper receiving, storage, and distribu-
tion techniques;
- (E) explain and demonstrate proper cleaning of equip-
ment and maintenance of the commercial kitchen;
- (F) assess food hazards and determine ways to prevent
food hazards; and
- (G) prepare for a state or national food sanitation certi-
fication or other appropriate certifications.

(4) The student evaluates global cuisines, including the
culture, history, and indigenous ingredients to create international
recipes. The student is expected to:

(A) replicate advanced moist and dry cooking techniques from global cuisines such as American regional, Latin American, European, Mediterranean, Middle Eastern, and Asian;

(B) synthesize indigenous ingredients from global cuisine to create innovative dishes; and

(C) justify the connection of flavor, texture, visual appeal, taste, and customer satisfaction on product development.

(5) The student demonstrates an understanding of sustainability in the restaurant industry and its local and global effect. The student is expected to:

(A) evaluate practices for water and energy conservation across the food service industry;

(B) identify waste management options to promote sustainability; and

(C) evaluate current sustainable food practices.

(6) The student demonstrates comprehensive protein product knowledge as it relates to flavor, texture, visual appeal, taste, and customer satisfaction and establishes quality standards. The student is expected to:

(A) assess grading and classifications;

(B) identify primal, sub-primal, and retail cuts;

(C) demonstrate fabrication techniques on proteins;

(D) evaluate purchasing practices according to various food service operations;

(E) model appropriate cooking methods for proteins; and

(F) evaluate appropriate cooking methods in regard to various protein selections.

(7) The student demonstrates comprehensive fish and shellfish product knowledge as it relates to flavor, texture, visual appeal, taste, and customer satisfaction and establishes quality standards. The student is expected to:

(A) categorize classifications of fish and shellfish;

(B) evaluate factors that influence seafood purchasing such as freshness, flavor, sustainability, and market conditions;

(C) demonstrate the ability to clean and fabricate round, flat, fin fish, and shellfish;

(D) model appropriate cooking methods for fish and shellfish; and

(E) evaluate the effects of cooking methods on product presentation.

(8) The student demonstrates comprehensive knowledge of fruits, vegetables, grains, herbs, spices, and other dry goods as related to presentation, flavor, texture, visual appeal, taste, and customer satisfaction and establishes quality standards. The student is expected to:

(A) compare types of commonly available produce;

(B) identify factors contributing to cost and quality such as seasonality, market volatility, and transportation;

(C) compare and contrast forms and use of produce such as fresh, frozen, canned, dried, and other classifications;

(D) model appropriate cooking methods for produce; and

(E) evaluate the effects of cooking methods on produce.

(9) The student understands advanced baking and pastry principles. The student is expected to:

(A) use professional food preparation equipment such as commercial-grade mixers, food processors, and measuring tools;

(B) apply proper measuring and scaling techniques; and

(C) compose various plated desserts appropriate for various food service operations.

(10) The student demonstrates and practices the basic procedures for the production of yeast and quick bread products. The student is expected to:

(A) differentiate how various types of bread crusts are created through fermentation, proofing, baking temperatures, and humidity;

(B) prepare soft, hard, and artisanal breads through proper baking techniques; and

(C) differentiate between quick breads such as muffins, scones, and biscuits.

(11) The student demonstrates and practices the basic procedures for the production of pastry crust, pastry dough, and cookie. The student is expected to:

(A) compare different types of pastry crusts and usage in pies and tarts;

(B) prepare pie fillings such as fruit, soft, and custard fillings;

(C) prepare different types of pastry dough such as Pate a Choux, Pate Sucree, and laminated dough;

(D) differentiate between various cookie preparation methods;

(E) determine the causes of crispness, moistness, chewiness, and the spread of cookies; and

(F) bake, cook, and store cookies properly.

(12) The student demonstrates and practices the basic procedures for the production of cakes, frostings, fillings, and icings. The student is expected to:

(A) differentiate between cake preparation methods;

(B) differentiate the functions of icings and determine appropriate application;

(C) assemble and ice simple layer cakes, sheet cakes, and cupcakes;

(D) demonstrate the ability to identify criteria for evaluation of cake products;

(E) prepare various icings such as fondant, buttercreams, flat, royal, and glazes; and

(F) perform basic piping skills with a parchment cone and pastry bag with tips.

(13) The student demonstrates and practices the basic procedures for the production of custards, creams, and mousse. The student is expected to:

(A) compose desserts such as ice creams, custards, mousse, and other desserts; and

(B) identify the roles of desserts such as ice creams, custards, mousse, and other desserts.

(14) The student demonstrates and practices the basic procedures for the production of chocolate, sugars, confections, and sauces. The student is expected to:

(A) differentiate between the types of advanced confections;

(B) model methods of preparation in each type of confection;

(C) use chocolate as a major ingredient in dessert or food production;

(D) temper chocolate;

(E) use tempered chocolate in dessert preparation;

(F) cook sugar syrups to various stages of hardness;

(G) prepare dessert sauces such as custard, chocolate, caramel, fruit fillings, and coulis; and

(H) serve attractively plated desserts with appropriate sauces and garnishes.

(15) The student evaluates nutrition concepts as they affect health and wellness, marketing, and menu planning. The student is expected to:

(A) analyze the role of carbohydrates, vitamins, minerals, proteins, and fats as they relate to food choices; and

(B) research and develop menus for populations with dietary requirements or restrictions.

(16) The student analyzes the components of cost controls in a food service operation and develops a plan to manage cost. The student is expected to:

(A) differentiate between the major costs in food service such as food, beverage, and labor costs;

(B) validate the effect of controlling costs on the success of a food service operation;

(C) compare and contrast the concept of fixed costs, variable costs, and controllable costs; and

(D) compare and contrast the relationship between inventory management and cost control in food service operations.

§127.473. Food Science (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 11 and 12. Prerequisites: three units of science, including chemistry and biology. Recommended prerequisite: Principles of Hospitality and Tourism. Students must meet the 40% laboratory and fieldwork requirement. This course satisfies a high school science graduation requirement. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Hospitality and Tourism Career Cluster focuses on the management, marketing, and operations of restaurants and other food/beverage services, lodging, attractions, recreation events, and travel-related services.

(3) In Food Science students conduct laboratory and field investigations, use scientific methods during investigations, and make informed decisions using critical thinking and scientific problem solving. Food Science is the study of the nature of foods, the causes of deterioration, the principles underlying food processing, and the improvement of foods for the consuming public.

(4) Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not scientifically testable.

(5) Scientific inquiry is the planned and deliberate investigation of the natural world. Scientific methods of investigation are experimental, descriptive, or comparative. The method chosen should be appropriate to the question being asked.

(6) Scientific decision making is a way of answering questions about the natural world. Students should be able to distinguish between scientific decision-making methods (scientific methods) and ethical and social decisions that involve science (the application of scientific information).

(7) A system is a collection of cycles, structures, and processes that interact. All systems have basic properties that can be described in space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically tested. Students should analyze a system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(8) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(9) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) apply interpersonal communication skills in business and industry settings;

(B) explain and recognize the value of collaboration within the workplace;

(C) examine the importance of time management to succeed in the workforce;

(D) identify work ethics/professionalism in a job setting; and

(E) develop problem-solving and critical-thinking skills.

(2) The student, for at least 40% of instructional time, conducts laboratory and field investigations using safe, environmentally appropriate, and ethical practices. The student is expected to:

(A) demonstrate safe practices during laboratory and field investigations; and

(B) demonstrate an understanding of the use and conservation of resources and the proper disposal or recycling of materials.

(3) The student uses scientific methods and equipment during laboratory and field investigations. The student is expected to:

(A) know the definition of science and understand that it has limitations, as specified in subsection (b)(4) of this section;

(B) know that hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power that have been tested over a wide variety of conditions are incorporated into theories;

(C) know scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers. Unlike hypotheses, scientific theories are well-established and highly-reliable explanations, but they may be subject to change as new areas of science and new technologies are developed;

(D) distinguish between scientific hypotheses and scientific theories;

(E) plan and implement descriptive, comparative, and experimental investigations, including asking questions, formulating testable hypotheses, and selecting equipment and technology;

(F) collect and organize qualitative and quantitative data and make measurements with accuracy and precision using tools such as calculators, spreadsheet software, data-collecting probes, computers, standard laboratory glassware, microscopes, various prepared slides, stereoscopes, metric rulers, electronic balances, gel electrophoresis apparatuses, micropipettors, hand lenses, Celsius thermometers, hot plates, lab notebooks or journals, timing devices, cameras, Petri dishes, lab incubators, dissection equipment, meter sticks, and models, diagrams, or samples of biological specimens or structures;

(G) analyze, evaluate, make inferences, and predict trends from data; and

(H) communicate valid conclusions supported by the data through methods such as lab reports, labeled drawings, graphic organizers, journals, summaries, oral reports, and technology-based reports.

(4) The student uses critical thinking, scientific reasoning, and problem solving to make informed decisions within and outside the classroom. The student is expected to:

(A) in all fields of science, analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, including examining all sides of scientific evidence of those scientific explanations, so as to encourage critical thinking by the student;

(B) communicate and apply scientific information extracted from various sources such as current events, news reports, published journal articles, and marketing materials;

(C) draw inferences based on data related to promotional materials for products and services;

(D) evaluate the impact of scientific research on society and the environment;

(E) evaluate models according to their limitations in representing biological objects or events; and

(F) research and describe the history of biology and contributions of scientists.

(5) The student analyzes the role of acids and bases in the food sciences. The student is expected to:

(A) evaluate physical and chemical properties of acids and bases; and

(B) analyze the relationship of pH to the properties, safety, and freshness of food.

(6) The student evaluates the principles of microbiology and food safety practices. The student is expected to:

(A) investigate the properties of microorganisms that cause food spoilage;

(B) compare food intoxication and food infection;

(C) examine methods to destroy or inactivate harmful pathogens in foods;

(D) compare beneficial and harmful microorganisms;

(E) analyze sanitary food-handling practices; and

(F) prepare for a state or national food manager's sanitation certification or alternative credential within the field of food science technology.

(7) The student examines the chemical properties of food. The student is expected to:

(A) describe elements, compounds, mixtures, and formulas related to food science;

(B) compare heterogeneous and homogeneous mixtures;

(C) use chemical symbols, formulas, and equations in food science; and

(D) analyze chemical and physical changes in food.

(8) The student analyzes solutions, colloids, solids, gels, foams, and emulsions in food science. The student is expected to:

(A) identify the solvent and solute in a given solution;

(B) compare unsaturated, saturated, and supersaturated solutions, including boiling and freezing points;

(C) calculate the concentration of a solution using mass percent;

(D) describe the properties of colloidal dispersions;

(E) investigate the relationships among the three parts of an emulsion; and

(F) create various food emulsions.

(9) The student analyzes the functions of enzymes in food science. The student is expected to:

(A) describe the role of enzymes as catalysts in chemical reactions of food;

(B) explain the relationship between an enzyme and a substrate;

(C) analyze the functions of enzymes in digestion, including the factors that influence enzyme activity; and

(D) analyze enzyme reactions in food preparation.

(10) The student evaluates the role of fermentation in food science. The student is expected to:

(A) analyze reasons food is fermented;

- (B) assess the role of bacteria in food fermentation; and
- (C) prepare various fermented food products.

(11) The student assesses the reaction of leavening agents in baked products. The student is expected to:

- (A) identify various leavening agents and describe their role;
- (B) analyze the role of acids as leavening agents;
- (C) compare doughs and batters;
- (D) conduct laboratory experiments with various leavening agents using the scientific processes; and
- (E) create baked products using various leavening agents.

(12) The student explores the roles of food additives. The student is expected to:

- (A) evaluate the various types of food additives such as incidental, intentional, natural, and artificial;
- (B) investigate the various roles of food additives such as food preservation, nutritive value, and sensory characteristics; and
- (C) research agencies involved in regulating food additives.

(13) The student analyzes the processes of energy production in food. The student is expected to:

- (A) discuss molecular motion and temperature;
- (B) examine heat transfer processes such as conduction, convection, and radiation;
- (C) investigate the role of latent heat in phase changes in food production such as crystallization and condensation; and
- (D) analyze rates of reaction using various temperatures.

(14) The student evaluates the properties of carbohydrates in food and their effects on food production. The student is expected to:

- (A) discuss photosynthesis;
- (B) identify the chemical structures of carbohydrates;
- (C) describe the functions of carbohydrates in food production such as a caramelizing agent, crystallizing agent, and thickening agent;
- (D) compare the structures of simple and complex carbohydrates and how these structures affect food production;
- (E) describe various process such as gelatinization, retrogradation, and syneresis in food production; and
- (F) create food products using simple and/or complex carbohydrates.

(15) The student evaluates the properties of fats in food and their effects on food production. The student is expected to:

- (A) identify the chemical structure of saturated and unsaturated fats;
- (B) compare the properties of saturated and unsaturated fats;
- (C) examine the functions of fats in food production;

- (D) explore methods for controlling fat oxidation;

(E) analyze the effects of temperature on fats in food preparation;

(F) conduct laboratory experiments using the scientific processes to explore the functions of fats in food production; and

(G) create food products using saturated and unsaturated fats.

(16) The student evaluates the properties of proteins and their effects on food production. The student is expected to:

(A) explain the processes of protein denaturation and coagulation;

(B) examine the functions of proteins in food productions such as emulsifiers, foams, and gluten formation;

(C) analyze the effect of temperature on protein in food production and storage;

(D) explore moist and dry heat methods for preparing protein rich foods; and

(E) create food products using protein.

(17) The student evaluates the properties of vitamins and minerals and their effects on food production. The student is expected to:

(A) discuss the functions of vitamins and minerals in food production;

(B) compare the effects of food production on water- and fat-soluble vitamins; and

(C) assess the interrelationships among vitamins and minerals in food production.

(18) The student evaluates the properties of water and their effects on food production. The student is expected to:

(A) identify the properties of water;

(B) compare the effects of hard and soft water on food production;

(C) analyze the phases of water and their effects on food production; and

(D) explain the functions of water in food production such as a heat medium and a solvent and create a food product.

(19) The student analyzes processes that destroy bacteria during food production. The student is expected to:

(A) examine the food irradiation process; and

(B) investigate the pasteurization process.

(20) The student examines packaging and labeling guidelines. The student is expected to:

(A) research federal food packaging guidelines;

(B) analyze components of appropriate commercial food containers;

(C) describe controlled-atmosphere packaging; and

(D) describe information required on a food label.

(21) The student analyzes food preservation processes. The student is expected to:

(A) describe reasons for food preservation;

(B) compare methods of dehydration and create a food product using dehydration;

(C) analyze various methods of personal and commercial food canning; and

(D) examine the various methods of personal and commercial food freezing.

§127.474. Practicum in Culinary Arts (Two Credits), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 11 and 12. Prerequisite: Culinary Arts. Students shall be awarded two credits for successful completion of this course. A student may repeat this course once for credit provided that the student is experiencing different aspects of the industry and demonstrating proficiency in additional and more advanced knowledge and skills.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Hospitality and Tourism Career Cluster focuses on the management, marketing, and operations of restaurants and other food/beverage services, lodging, attractions, recreation events, and travel-related services.

(3) Practicum in Culinary Arts is a unique practicum that provides occupationally specific opportunities for students to participate in a learning experience that combines classroom instruction with actual business and industry career experiences. Practicum in Culinary Arts integrates academic and career and technical education; provides more interdisciplinary instruction; and supports strong partnerships among schools, businesses, and community institutions with the goal of preparing students with a variety of skills in a fast-changing workplace.

(4) Students are taught employability skills to prepare for college and career success, which include job-specific skills applicable to their training plan, job interview techniques, communication skills, financial and budget activities, human relations, and portfolio development.

(5) Instructions may be delivered through school-based laboratory training or through work-based delivery arrangement such as cooperative education, mentoring, and job shadowing.

(6) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(7) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) model effective oral and written communication;

(B) practice professional grooming and hygiene standards;

(C) exercise punctuality and time-management skills;

(D) demonstrate self-respect and respect for others;

(E) demonstrate effective teamwork and leadership; and

(F) employ initiative, adaptability, and problem-solving techniques in practical applications.

(2) The student uses employability skills to gain an entry-level job in a high-skill, high-wage, or high-demand field. The student is expected to:

(A) identify employment opportunities;

(B) demonstrate the application of essential workplace skills in the career acquisition process;

(C) complete employment-related documents such as job applications, I-9 and W-4 forms, and job descriptions; and

(D) demonstrate proper interview techniques in various situations.

(3) The student develops skills for success in the workplace. The student is expected to:

(A) comprehend and model appropriate grooming and appearance for the workplace;

(B) demonstrate dependability, punctuality, and initiative;

(C) develop positive interpersonal skills, including respect for diversity;

(D) demonstrate appropriate business and personal etiquette in the workplace;

(E) exhibit productive work habits, ethical practices, and a positive attitude;

(F) demonstrate knowledge of personal and occupational health and safety practices in the workplace;

(G) demonstrate the ability to work with the other employees to support the organization and complete assigned tasks;

(H) prioritize work to fulfill responsibilities and meet deadlines;

(I) evaluate the relationship of good physical and mental health to job success and personal achievement;

(J) demonstrate effective verbal, non-verbal, written, and electronic communication skills; and

(K) apply effective listening skills used in the workplace.

(4) The student demonstrates work ethics, employer expectations, interaction with diverse populations, and communication skills in the workplace. The student is expected to:

(A) relate how personal integrity affects human relations on the job;

(B) demonstrate characteristics of successful working relationships such as teamwork, conflict resolution, self-control, and the ability to accept criticism;

(C) implement employer expectations;

(D) demonstrate respect for the rights of others;

(E) demonstrate ethical standards; and

(F) comply with organizational policies.

(5) The student applies academics and job-readiness skills. The student is expected to:

- (A) apply mathematical skills to business transactions;
- (B) develop a personal budget based on career choice;
- (C) interpret data from documents such as tables, charts, and graphs to estimate and find solutions to problems; and
- (D) organize and compose workplace documents.

(6) The student applies ethical behavior standards and legal responsibilities within the workplace. The student is expected to:

- (A) compare workplace policies reflecting various business establishments;
- (B) apply responsible and ethical behavior;
- (C) summarize provisions of the Fair Labor Standards Act;

Act;
(D) describe the consequences of breach of confidentiality; and
(E) research and model laws related to culinary arts professions.

(7) The student applies the use of interpersonal skills to accomplish objectives. The student is expected to:

- (A) identify and practice effective interpersonal and team-building skills involving situations with coworkers, managers, and customers; and
- (B) apply leadership and career development skills through participation in activities such as career and technical student organizations.

(8) The student uses concepts and skills related to safety in the workplace. The student is expected to:

- (A) identify and apply safe working practices;
- (B) solve problems related to unsafe work practices and attitudes;
- (C) explain Occupational Safety and Health Administration regulations in the workplace;
- (D) analyze health and wellness practices that influence job performance; and
- (E) prepare for a state or national food sanitation certification or other appropriate certification.

(9) The student evaluates personal attitudes and work habits that support career retention and advancement. The student is expected to:

- (A) analyze the future employment outlook in the occupational area;
- (B) describe entrepreneurial opportunities in the area of culinary arts;
- (C) evaluate nontraditional food service careers such as food photographer, food stylist, corporate research and development chef, food writer, and independent consultant;
- (D) identify all of the aspects of a specific career path, including salary, skills level, and advancement opportunities;
- (E) evaluate strategies for career retention and advancement in response to the changing hospitality industry;

(F) compare and contrast the rights and responsibilities of employers and employees; and

(G) determine effective money management and financial planning techniques.

(10) The student identifies skills and attributes necessary for professional advancement. The student is expected to:

- (A) evaluate employment options, including salaries and benefits;
- (B) determine factors that affect career choices such as personal interests, abilities, priorities, and family responsibilities;
- (C) determine continuing education opportunities that enhance career advancement and promote lifelong learning; and
- (D) demonstrate effective methods to secure, maintain, and terminate employment.

(11) The student demonstrates proper culinary techniques and knowledge of the professional kitchen. The student is expected to:

- (A) use large and small equipment in a commercial kitchen;
- (B) develop food production and presentation techniques;
- (C) demonstrate moist, dry, and combination cookery methods;
- (D) demonstrate food preparation skills used in commercial food service preparations such as breakfast cookery, salads and dressings, soups and sandwiches, stocks and sauces, appetizers, seafood, poultry cookery, meat cookery, pastas and grains, and fruits and vegetables;
- (E) demonstrate baking techniques such as yeast breads and rolls, quick breads, and desserts;
- (F) demonstrate proper receiving and storage techniques;
- (G) demonstrate proper cleaning of equipment and maintenance of the commercial kitchen; and
- (H) compare and contrast the pairing of cuisine and service styles in food service operations.

(12) The student determines how successful marketing impacts a food service operation. The student is expected to:

- (A) explain marketing, product, service, presentation, and communication mixes;
- (B) generate a marketing plan for multiple food service operations;
- (C) evaluate the marketing plans based on various demographics;
- (D) conduct market analysis and predict impact on current economy;
- (E) identify marketing communication formats across multiple platforms; and
- (F) design the menu as a marketing tool.

(13) The student documents technical knowledge and skills. The student is expected to:

- (A) complete a professional career portfolio to include items such as an updated resume, documentation of technical skill com-

petencies, licensures or certifications, recognitions, awards and scholarships, community service hours, participation in student and professional organizations, abstract of key points of the practicum, and practicum supervisor evaluations; and

(B) present the portfolio to interested stakeholders.

§127.475. Travel and Tourism Management (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisite: Principles of Hospitality and Tourism. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Hospitality and Tourism Career Cluster focuses on the management, marketing, and operations of restaurants and other food/beverage services, lodging, attractions, recreation events and travel-related services.

(3) Travel and Tourism Management incorporates management principles and procedures of the travel and tourism industry as well as destination geography, airlines, international travel, cruising, travel by rail, lodging, recreation, amusements, attractions, and resorts. Employment qualifications and opportunities are also included in this course.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) formulate and organize oral and written information;

(B) compose a variety of written documents used in travel and tourism such as itineraries, thank you letters, presentations, and advertisements;

(C) differentiate and deliver different types of presentations such as informative, instructional, persuasive, and decision making;

(D) calculate basic math and percentages;

(E) investigate geography and factors that affect the travel and tourism industry; and

(F) summarize how to use the state of the economy to plan products and services.

(2) The student uses oral and written communication skills in creating, expressing, and interpreting information and ideas, including technical terminology and information. The student is expected to:

(A) select and employ verbal skills when obtaining and conveying information;

(B) use verbal and nonverbal communication skills effectively with diverse constituents; and

(C) develop and deliver presentations using appropriate technology such as to engage, inform, and persuade audiences.

(3) The student solves problems independently and in teams using critical-thinking skills. The student is expected to:

(A) generate creative ideas by brainstorming possible solutions;

(B) guide individuals through the process of making informed travel decisions;

(C) interpret and use industry standards for principles of budgeting and forecasting to maximize profit and growth; and

(D) analyze customer comments to formulate improvements in services and products.

(4) The student uses information technology tools specific to the travel and tourism industry to access, manage, integrate, and create information. The student is expected to:

(A) operate and use technological applications to communicate within a workplace and perform a task;

(B) distinguish among the different modes of travel such as airline, cruise line, road travel, and rail;

(C) differentiate among recreation such as amusement, attractions, and resort venues;

(D) research travel arrangement systems used for booking reservations; and

(E) create basic multimedia publications.

(5) The student understands roles within teams, work units, departments, organizations, inter-organization systems, and the larger environment of the travel and tourism industry. The student is expected to:

(A) explain the functions and interactions of various departments within a travel and tourism business;

(B) research quality-control systems and practices;

(C) develop plans to accomplish organizational goals; and

(D) formulate collaborative plans with other related industries such as lodging, food and beverage service, and transportation agencies to provide an all-inclusive product for the customer.

(6) The student understands the importance of health, safety, and environmental systems in the travel and tourism industry and their importance to organizational performance and regulatory compliance. The student is expected to:

(A) identify hazards common to workplaces such as safety, health, and environmental hazards;

(B) use industry standards to implement safety precautions to maintain a safe worksite;

(C) research and relate first aid and cardiopulmonary resuscitation skills;

(D) describe environmental procedures that ensure a facility is in compliance with health codes;

(E) describe how to train others for emergency situations;

(F) analyze potential effects caused by common chemicals and hazardous materials; and

(G) compare and contrast security measures to protect the guests, staff, and property.

(7) The student uses leadership and teamwork skills in collaborating with others to accomplish organizational goals and objectives. The student is expected to:

(A) apply team-building skills;

(B) apply decision-making and problem-solving skills;

(C) apply teamwork qualities in creating a pleasant work environment;

(D) determine the impact of cultural diversity on teamwork; and

(E) participate in community service opportunities.

(8) The student knows and understands the importance of professional ethics and legal responsibilities. The student is expected to:

(A) discuss ethical reasoning to a variety of workplace situations in order to make decisions; and

(B) research information on organizational policies in handbooks and manuals.

(9) The student knows and understands the importance of employability skills and is able to explore and effectively plan for managing travel and tourism careers. The student is expected to:

(A) identify and demonstrate behaviors and skills necessary to be employable;

(B) identify the training and education requirements that lead toward an appropriate certification for employment;

(C) demonstrate proper interview techniques;

(D) update or create a career portfolio;

(E) investigate continuing education opportunities within the industry;

(F) examine appropriate credentialing requirements to maintain compliance with industry requirements;

(G) compare and contrast the effect of stress, fatigue, and anxiety on job performance;

(H) complete required employment forms such as I-9, work visa, W-4, and licensures to meet employment requirements; and

(I) explore entrepreneurship opportunities within the travel and tourism industry.

(10) The student develops principles in time management, decision making, effective communication, and prioritizing. The student is expected to:

(A) apply effective practices for time management;

(B) analyze various steps in the decision-making process for prioritizing effectively; and

(C) discuss the importance of balancing a career, a family, and leisure activities.

(11) The student uses technical knowledge and skills required in the travel and tourism industry. The student is expected to:

(A) develop job-specific technical vocabulary;

(B) use marketing techniques to sell products and services;

(C) evaluate current and emerging technologies to improve guest services;

(D) explain different types of payment options;

(E) analyze customer service concepts and scenarios;

(F) describe how customer service affects a company's bottom line;

(G) develop an awareness of cultural diversity to enhance travel planning such as differences in social etiquette, dress, and behaviors;

(H) demonstrate an understanding of tourism sales and the impact on distribution systems; and

(I) demonstrate knowledge of destination, attraction planning, and development, including the use of organizations such as convention and visitor's bureaus and state tourist boards.

§127.476. Hotel Management (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisite: Principles of Hospitality and Tourism. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Hospitality and Tourism Career Cluster focuses on the management, marketing, and operations of restaurants and other food/beverage services, lodging, attractions, recreation events, and travel-related services.

(3) Hotel Management focuses on the knowledge and skills needed to pursue staff and management positions available in the hotel industry. This in-depth study of the lodging industry includes departments within a hotel such as front desk, food and beverage, housekeeping, maintenance, human resources, and accounting. This course will focus on, but not be limited to, professional communication, leadership, management, human resources, technology, and accounting.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) organize oral and written information;

(B) compose and present individually and in teams a variety of written documents such as agendas, thank you letters, presentations, and advertisements;

(C) calculate correctly using numerical concepts such as percentage and estimation in practical situations; and

(D) examine and apply how scientific principles are used in the hotel industry.

(2) The student uses verbal and nonverbal communication skills to create, express, and interpret information for providing a positive experience for guests and employees. The student is expected to:

(A) develop, deliver, and critique presentations;

(B) analyze various marketing strategies for a lodging property and available services;

(C) demonstrate proper techniques for using telecommunications equipment;

(D) interpret verbal and nonverbal cues to enhance communication with individuals such as coworkers, guests, and clients;

(E) locate written information used to communicate with individuals such as coworkers and guests;

(F) apply and model active listening skills to obtain and clarify information; and

(G) follow directions and procedures independently and in teams.

(3) The student solves problems independently and in teams using critical thinking, innovation, and creativity. The student is expected to:

(A) generate creative ideas to solve problems by brainstorming possible solutions;

(B) employ critical-thinking and interpersonal skills to resolve conflicts with individuals such as coworkers, employers, guests, and clients; and

(C) interpret and use industry standards for principles of budgeting and forecasting to maximize profit and growth.

(4) The student demonstrates an understanding that personal success depends on personal effort. The student is expected to:

(A) demonstrate an understanding of self-responsibility and self-management;

(B) identify and demonstrate both positive and negative work behaviors and personal qualities for employability; and

(C) evaluate the effects of health and wellness on employee performance.

(5) The student develops principles in time management, decision making, effective communication, and prioritization. The student is expected to:

(A) apply effective practices for managing time and energy;

(B) develop and implement stress-management techniques;

(C) assemble and analyze the various steps in the decision-making process; and

(D) evaluate the importance of balancing a career, family, and leisure activities and develop various techniques to reduce conflict.

(6) The student understands the importance of employability skills. The student is expected to:

(A) assemble the required training or education requirements that lead to an appropriate industry certification;

(B) comprehend and model skills related to seeking employment;

(C) assemble and/or update an electronic personal career portfolio;

(D) complete a job application in written and electronic format;

(E) examine and model proper interview techniques in applying for employment;

(F) complete required employment forms such as I-9, work visa, W-4, and licensures to meet employment requirements;

(G) research the local labor workforce market to determine opportunities for lodging employment; and

(H) investigate professional lodging organizations and development training opportunities to keep current on relevant trends and information within the lodging industry.

(7) The student understands roles within teams, work units, departments, organizations, and the larger environment of the lodging industry. The student is expected to:

(A) identify lodging departments and distinguish among the duties and responsibilities within each department;

(B) implement quality-control standards and practices;

(C) compare and contrast duties and responsibilities from each department to the larger lodging environment, including food and beverage services;

(D) identify, compare, and contrast all types of lodging properties;

(E) compare and contrast lodging revenue and support centers;

(F) compare and contrast chain and franchise lodging properties;

(G) create, design, and present lodging entrepreneurship opportunities; and

(H) comprehend and model professional attire.

(8) The student uses information technology tools specific to lodging management to access, manage, integrate, and create information. The student is expected to:

(A) use information technology tools to evaluate lodging work responsibilities;

(B) evaluate technology tools to perform workplace tasks;

(C) understand and evaluate the hotel/guest cycle with applicable technology;

(D) prepare and present complex multimedia publications;

(E) demonstrate knowledge and use of point-of-sale systems;

(F) evaluate Internet resources for industry information; and

(G) evaluate current and emerging technologies to improve guest services.

(9) The student uses leadership and teamwork skills in collaborating with others to accomplish organizational goals and objectives. The student is expected to:

(A) differentiate types of effective leadership and management styles and select which management style is effective for the lodging industry;

(B) apply team-building skills;

(C) apply decision-making and problem-solving skills;

(D) apply leadership and teamwork qualities in creating a pleasant working atmosphere; and

(E) participate in community leadership and teamwork opportunities to enhance professional skills.

(10) The student understands the importance of health, safety, and environmental management systems in organizations and their importance to organizational performance and regulatory compliance. The student is expected to:

(A) assess workplace conditions with regard to safety and health;

(B) apply safety and sanitation standards common to the workplace;

(C) analyze potential effects caused by common chemical and hazardous materials;

(D) demonstrate first aid and cardiopulmonary resuscitation skills;

(E) research sources of food-borne illness and determine ways to prevent them; and

(F) evaluate the need for personal hygiene and correlate this to the importance of health, safety, and environmental management systems in the organization.

(11) The student knows and understands the importance of professional ethics and legal responsibilities within the lodging industry. The student is expected to:

(A) demonstrate professional and ethical standards;

(B) compare and contrast the rights of the innkeeper and the rights of the guest; and

(C) interpret and explain written organizational policies and procedures to help employees perform their jobs.

(12) The student understands the knowledge and skills required for careers in the lodging industry. The student is expected to:

(A) develop job-specific technical vocabulary;

(B) explain procedures to meet guest needs, including guest registration, rate assignment, room assignment, and determination of payment methods;

(C) differentiate the functions of meeting and event planning and how they correlate to the individual lodging property; and

(D) understand the importance of check-out procedures to ensure guest satisfaction and verify settlement of account.

§127.477. Hospitality Services (Two Credits), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 11 and 12. Recommended prerequisites: Principles of Hospitality and Tourism, Hotel Management, and Travel and

Tourism Management. Students shall be awarded two credits for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Hospitality and Tourism Career Cluster focuses on the management, marketing, and operations of restaurants and other food/beverage services, lodging, attractions, recreation events, and travel-related services.

(3) Hospitality Services provides students with the academic and technical preparation to pursue high-demand and high-skill careers in hospitality related industries. The knowledge and skills are acquired within a sequential, standards-based program that integrates hands-on and project-based instruction. Standards included in the Hospitality Services course are designed to prepare students for nationally recognized industry certifications, postsecondary education, and entry-level careers. In addition, Hospitality Services is designed so that performance standards meet employer expectations, enhancing the employability of students. Instruction may be delivered through laboratory training or through internships, mentoring, or job shadowing.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) apply advanced reading, writing, and mathematical skills necessary in the hospitality industry; and

(B) understand and develop marketing techniques.

(2) The student uses communication skills in the creation, expression, and interpretation of information and ideas. The student is expected to:

(A) interpret communication such as verbal and non-verbal;

(B) recognize and respond to guest needs;

(C) develop listening skills to accurately process messages for guests;

(D) exhibit public relations skills; and

(E) recognize alternate communication services to assist customers with specialized needs.

(3) The student researches career opportunities and qualifications to broaden awareness of careers available in the hospitality industry. The student is expected to:

(A) outline a plan for an effective job search, including developing a resume;

(B) demonstrate flexibility to learn new knowledge and skills;

(C) prioritize work responsibilities and life responsibilities;

(D) develop an electronic career portfolio;

(E) compare and contrast personal strengths and weaknesses that may determine individual potential for growth within the hospitality industry;

(F) explain what is needed to achieve job advancement;

(G) understand the role of professional organizations or industry associations;

(H) research the procedures for licensure, certification, or credentials for a chosen occupation;

(I) analyze future employment outlooks;

(J) demonstrate appropriate business and personal etiquette;

(K) develop a written organizational policy to ensure successful hospitality operations such as guest satisfaction and employee success; and

(L) research the major duties and qualifications for hospitality managerial positions.

(4) The student reviews ethical and legal responsibilities or related conduct toward guests and employees within the establishment to maintain high industry standards. The student is expected to:

(A) examine laws regarding hiring, harassment, and safety issues;

(B) compare and contrast legal responsibilities and employer policies; and

(C) discuss ethical dilemmas.

(5) The student uses information technology tools specific to hospitality service careers to access, manage, integrate, or create information. The student is expected to:

(A) examine types of technology used to manage hospitality service operations;

(B) research website information on hospitality service operations; and

(C) evaluate current and emerging technologies provided by the hospitality industry.

(6) The student applies leadership, teamwork, and critical-thinking skills in collaboration with others to accomplish organizational goals or objectives. The student is expected to:

(A) demonstrate qualities that contribute to employee retention;

(B) formulate staff training plans to create an effective working team;

(C) evaluate methods of conflict-management skills to facilitate appropriate solutions;

(D) resolve unexpected situations in customer service;

(E) understand diverse employee cultures and customs; and

(F) value cultural diversity of guests.

(7) The student applies marketing strategies independently and in teams. The student is expected to:

(A) select and assemble effective marketing strategies;

(B) develop promotional packages;

(C) devise strategies for maximizing profit; and

(D) create a business plan.

(8) The student reviews the importance of management systems such as health, safety, and environmental and their function in performance and regulatory compliance. The student is expected to:

(A) determine local safety and sanitation requirements;

(B) explain how guests and property are protected to minimize losses or liabilities;

(C) outline safety and security issues and analyze solutions for individuals or groups in multiple environments to minimize risks;

(D) recognize potential, real, or perceived emergency situations such as a natural disaster or terrorist threat in order to respond appropriately;

(E) evaluate equipment for elements such as safety, functionality, and durability; and

(F) determine most appropriate sources of assistance such as self, coworkers, guests, the Federal Emergency Management Agency (FEMA), or first responders to use in varied emergency situations.

(9) The student understands roles within teams, work units, departments, organizations, inter-organizational systems, or the larger environment. The student is expected to:

(A) implement a set of operating procedures that results in profitable operations;

(B) create a detailed customer service plan or process to provide maximum customer service;

(C) prepare a staffing guide to schedule various staff positions;

(D) evaluate inventory management systems used in the hospitality industry to result in profitable operations;

(E) describe current industry collaborations or trends that provide more inclusive products or services to customers; and

(F) compare and contrast organizational structures of operations such as lodging, food and beverage, travel, and recreation.

(10) The student uses technological knowledge and skills required in food and beverage service. The student is expected to:

(A) evaluate prepared foods for quality and presentation to set quality standards in accordance with company standards;

(B) practice basic nutrition skills by planning, preparing, and presenting quality foods; and

(C) evaluate types of kitchen equipment to match equipment with correct cooking methodology.

(11) The student uses technological knowledge and skills required in hotel services. The student is expected to:

(A) describe the necessary information collected during the registration process;

(B) explain how room rates are established;

(C) explain how standard operating guidelines such as availability, room status, and guest satisfaction are used to assign rooms to arriving guests;

(D) examine the account settlement procedures on different methods of payment;

(E) explain how a hotel's computer system is used to create guest accounts; and

(F) summarize correct check-out procedures to prevent oversights or errors.

(12) The student uses technological knowledge and skills required in travel and tourism. The student is expected to:

(A) develop technical vocabulary for lodging, food and beverage service, recreation, and travel;

(B) compare and contrast diverse transportation options;

(C) integrate various or diverse elements of the travel and tourism industry to create a personalized travel experience for a customer; and

(D) compare and contrast products and services from related industries.

§127.478. Practicum in Hospitality Services (Two Credits), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 11 and 12. Recommended prerequisite: Hospitality Services. Students shall be awarded two credits for successful completion of this course. A student may repeat this course once for credit provided that the student is experiencing different aspects of the industry and demonstrating proficiency in additional and more advanced knowledge and skills.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Hospitality and Tourism Career Cluster focuses on the management, marketing, and operations of restaurants and other food/beverage services, lodging, attractions, recreation events, and travel-related services.

(3) Practicum in Hospitality Services is a unique practicum experience to provide opportunities for students to participate in a learning experience that combines classroom instruction with actual business and industry career experiences. Practicum in Hospitality Services integrates academic and career and technical education; provides more interdisciplinary instruction; and supports strong partnerships among schools, businesses, and community institutions with the goal of preparing students with a variety of skills in a fast-changing workplace. Students are taught employability skills, including job-specific skills applicable to their training plan, job interview techniques, communication skills, financial and budget activities, human relations, and portfolio development. Practicum in Hospitality Services is relevant and rigorous, supports student attainment of academic and technical standards, and effectively prepares students for college and career success.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) research and produce a variety of relevant employment opportunities;

(B) differentiate the essential workplace skills in the career acquisition process;

(C) practice and complete employment-related documents such as job applications (written and electronic formats) and I-9 and W-4 forms;

(D) model proper interview techniques in various situations;

(E) formulate verbal, nonverbal, and written communication skills;

(F) develop and properly use appropriate electronic communication tools; and

(G) display effective listening skills used in the workplace.

(2) The student develops skills for success in the workplace. The student is expected to:

(A) formulate and model appropriate grooming and appearance for the workplace;

(B) model dependability, punctuality, and initiative;

(C) display positive interpersonal skills such as respect for diversity;

(D) differentiate types of diversity from both the employer and customer perspective;

(E) exhibit appropriate business and personal etiquette in the workplace;

(F) exhibit productive work habits, ethical practices, and a positive attitude;

(G) integrate knowledge of personal and occupational safety practices in the workplace;

(H) collaborate with others to support the organization and complete assigned tasks as a team;

(I) organize work to fulfill responsibilities and meet deadlines; and

(J) compare and contrast the relationship of good physical and mental health strategies for job success and work-life balance.

(3) The student compares and contrasts the importance of work ethics, employer expectations, interaction with diverse populations, and communication skills in the workplace. The student is expected to:

(A) defend personal integrity as it affects human relations on the job;

(B) study and develop characteristics of successful working relationships such as teamwork, conflict resolution, self-control, and ability to accept criticism;

- (C) analyze and defend employer expectations;
- (D) demonstrate respect for the rights of others;
- (E) compare and contrast the hospitality code of ethics and ethical standards; and
- (F) support organizational policies and procedures.

(4) The student applies academics with career-readiness skills. The student is expected to:

- (A) apply mathematical skills to business transactions;
- (B) interpret data from documents such as tables, charts, and graphs to estimate and find solutions to problems; and
- (C) organize and compose workplace business documents.

(5) The student applies ethical behavior standards, safety procedures, and legal responsibilities within the workplace. The student is expected to:

- (A) compare and contrast published workplace policies;
- (B) apply responsible and ethical behavior;
- (C) evaluate provisions of state and federal labor laws; and
- (D) evaluate the employer's and employee's fiduciary responsibilities to customers such as breach of confidentiality, safety, and privacy.

(6) The student models strategies and technique to develop interpersonal skills. The student is expected to:

- (A) model effective interpersonal and team-building skills involving situations with diverse individuals; and
- (B) model leadership through participation in activities such as career and technical student organizations.

(7) The student evaluates advancement opportunities and career paths in the industry. The student is expected to:

- (A) analyze future employment in occupational areas;
- (B) develop an entrepreneurial opportunity in the hospitality services area;
- (C) compare and contrast salaries, industry demands, and challenges for various jobs in hospitality services; and
- (D) evaluate the changing global workplace and future trends using governmental and other resources.

(8) The student identifies skills and attributes necessary for professional advancement. The student is expected to:

- (A) evaluate continuing education opportunities that enhance career advancement and promote lifelong learning; and
- (B) formulate effective strategies to secure, maintain, and terminate employment.

(9) The student understands roles within teams, work units, departments, organizations, and the larger environment of the hospitality services industry. The student is expected to:

- (A) explain the different types and functions of all departments such as food and beverage to understand their impact on customer service;

(B) illustrate proficiency with duties in each of the departments of a hotel or tourism venue;

- (C) compare and contrast lodging properties;
- (D) analyze the differences between chain and franchise lodging operations; and
- (E) explore the job duties in travel and tourism, recreation, and amusement and attraction venues.

(10) The student understands the knowledge and skills required for careers in the lodging industry. The student is expected to:

- (A) examine, understand, and articulate job-specific technical vocabulary;
- (B) explain technical procedures needed to meet guest needs such as registration, rate assignment, room assignment, and determination of payment methods;
- (C) research and create a meeting/event company;
- (D) evaluate current and emerging technologies to improve guest services; and
- (E) determine the correct procedures for the traditional hotel guest cycle.

(11) The student documents in manual and electronic format acquired technical knowledge and skills from coherent plan of study. The student is expected to:

- (A) produce a professional portfolio to include information such as:
 - (i) a current resume;
 - (ii) official documentation of attainment of technical skill competencies;
 - (iii) recognitions, awards, and scholarships;
 - (iv) community service activities;
 - (v) student organization participation;
 - (vi) practicum supervisor evaluations;
 - (vii) letters of recommendation;
 - (viii) cover letters;
 - (ix) documentation of preparation for state or national industry certification such as food sanitation certification; and
 - (x) any other supporting documents;
- (B) present the portfolio to interested stakeholders;
- (C) evaluate employment options, including salaries and benefits;
- (D) determine effective money management and financial planning techniques to manage:
 - (i) insurance and benefits;
 - (ii) taxes;
 - (iii) retirement;
 - (iv) relocation costs;
 - (v) a budget;
 - (vi) housing costs; and
 - (vii) transportation costs; and

(E) develop a personal budget based on career choice using effective money management and financial planning techniques.

§127.479. Extended Practicum in Culinary Arts (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 11 and 12. The practicum course is a paid or unpaid capstone experience for students participating in a coherent sequence of career and technical education courses in the Hospitality and Tourism Career Cluster. Prerequisite: Culinary Arts. Corequisite: Practicum in Culinary Arts. This course must be taken concurrently with Practicum in Culinary Arts and may not be taken as a stand-alone course. Students shall be awarded one credit for successful completion of this course. A student may repeat this course once for credit provided that the student is experiencing different aspects of the industry and demonstrating proficiency in additional and more advanced knowledge and skills.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Hospitality and Tourism Career Cluster focuses on the management, marketing, and operations of restaurants and other food/beverage services, lodging, attractions, recreation events, and travel-related services.

(3) Extended Practicum in Culinary Arts is a unique practicum that provides occupationally specific opportunities for students to participate in a learning experience that combines classroom instruction with actual business and industry career experiences. Extended Practicum in Culinary Arts integrates academic and career and technical education; provides more interdisciplinary instruction; and supports strong partnerships among schools, businesses, and community institutions with the goal of preparing students with a variety of skills in a fast-changing workplace.

(4) Students are taught employability skills to prepare for college and career success, which include job-specific skills applicable to their training plan, job interview techniques, communication skills, financial and budget activities, human relations, and portfolio development.

(5) Instruction may be delivered through school-based laboratory training or through work-based delivery arrangements such as cooperative education, mentoring, and job shadowing.

(6) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(7) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) participate in a paid or unpaid, laboratory- or work-based application of previously studied knowledge and skills related to culinary arts;

(B) participate in training, education, or preparation for licensure, certification, or other relevant credentials to prepare for employment;

(C) demonstrate professional standards and personal qualities needed to be employable such as self-discipline, positive attitude, integrity, leadership, customer service, work ethic, and adaptability with increased fluency;

(D) employ teamwork and conflict-management skills with increased fluency to achieve collective goals; and

(E) employ planning and time-management skills and tools with increased fluency to enhance results and complete work tasks.

(2) The student applies professional communications strategies. The student is expected to:

(A) demonstrate verbal and non-verbal communication consistently in a clear, concise, and effective manner;

(B) present information formally and informally in an effective manner;

(C) apply active listening skills to obtain and clarify information; and

(D) exhibit public relations skills to maintain internal and external customer/client satisfaction.

(3) The student implements advanced problem-solving methods. The student is expected to employ critical-thinking skills with increased fluency both independently and in groups to solve problems and make decisions.

(4) The student understands and applies proper safety techniques in the workplace. The student is expected to:

(A) comply with Occupational Safety and Health Administration regulations in the workplace;

(B) demonstrate knowledge of procedures for reporting and handling accidents and safety incidents;

(C) analyze health and wellness practices that influence job performance; and

(D) understand and follow workplace safety rules and regulations.

(5) The student understands the professional, ethical, and legal responsibilities in culinary arts. The student is expected to:

(A) demonstrate a positive, productive work ethic by performing assigned tasks as directed;

(B) show integrity by choosing the ethical course of action when making decisions; and

(C) comply with all applicable rules, laws, and regulations in a consistent manner.

(6) The student demonstrates proper culinary techniques and knowledge of the professional kitchen. The student is expected to:

(A) demonstrate proper use of large and small equipment in a commercial kitchen with increased proficiency;

(B) demonstrate advanced food production and presentation techniques;

(C) demonstrate moist, dry, and combination cookery methods;

(D) demonstrate advanced food preparation skills used in commercial food service preparations;

(E) demonstrate advanced baking techniques;

(F) demonstrate proper receiving and storage techniques; and

(G) demonstrate proper cleaning of equipment and maintenance of the commercial kitchen.

§127.480. Extended Practicum in Hospitality Services (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 11 and 12. The practicum course is a paid or unpaid capstone experience for students participating in a coherent sequence of career and technical education courses in the Hospitality and Tourism Career Cluster. Recommended prerequisite: Hospitality Services. Corequisite: Practicum in Hospitality Services. This course must be taken concurrently with Practicum in Hospitality Services and may not be taken as a stand-alone course. Students shall be awarded one credit for successful completion of this course. A student may repeat this course once for credit provided that the student is experiencing different aspects of the industry and demonstrating proficiency in additional and more advanced knowledge and skills.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Hospitality and Tourism Career Cluster focuses on the management, marketing, and operations of restaurants and other food/beverage services, lodging, attractions, recreation events, and travel-related services.

(3) Extended Practicum in Hospitality Services is a unique practicum experience that provides opportunities for students to participate in a learning experience that combines classroom instruction with actual business and industry career experiences. Extended Practicum in Hospitality Services integrates academic and career and technical education; provides more interdisciplinary instruction; and supports strong partnerships among schools, businesses, and community institutions with the goal of preparing students with a variety of skills in a fast-changing workplace.

(4) Students are taught employability skills, including job-specific skills applicable to their training plan, job interview techniques, communication skills, financial and budget activities, human relations, and portfolio development. Extended Practicum in Hospitality Services is relevant and rigorous, supports student attainment of academic and technical standards, and effectively prepares students for college and career success.

(5) Instruction may be delivered through school-based laboratory training or through work-based delivery arrangement such as cooperative education, mentoring, and job shadowing.

(6) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(7) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) participate in a paid or unpaid, laboratory- or work-based application of previously studied knowledge and skills related to hospitality services;

(B) participate in training, education, or preparation for licensure, certification, or other relevant credentials to prepare for employment;

(C) demonstrate professional standards and personal qualities needed to be employable such as leadership, appreciation for diversity, conflict management, customer service, work ethic, and adaptability with increased fluency;

(D) employ teamwork and conflict-management skills with increased fluency to achieve collective goals; and

(E) employ planning and time-management skills and tools with increased fluency to enhance results and complete work tasks.

(2) The student applies professional communications strategies. The student is expected to:

(A) demonstrate verbal and non-verbal communication consistently in a clear, concise, and effective manner;

(B) present information formally and informally in an effective manner;

(C) analyze, interpret, and effectively communicate information;

(D) apply active listening skills to obtain and clarify information; and

(E) exhibit public relations skills to maintain internal and external customer/client satisfaction.

(3) The student implements advanced problem-solving methods. The student is expected to employ critical-thinking skills with increased fluency both independently and in groups to solve problems and make decisions.

(4) The student understands and applies proper safety techniques in the workplace. The student is expected to:

(A) demonstrate an understanding of and consistently follow workplace safety rules and regulations; and

(B) demonstrate knowledge of procedures for reporting and handling accidents and safety incidents.

(5) The student understands the professional, ethical, and legal responsibilities in hospitality services. The student is expected to:

(A) practice ethical conduct when interacting with others such as maintaining client confidentiality and maintaining privacy of sensitive content;

(B) demonstrate a positive, productive work ethic by performing assigned tasks as directed;

(C) show integrity by choosing the ethical course of action when making decisions;

(D) demonstrate proper etiquette and knowledge of acceptable-use policies when using networks, especially resources on the Internet and intranet; and

(E) comply with all applicable rules, laws, and regulations in a consistent manner.

(6) The student participates in a supervised hospitality experience. The student is expected to:

(A) conduct, document, and evaluate learning activities in a supervised hospitality experience;

(B) practice technical procedures such as registration, rate assignment, room assignment, and determination of payment methods needed to meet guest needs;

(C) examine, understand, and articulate job-specific technical vocabulary;

(D) demonstrate proficiency in the duties for an appropriate department of a hotel or tourism venue; and

(E) collect representative work samples.

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 December 6, 2021.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: January 16, 2022

For further information, please call: (512) 475-1497



SUBCHAPTER M. LAW AND PUBLIC SERVICE

19 TAC §§127.625 - 127.648

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(n), which allows the SBOE to by rule develop and implement a plan designed to incorporate foundation curriculum requirements into the career and technical education (CTE) curriculum required in TEC, §28.002; TEC, §28.002(o), which requires the SBOE to determine that at least 50% of the approved CTE courses are cost effective for a school district to implement; TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002; TEC, §28.025(b-2), which requires the SBOE to by rule allow a student to comply with the curriculum requirements for the third and fourth mathematics credits under TEC, §28.025(b-1)(2), or the third and fourth science credits under TEC, §28.025(b-1)(3), by successfully completing a CTE course designated by the SBOE as containing substantially similar and rigorous content; and TEC, §28.025(b-17), which requires the SBOE by rule to ensure that a student may comply with curriculum requirements under TEC, §28.025(b-1)(6), by successfully completing an advanced CTE course, including a course that may lead to an industry-recognized credential or certificate or an associate degree.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (n), and (o); and 28.025(a), (b-2), and (b-17).

§127.625. Implementation of Texas Essential Knowledge and Skills for Law, Public Safety, Corrections, and Security, Adopted 2015.

(a) The provisions of this subchapter shall be implemented by school districts beginning with the 2017-2018 school year.

(b) No later than August 31, 2016, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills for career and technical education as adopted in §§127.626-127.637 of this subchapter.

(c) If the commissioner makes the determination that instructional materials funding has been made available under subsection (b) of this section, §§127.626-127.637 of this subchapter shall be implemented beginning with the 2017-2018 school year and apply to the 2017-2018 and subsequent school years.

(d) If the commissioner does not make the determination that instructional materials funding has been made available under subsection (b) of this section, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that §§127.626-127.637 of this subchapter shall be implemented for the following school year.

§127.626. Principles of Law, Public Safety, Corrections, and Security (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 9-12. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Law, Public Safety, Corrections, and Security Career Cluster focuses on planning, managing, and providing legal services, public safety, protective services, and homeland security, including professional and technical support services.

(3) Principles of Law, Public Safety, Corrections, and Security introduces students to professions in law enforcement, protective services, corrections, firefighting, and emergency management services. Students will examine the roles and responsibilities of police, courts, corrections, private security, and protective agencies of fire and emergency services. The course provides students with an overview of the skills necessary for careers in law enforcement, fire service, protective services, and corrections.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student

is expected to achieve business and industry employability skills standards such as attendance, on-time arrival, meeting deadlines, working toward personal/team goals every day, and ethical use of technology.

(2) The student achieves academic knowledge and skills required for career and postsecondary education opportunities associated with the career field. The student is expected to:

(A) apply English language arts knowledge and skills required for career and postsecondary education opportunities;

(B) apply mathematics knowledge and skills required for career and postsecondary education opportunities; and

(C) apply science knowledge and skills for career and postsecondary education associated with the career field.

(3) The student uses communication skills in creating, expressing, and interpreting information and ideas, including technical terminology and information. The student is expected to:

(A) evaluate effective use of grammar to develop verbal communication skills;

(B) differentiate among speaking strategies used to communicate specific ideas to various audiences;

(C) interpret voice quality and delivery to analyze verbal communication; and

(D) demonstrate effective interpersonal skills necessary to communicate with coworkers and the public.

(4) The student formulates ideas, proposals, and solutions to address problems related to the career field in order to ensure effective and efficient delivery of services. The student is expected to:

(A) use analytical skills to formulate ideas, proposals, and solutions to problems;

(B) formulate ideas, proposals, and solutions to ensure delivery of services; and

(C) use critical-thinking skills to solve ethical issues identified in the career field.

(5) The student implements measures to maintain safe and healthful working conditions in a law and public safety environment. The student is expected to:

(A) identify, analyze, and evaluate the dangers associated with the different career fields;

(B) create and recommend strategies for issues related to the safety and health of employees based on an assessment of a simulated workplace environment;

(C) discuss methods for safe handling of hazardous materials;

(D) discuss the importance of good health and physical fitness; and

(E) demonstrate first aid, cardiopulmonary resuscitation, and automated external defibrillator procedures.

(6) The student analyzes the legal responsibilities associated with roles and functions within law, public safety, corrections, and security organizations to demonstrate a commitment to professional and ethical behavior. The student is expected to:

(A) examine real-world situations involving ethical dilemmas and professional conduct;

(B) explain laws, regulations, and policies that govern professionals; and

(C) recommend a strategy for responding to an unethical or illegal situation.

(7) The student recognizes the importance of interagency cooperation. The student is expected to:

(A) discuss the importance of police, fire, emergency medical services, court, corrections, and security systems working together to protect the public;

(B) examine the roles and responsibilities of first responders;

(C) identify jurisdictional problems that may arise as multiple agencies work together; and

(D) differentiate the roles of private security and public law enforcement agencies.

(8) The student understands the historical and philosophical development of criminal law. The student is expected to:

(A) identify the sources and origin of law in the United States;

(B) explain the impact of the U.S. Constitution and Bill of Rights on criminal law in regard to the rights of citizens;

(C) differentiate between crimes classified as felonies or misdemeanors and the punishments for each;

(D) analyze the essential elements and classifications of a crime;

(E) identify problems commonly associated with the enforcement of criminal laws; and

(F) identify the process by which laws are enacted.

(9) The student identifies the roles of the public safety professional. The student is expected to:

(A) identify career opportunities in federal, state, county, and municipal law enforcement agencies;

(B) identify the education and training required for various levels of law enforcement;

(C) discuss the history of policing in the United States;

(D) identify the roles and responsibilities of law enforcement professionals;

(E) analyze the impact of constitutional law on police as it relates to arrest, use of force, searches, and seizure;

(F) examine the role of emergency medical services in public safety; and

(G) identify how public safety professionals manage the stress related to these jobs.

(10) The student identifies the roles and functions of court systems. The student is expected to:

(A) identify career opportunities in the court systems;

(B) identify the levels and functions of criminal courts;

(C) examine the roles of the courtroom work groups such as judges, prosecutors, defense counsel, and bailiffs;

(D) explain pretrial and courtroom procedures; and

(E) identify types of sentencing and sentencing rules.

(11) The student identifies the roles and functions of the correctional system. The student is expected to:

(A) explain career opportunities available in the correctional system, including probation and parole;

(B) explain the duties and responsibilities of correctional officers;

(C) recognize the history of prisons in the United States;

(D) explain the differences between jails and prisons;

(E) identify the levels of security in prisons and jails;

and

(F) explain the constitutional rights of inmates in prisons and jails.

(12) The student identifies the roles and functions of private security systems and agencies. The student is expected to:

(A) explain the career opportunities available in private security;

(B) discuss the history and importance of private security in the United States; and

(C) examine the relationship between private security and public safety agencies.

(13) The student identifies the roles and functions of fire protection services. The student is expected to:

(A) identify the career opportunities in fire protection services;

(B) explain the duties and responsibilities of firefighters;

(C) recognize the importance of the operation of 911 and computer-aided dispatch systems; and

(D) explain the relationships among police, fire, and emergency medical services.

(14) The student identifies the roles and functions of student community organizations that support or provide additional information and guidance to those interested in law, public safety, corrections, and protective services. The student is expected to:

(A) research and participate in community organizations such as SkillsUSA, Law Enforcement Explorer Scouts, and National Technical Honor Society; and

(B) identify community outreach organizations such as Citizens on Patrol; local student police organizations; or national student police organizations.

§127.627. Correctional Services (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisite: Principles of Law, Public Safety, Corrections, and Security. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Law, Public Safety, Corrections, and Security Career Cluster focuses on planning, managing, and providing legal ser-

vices, public safety, protective services, and homeland security, including professional and technical support services.

(3) In Correctional Services, students prepare for certification required for employment as a municipal, county, state, or federal correctional officer. Students will learn the role and responsibilities of a county or municipal correctional officer; discuss relevant rules, regulations, and laws of municipal, county, state, or federal facilities; and discuss defensive tactics, restraint techniques, and first aid procedures as used in the municipal, county, state, or federal correctional setting. Students will analyze rehabilitation and alternatives to institutionalization for inmates.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to achieve business and industry employability skills standards such as attendance, on-time arrival, meeting deadlines, working toward personal/team goals every day, and ethical use of technology.

(2) The student researches the history of correctional services in the municipal, county, state, or federal setting. The student is expected to:

(A) examine the history of corrections such as municipal, county, state, and federal;

(B) examine the rules of conduct and disciplinary action guidelines for employees of municipal, county, state, or federal correctional facilities;

(C) analyze personal responsibilities, including preferences, to determine requirements for employment in municipal, county, state, or federal correctional services; and

(D) effectively search methods to locate potential employment opportunities in municipal, county, state, or federal correctional services.

(3) The student recognizes professional standards and ethical responsibilities in the municipal, county, state, or federal correctional facilities. The student is expected to:

(A) identify employer expectations such as effective verbal communication skills; professional conduct; knowledge of laws, regulations, and policies; punctuality and attendance; initiative; cooperation; time management; and sensitivity to and value for diversity;

(B) identify professional standards in municipal, county, state, or federal correctional facilities such as dress, grooming, and personal protective equipment as appropriate; and leadership and teamwork when collaborating with others to accomplish goals and objectives; and

(C) analyze the ethical responsibilities of correctional officers to ensure protections of rights.

(4) The student uses verbal communication skills necessary for municipal, county, state, or federal correctional officers. The student is expected to:

(A) define technical concepts and vocabulary associated with municipal, county, state, or federal correctional services through effective verbal communication; and

(B) contribute to group discussions and meetings by demonstrating active listening and effective speaking skills.

(5) The student performs active listening skills to obtain and clarify information. The student is expected to:

(A) apply listening skills to obtain and clarify information provided in verbal communication; and

(B) demonstrate communication skills to explain the meaning of technical vocabulary concepts related to correctional services.

(6) The student uses first aid, infection control, and cardiopulmonary resuscitation in a correctional facility. The student is expected to:

(A) demonstrate first aid procedures, cardiopulmonary resuscitation, and automated external defibrillator use in a simulated emergency situation;

(B) comply with standard precautions as they relate to infection control; and

(C) use special requirements for handling hazardous materials to maintain a safe working environment.

(7) The student recognizes constitutional laws and laws of correctional systems. The student is expected to:

(A) apply constitutional laws, including laws of arrest, to execute official correctional service duties while respecting citizen rights;

(B) explore the impact of the U.S. legal system on the correctional system;

(C) differentiate between the civil and criminal justice systems and explain how change impacts correctional services;

(D) use the appropriate techniques to manage crisis situations to protect individuals and society;

(E) execute protocols associated with arrest, search, and seizure using the statutes set forth by the Fourth Amendment;

(F) summarize the rights of an individual being interrogated under the Fifth Amendment;

(G) examine trial, jury, and due process rights; and

(H) state the conditions under which citizens and non-citizens of the United States may be interrogated in the correctional environment.

(8) The student models behaviors during interactions with prisoners that demonstrate concern for individuals with disabilities. The student is expected to:

(A) apply the appropriate procedures for use with individuals who have mental disorders, physical disabilities, communication disorders, and atypical behaviors;

(B) execute protocols to provide appropriate assistance to people with disabilities and impairments; and

(C) analyze the impact of the Americans with Disabilities Act on inmates and correctional staff.

(9) The student uses conflict resolution skills and knowledge to resolve conflicts among individuals in correctional environments. The student is expected to:

(A) examine the origins of conflict and the needs that motivate behavior;

(B) analyze different responses to conflict and the results generated;

(C) use principle-centered conflict resolution processes in order to resolve conflicts; and

(D) interpret visual and vocal cues to comprehend information received such as from body language, eye movement, voice tone, and voice inflection.

(10) The student analyzes hostile situations and executes conflict management strategies to take charge of problems that arise in correctional settings. The student is expected to:

(A) review security post procedures in a correctional facility;

(B) explain the importance of a perimeter security system;

(C) appraise situations and select the appropriate degree of force;

(D) complete steps involved in pre-event planning to respond to crisis situations; and

(E) perform appropriate crisis management to protect individual and societal rights.

(11) The student applies technical skill procedures of correctional staff to effectively manage day-to-day operations of correctional facilities. The student is expected to:

(A) demonstrate knowledge of policies and procedures for inmate supervision and discipline;

(B) demonstrate protocol designed to restrain individuals placed into custody without violating personal rights or jeopardizing personal safety;

(C) develop emergency plans and procedures for correctional facilities;

(D) describe the process for providing food services and the critical elements to ensure an effective operation;

(E) describe the steps for processing inmates such as reception, orientation, and classification;

(F) conduct a simulated parole interview;

(G) analyze prisoner re-entry programs and the effect of the programs on the community; and

(H) describe the importance of public relations as related to communities and citizens.

(12) The student identifies basic organizational models for municipal, county, state, or federal correctional facilities and the officer's role in maintaining order and safety. The student is expected to:

(A) identify three primary models of detention facilities;

(B) identify the role and core responsibilities of the officer in the detention facility; and

(C) recognize issues involving prisoners' constitutional rights.

(13) The student recognizes issues related to human behavior and relations in a detention facility. The student is expected to:

(A) identify the importance of ethical judgment and behavior in the criminal justice system;

(B) recognize issues involved with human relations between staff and prisoners;

(C) compare and contrast stress and stress-related issues for correctional personnel;

(D) evaluate the process of promoting cultural awareness at a municipal, county, state, or federal facility; and

(E) identify state and federal laws related to civil rights, sexual harassment, and liability issues for detention personnel.

(14) The student identifies methods of screening for and addressing injurious prisoner behavior. The student is expected to:

(A) identify various methods of screening for suicide risks;

(B) recognize procedures for preventing suicide among prisoners and for responding to suicide attempts; and

(C) identify various methods for determining, classifying, and dealing with intoxicated prisoners in the correctional setting.

(15) The student recognizes intake procedures for a detention facility. The student is expected to:

(A) identify general booking procedures such as basic orientation procedures, fingerprinting, report writing, and documentation of prisoner information;

(B) identify steps in the prisoner admission process; and

(C) recognize the process for releasing prisoners.

(16) The student recognizes various inmate health care issues and processes. The student is expected to:

(A) identify issues and symptoms involving persons with a variety of mental impairments at a detention facility;

(B) identify questions to ask when screening prisoners for mental illness and recognize methods for interacting and communicating with prisoners who may be mentally ill;

(C) recognize processes for maintaining inmate health records and understand health risks of communicable diseases; and

(D) recognize legal aspects of health care in a detention facility.

(17) The student identifies methods of providing various prisoner services. The student is expected to identify processes for issuing prisoner supplies and recognize issues involving prisoner food service, visitations, prisoner correspondence, and telephone usage.

(18) The student recognizes prisoner and facility security protocols. The student is expected to:

(A) identify issues involving inmate counts;

(B) demonstrate procedures for inventorying prisoner's property;

(C) identify the process of searching male and female prisoners;

(D) identify the processes and procedures for searching cells and common areas within a correctional facility; and

(E) identify issues involving facility security.

(19) The student recognizes the appropriate actions to take in emergency situations at a detention facility. The student is expected to:

(A) identify procedures for responding to a riot and disturbance in a municipal, county, state, or federal correctional facility;

(B) identify procedures for responding to events such as assaults, fires, medical emergencies, prisoner escapes, and hostage situations;

(C) recognize issues in dealing with disruptive inmates and groups; and

(D) identify procedures for escape attempts and escapes.

(20) The student identifies report-writing methods and courtroom procedures. The student is expected to:

(A) identify the process involved with writing reports;

(B) identify appropriate courtroom attire and demeanor; and

(C) recognize procedures for preparing for courtroom testimony.

(21) The student evaluates situations requiring the use of force. The student is expected to:

(A) demonstrate the use of the force continuum in simulated situations requiring varied degrees of force; and

(B) explain the guidelines and restrictions imposed by state and federal governments related to the use of deadly force.

(22) The student analyzes procedures and protocols for self-defense in homeland security and protective services. The student is expected to demonstrate self-defense and defensive tactics such as ready stance and escort positions, strikes, kicks, punches, handcuffing, and searching.

§127.628. Firefighter I (Two Credits), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisite: Principles of Law, Public Safety, Corrections, and Security. Students shall be awarded two credits for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Law, Public Safety, Corrections, and Security Career Cluster focuses on planning, managing, and providing legal services, public safety, protective services, and homeland security, including professional and technical support services.

(3) Firefighter I introduces students to firefighter safety and development. Students will analyze Texas Commission on Fire Protection rules and regulations, proper incident reporting and records, proper use of personal protective equipment, and the principles of fire safety.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to achieve business and industry employability skills standards such as attendance, on-time arrival, meeting deadlines, working toward personal/team goals every day, and ethical use of technology.

(2) The student uses communication skills as related to fire management. The student is expected to:

(A) demonstrate the use of speech and written communication platforms common to fire management services;

(B) practice steps involved in using radio communication for fire management;

(C) apply the Incident Command System to manage emergencies; and

(D) apply protocols in emergency management response when working at an accident scene.

(3) The student executes safety procedures and protocols associated with fire management services. The student is expected to:

(A) apply local, state, and federal regulations pertaining to safety issues;

(B) apply protocols for handling hazardous materials at the awareness level; and

(C) practice personal safety procedures.

(4) The student comprehends the steps to develop an institutional professional growth plan to develop team building and leadership skills common for fire management systems. The student is expected to:

(A) recognize techniques for functioning within a group environment; and

(B) demonstrate model leadership within fire management.

(5) The student applies laws, ordinances, regulations, and rules as defined by the Texas Commission on Fire Protection Certification Curriculum Manual to perform duties within a set of rules or protocols. The student is expected to:

(A) identify the correct laws and rules applicable to basic firefighter certification by the Texas Commission on Fire Protection;

(B) review the Texas Commission on Fire Protection requirements for certification as a basic firefighter as stated in the Standards Manual for Fire Protection Personnel;

(C) identify the various levels of firefighter certifications by the Texas Commission on Fire Protection as stated in the Standards Manual for Fire Protection Personnel;

(D) identify the levels of instructor certification by the Texas Commission on Fire Protection as stated in the Standards Manual for Fire Protection Personnel; and

(E) describe responsibilities of a firefighter as required by the National Fire Protection Association 1500: Standard on Fire Department Occupational Safety and Health Program.

(6) The student describes the stages of a fire, the process of combustion, and the appropriate action to be taken for extinguishment. The student is expected to:

(A) describe the four products of combustion commonly found in structural fires that create a life hazard;

(B) define terms such as fire, flash point, ignition temperature, fire point, flammable (explosive) range, boiling point, oxidation, pyrolysis, reducing agent, vaporization, combustion, vapor density, and specific gravity;

(C) describe the process of thermal layering that occurs in structural fires and how to avoid disturbing the normal layering of heat;

(D) define fire triangle and fire tetrahedron;

(E) describe heat energy sources such as chemical, electrical, mechanical, and nuclear;

(F) identify the stages of fire development;

(G) explain the special conditions that occur during a fire's growth such as flameover, rollover, flashover, thermal layering, and backdraft; and

(H) identify the units of heat measurement and how to convert units.

(7) The student describes the methods of heat transfer. The student is expected to:

(A) describe methods of heat transfer such as conduction, convection, and radiation; and

(B) describe examples of heat transfer in fire emergencies such as conduction, convection, and radiation.

(8) The student analyzes the physical states of matter in which fuels are commonly found. The student is expected to:

(A) describe the physical states of matter in which fuels are commonly found such as solid, liquid, and gaseous fuels;

(B) explain terms related to the combustion process such as specific gravity, vapor density, and the theory of surface-to-mass ratio; and

(C) identify narcotic asphyxiant gases and irritants common in smoke.

(9) The student comprehends the fire extinguishment theory. The student is expected to:

(A) describe the fire extinguishment theory; and

(B) analyze methods of extinguishment such as temperature reduction, fuel removal, oxygen exclusion, and inhibiting chemical reaction.

(10) The student describes the characteristics of water as it relates to fire extinguishing potential. The student is expected to:

(A) explain the law of thermodynamics as it relates to specific heat, latent heat, and heat flow; and

(B) compare the advantages and disadvantages of water as an extinguishing agent.

(11) The student analyzes the internal systems that sustain life in the human body and identifies the physical requirements of a self-contained breathing apparatus wearer. The student is expected to:

(A) describe the internal systems that sustain life in the human body such as the respiratory and cardiovascular systems;

(B) describe the National Fire Protection Association standards applicable to the self-contained breathing apparatus;

(C) identify the firefighter's physical requirements for wearing a self-contained breathing apparatus;

(D) identify respiratory hazards during firefighting that require the use of respiratory protection;

(E) identify the different types of self-contained breathing apparatus; and

(F) describe the safety features and function of the open circuit self-contained breathing apparatus.

(12) The student demonstrates confidence in performing firefighting skills while wearing a self-contained breathing apparatus. The student is expected to:

(A) identify the safety requirements when using the self-contained breathing apparatus;

(B) describe how to calculate the air supply duration in the cylinder;

(C) describe the safety rules when wearing the self-contained breathing apparatus;

(D) describe the uses and limitations of the self-contained breathing apparatus;

(E) demonstrate the various methods of donning and doffing the self-contained breathing apparatus while wearing protective clothing;

(F) demonstrate the replacement of an expended cylinder on a self-contained breathing apparatus assembly with a full cylinder;

(G) demonstrate rescue procedures without compromising the rescuer's respiratory protection such as rescuing a firefighter with functioning respiratory protection, a firefighter without functioning respiratory protection, or a civilian without respiratory protection;

(H) perform firefighting skills while wearing the self-contained breathing apparatus with a fully charged cylinder;

(I) demonstrate the use of the self-contained breathing apparatus to manage a restricted passage in conditions of obscured visibility; and

(J) demonstrate emergency procedures to be used in the event of failure of the self-contained breathing apparatus.

(13) The student demonstrates inspection, care, and testing procedures for the self-contained breathing apparatus. The student is expected to:

(A) document routine maintenance for the self-contained breathing apparatus; and

(B) describe the use of an air supply system for recharging an air cylinder and cylinder testing maintenance of a self-contained breathing apparatus.

(14) The student identifies the types and components of fire service protective clothing and personal protective equipment. The student is expected to:

(A) identify the various types of fire service protective clothing;

(B) identify the different components of structural firefighting protective equipment and their functions;

(C) demonstrate the correct procedures for inspection and maintenance of personal protective equipment;

(D) describe the limitations of personal protective equipment in providing protection to firefighters;

(E) explain the physical limitations of a firefighter working in a personal protective ensemble; and

(F) demonstrate the donning and doffing of personal protective equipment such as helmet with eye protection, hood, boots, gloves, protective coat and trousers, self-contained breathing apparatus, and personal alert safety system device.

(15) The student demonstrates the proper testing and operation of a personal alert safety system device. The student is expected to:

(A) explain the proper operation of a personal alert safety system; and

(B) demonstrate the proper testing of a personal alert safety system.

(16) The student recognizes all aspects of the fire department organization. The student is expected to:

(A) identify aspects of the fire department organization;

(B) explain the firefighter's role as a member of the fire department;

(C) analyze the rules and regulations common to most fire departments;

(D) identify the mission of the fire service and of the local fire department according to the authority having jurisdiction;

(E) describe the function of a standard operating system and the responsibilities of a firefighter relating to compliance with the provisions of occupational safety and health programs; and

(F) explain the components of a member assistance program.

(17) The student recognizes common types of accidents and injuries and their causes. The student is expected to:

(A) describe the elements of a personnel accountability system and the application of the system at an incident;

(B) identify potential long-term firefighter health considerations of exposure to products of combustion;

(C) identify common types of accidents or injuries such as those occurring at the emergency scene, responding to and returning from calls on fire apparatus, in personal vehicles, at the fire station, at other on-duty locations, and during training; and

(D) demonstrate techniques for action when trapped or disoriented in a fire situation or in a hostile environment.

(18) The student describes the handling of different types of accidents and hazards. The student is expected to:

(A) describe the procedures for terminating utility services to a building;

(B) explain hazards that exist and describe procedures to be used in electrical emergencies;

(C) describe the safe handling and operation of hand and power tools;

(D) describe safety procedures for fire service lighting equipment such as power supply (portable or mounted), lights, cords, and connectors; and

(E) recognize the procedures for the use of safety equipment such as seat belts, ear protection, eye protection, and other safety equipment provided for protection while riding on apparatus.

(19) The student identifies safety procedures for ensuring a safe environment. The student is expected to:

(A) identify protective equipment and describe its uses;

(B) recognize traffic and scene control devices;

(C) identify structure fire and roadway emergency scene potential hazards;

(D) describe solutions to mitigate potential hazards; and

(E) describe procedures for safe operation at emergency scenes.

§127.629. Firefighter II (Three Credits), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 11 and 12. Prerequisite: Firefighter I. Recommended prerequisite: Principles of Law, Public Safety, Corrections, and Security. Students shall be awarded three credits for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Law, Public Safety, Corrections, and Security Career Cluster focuses on planning, managing, and providing legal services, public safety, protective services, and homeland security, including professional and technical support services.

(3) Firefighter II is the second course in a series for students studying firefighter safety and development. Students will understand Texas Commission on Fire Protection rules and regulations, proper incident reporting and records, proper use of personal protective equipment, and the principles of fire safety. Students will demonstrate proper use of fire extinguishers, ground ladders, fire hoses, and water supply apparatus systems.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to achieve business and industry employability skills standards such as attendance, on-time arrival, meeting deadlines, working toward personal/team goals every day, and ethical use of technology.

(2) The student uses information technology applications as they pertain to fire management situations. The student is expected to:

(A) apply protocols for managing emergency situations using radio equipment, computer technology, and public address and warning systems; and

(B) demonstrate use of word-processing and spreadsheet software in fire management services.

(3) The student evaluates behaviors, strategies, and protocols that demonstrate an understanding of duties while responding to a variety of emergency incidents. The student is expected to:

(A) identify response procedures to emergency incidents; and

(B) apply response procedures to simulated emergency incidents.

(4) The student describes the characteristics and applications for the classes of extinguishers. The student is expected to:

(A) identify the classification of types of fires as they relate to the use of portable fire extinguishers and the materials involved in each class of fire;

(B) identify the appropriate fire extinguisher for each class of fire;

(C) identify and describe fire extinguisher characteristics and operations; and

(D) describe and demonstrate the operation of fire extinguishers using Pull Aim Squeeze Sweep (PASS).

(5) The student explains the purpose of the National Fire Protection Association standards applicable to fire service ground ladders. The student is expected to:

(A) identify the materials used in ladder construction and the features;

(B) describe and demonstrate inspection and maintenance procedures for different types of ground ladders and describe procedures for conducting an annual service test on ground ladders;

(C) identify the load capacities for ground ladders;

(D) identify and select a ladder for a given task;

(E) demonstrate raising and positioning ground ladders;

(F) describe and demonstrate securing a ladder;

(G) explain and demonstrate proper ladder climbing techniques while transporting tools and equipment or assisting a person with a simulated injury; and

(H) demonstrate the deployment of a roof ladder on a pitched roof.

(6) The student describes the purpose of the National Fire Protection Association standards applicable to fire service hoses and reviews the procedures for care, maintenance, and inspection of fire hoses, couplings, nozzles, and water valves. The student is expected to:

(A) identify and describe the use and construction of fire hoses and couplings;

(B) explain the application of each size and type of hose on a pumper as required to be carried by National Fire Protection Association 1901;

(C) demonstrate the methods of connecting fire hose couplings;

(D) demonstrate the one- and two-person methods of connecting, dismantling, and rolling various sizes of hose lines;

(E) demonstrate advancing dry hose lines and charged attack lines of different sizes;

(F) demonstrate methods of hose load finishes;

(G) describe and demonstrate extending a section of hose and replacing damaged sections of hose using proper safety equipment such as clothing for performing overhaul activities; and

(H) describe the methods of washing and drying a fire hose.

(7) The student explains requirements for the production of effective fire streams. The student is expected to:

(A) identify, define, and demonstrate characteristics of fire streams;

(B) identify the type, design, operation, required nozzle pressure, and flow of a given selection of nozzles and tips;

(C) demonstrate the proper use of nozzles, hose appliances, water valves, adapters, and tools;

(D) identify various types of nozzles and their components; and

(E) identify terms relating to the principles of fire service hydraulics.

(8) The student identifies water supply sources and methods to move water from the supply source to the fire. The student is expected to:

(A) describe the operation of fire hydrants such as fully opened fire hydrants and closed fire hydrants;

(B) identify the National Fire Protection Association hydrant color code;

(C) describe making a hydrant-to-pumper connection;

(D) explain the hazards involved when the hydrant-to-pumper connection is not properly sealed; and

(E) describe the apparatus, equipment, and appliances required to provide water at rural locations.

(9) The student explains the duties of a firefighter after a fire. The student is expected to:

(A) explain how debris is handled from fires, including house fires and chemical fires;

(B) describe the duties for gathering information that may lead to the determination of the fire cause;

(C) identify the proper procedure for restoration of the premises after a fire; and

(D) describe the duties for fire and security surveillance during and after the fire.

§127.630. Law Enforcement I (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisite: Principles of Law, Public Safety, Corrections, and Security. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Law, Public Safety, Corrections, and Security Career Cluster focuses on planning, managing, and providing legal services, public safety, protective services, and homeland security, including professional and technical support services.

(3) Law Enforcement I is an overview of the history, organization, and functions of local, state, and federal law enforcement. Students will understand the role of constitutional law at local, state,

and federal levels; the U.S. legal system; criminal law; and law enforcement terminology and the classification and elements of crime.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to achieve business and industry employability skills standards such as attendance, on-time arrival, meeting deadlines, working toward personal/team goals every day, and ethical use of technology.

(2) The student explores the legal authorities pertaining to law enforcement officers' use of force. The student is expected to:

(A) identify key terminology relating to the use of force and explain the legal authorities and the justification for use of force;

(B) analyze the deciding factors for use of force when effecting an arrest;

(C) analyze circumstances that are high risks for officers;

(D) analyze various force options or alternatives to increase the student's awareness of various force options or alternatives available to peace officers;

(E) discuss force options available to peace officers; and

(F) examine elements that an officer must recognize and control in every encounter.

(3) The student uses verbal and nonverbal communication skills necessary for law enforcement. The student is expected to:

(A) relate the meaning of technical concepts and vocabulary associated with law enforcement;

(B) interpret facial expressions, voice quality and delivery, gestures, and body positioning as related to nonverbal communication;

(C) interpret voice quality and delivery such as combination of pitch, tone, and wording;

(D) recognize diversity in culture;

(E) employ active listening skills; and

(F) contribute to group discussions and meetings.

(4) The student demonstrates a working knowledge of the laws, methods, and techniques relative to accident investigation:

(A) produce a crash report involving two or more vehicles in an accident;

(B) apply laws associated with accident investigation;

(C) research procedures for responding to an accident scene and how to maintain control of an accident scene; and

(D) demonstrate how to maintain traffic control at an accident scene.

(5) The student understands ethical behavior standards required for law enforcement personnel. The student is expected to:

(A) explain the role of the U.S. Constitution in relation to the development and implementation of law enforcement;

(B) evaluate individual ethical behavior standards;

(C) analyze legal and ethical behavior standards protecting citizens' constitutional rights;

(D) demonstrate strategies to enhance public trust; and

(E) explain the mission of law enforcement in protecting a democratic society.

(6) The student explores the U.S. legal system and the requirements for law enforcement. The student is expected to:

(A) explain how citizens are protected by constitutional laws of local, state, and federal courts;

(B) analyze the impact of Supreme Court decisions such as *Mapp v. Ohio*, *Terry v. Ohio*, and *Tennessee v. Garner*;

(C) analyze the similarities, differences, and interactions between local, state, and federal court systems;

(D) illustrate the progression of a case as it moves through local, state, and federal jurisdictions; and

(E) compare the characteristics of civil and criminal court systems.

(7) The student analyzes custody and interrogation as they relate to the U.S. Supreme court decision in *Miranda v. Arizona*. The student is expected to:

(A) demonstrate the application of the constitutional rights, using the Miranda warning requirements for both adult and juvenile suspects;

(B) explain the additional requirements above the Miranda warnings for juvenile suspects, offenders, and witnesses; and

(C) demonstrate a non-custodial and custodial interview and interrogation.

(8) The student analyzes procedural and substantive criminal law. The student is expected to:

(A) define crime categories and respective punishments according to the Texas Penal Code;

(B) analyze the elements of criminal acts according to Texas laws, including Alcoholic Beverage Code, Family Code, Penal Code, Health and Safety Code, and Criminal Code of Procedure;

(C) differentiate *mala prohibita* and *mala in se*; and

(D) analyze types of criminal defenses.

(9) The student analyzes law related to victims and witnesses. The student is expected to:

(A) analyze the rights of victims of crimes and witnesses to crime laws such as the Victim and Witness Protection Act of 1982, the Victims of Crime Act of 1984, the Victim's Rights and Restitution Act, the Child Victims' Bill of Rights of 1990, and the Victim Rights Clarification Act of 1997;

(B) analyze the psychological, social, and economic impact of crime on the victim such as:

(i) identifying the elements of a crisis reaction, the phases of a victim's reaction to a crime, the ripple effect of crime victimization, and crisis intervention; and

(ii) identifying and discussing the potential for secondary victimization by the criminal justice system and how to avoid it; and

(C) identify statutory responsibilities relating to victims' rights such as:

(i) identifying the legal basis of law enforcement's responsibilities to victims' rights;

(ii) summarizing legal requirement for providing victims written notice; and

(iii) explaining rights granted to victims of crime.

(10) The student executes protocols and procedures protecting the rights of juvenile offenders and victims. The student is expected to:

(A) discuss juvenile law as it relates to the steps in processing status offenses of juveniles; and

(B) demonstrate the procedure for holding conferences with juveniles and parents or guardians.

(11) The student analyzes the steps in handling family violence calls involving Temporary Ex Parte Protective Orders, Protective Orders, and Magistrate's Orders for Emergency Protection and the procedures for responding to family violence. The student is expected to:

(A) understand the dynamics and legal issues of family violence and child abuse such as:

(i) explaining common characteristics of family violence offenders and describing the cycle of abuse phases;

(ii) discussing the types of abuse often occurring in family violence incidences, explaining some barriers victims face when attempting to leave an abusive relationship; and

(iii) defining terminology associated with family violence related to Texas Family Code, Title 4, for Protective Orders and Family Violence; and

(B) evaluate the recommended steps in handling family violence calls involving Temporary Ex Parte Protective Orders, protective orders, and Magistrate's Order for Emergency Protection such as:

(i) identifying the legal requirements for investigation of domestic abuse and child abuse or neglect and medical treatment and examinations for both;

(ii) designing a plan on how to handle family violence situations and procedures for conducting preliminary investigations; and

(iii) demonstrating how to provide and explain community resources and referrals to victims of family violence.

(12) The student explains laws associated with the Texas Health and Safety Code. The student is expected to:

(A) identify current commonly abused drugs in society;

(B) research the effects of substances as it applies to the Texas Health and Safety Code; and

(C) summarize the procedures for handling drugs, dangerous drugs, and controlled substances.

(13) The student summarizes the philosophy and concepts that influence the development and implementation of a community-oriented police program. The student is expected to:

(A) define community-oriented policing; and

(B) evaluate the skills needed to be a successful community-oriented police officer.

(14) The student uses field note-taking and report-writing skills to complete a police call sheet, an incident report, and a supplemental report. The student is expected to:

(A) describe the components of a police call sheet, an incident report, and a supplemental report;

(B) explain why a police call sheet, an incident report, and a supplemental report are legal documents;

(C) demonstrate obtaining the appropriate information for a police call sheet, an incident report, and a supplemental report; and

(D) write a police call sheet, an incident report, and a supplemental report using clear, concise, and legible entries.

(15) The student analyzes reasonable suspicion and probable cause for motor vehicle traffic stops. The student is expected to:

(A) apply techniques used to assess risk in vehicle stops;

(B) understand and analyze traffic laws contained in the Texas Transportation Code and their applications;

(C) execute a simulated misdemeanor traffic stop using the seven-step violator contact method;

(D) execute a simulated felony traffic stop with one and two patrol units;

(E) identify if a traffic law has been violated according to the Texas Transportation Code regarding a driving situation; and

(F) identify the regulations relating to arrest, charging procedures, notices, and promises to appear.

(16) The student employs procedures to protect, document, and process a crime scene. The student is expected to:

(A) demonstrate how to lift and preserve developed latent prints from a simulated crime scene; and

(B) demonstrate how to photograph, sketch, search, collect, document, and protect the crime scene area for further investigation.

(17) The student demonstrates and applies a working knowledge of the detection, apprehension, and arrest of an intoxicated driver. The student is expected to:

(A) explain the laws related to driving while intoxicated and related offenses; and

(B) discuss the development of "reasonable suspicion" for the intoxicated driver stop and temporary detention.

(18) The student demonstrates a working knowledge of a tactical entry into a residence and building safely. The student is expected to:

(A) describe techniques officers can use to safely approach a residence or building;

(B) explain techniques to safely enter and search a residence or building;

(C) demonstrate the correct techniques for entering a doorway and searching a room(s); and

(D) demonstrate methods for clearing buildings or residences and techniques used when suspects are found inside a building or residence.

§127.631. Law Enforcement II (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisite: Law Enforcement I. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Law, Public Safety, Corrections, and Security Career Cluster focuses on planning, managing, and providing legal services, public safety, protective services, and homeland security, including professional and technical support services.

(3) Law Enforcement II provides the knowledge and skills necessary to prepare for a career in law enforcement. Students will understand ethical and legal responsibilities, patrol procedures, first responder roles, telecommunications, emergency equipment operations, and courtroom testimony.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to achieve business and industry employability skills standards such as attendance, on-time arrival, meeting deadlines, working toward personal/team goals every day, and ethical use of technology.

(2) The student achieves the academic knowledge and skills required to prepare for postsecondary education and a career in law enforcement. The student is expected to:

(A) demonstrate the use of communication skills to evaluate body language, gestures, verbal tone, and inflection;

(B) apply interpersonal communication skills;

(C) apply writing skills to facilitate effective field note taking and report writing such as police incident reports;

(D) create various scenarios that use patrol tactics to effect an arrest; and

(E) demonstrate appropriate use of law, public safety, corrections, and security terminology.

(3) The student uses telecommunications equipment. The student is expected to:

(A) support the use of telecommunication mobile and handheld radio systems and current technology;

(B) formulate simulated radio communications using phonetic alphabet and common terminology;

(C) conduct simulated radio and data communications using mobile data computers and handheld radios;

(D) evaluate safety concerns with the use of telecommunications equipment, including when in the presence of non-first responders and while operating vehicles;

(E) explain the need of prioritizing calls for service; and

(F) identify the procedures used during emergency communications incidents such as hostage incidents and active pursuits.

(4) The student presents testimony in legal proceedings in accordance with courtroom procedures. The student is expected to:

(A) explain the roles of the courtroom work group;

(B) analyze the importance of reviewing field notes, reports, and evidence prior to pre-trial meeting;

(C) apply proper explanation for the introduction of evidence for admission into a trial;

(D) analyze effective courtroom testimony;

(E) demonstrate an understanding of the importance of professionalism in demeanor and attire as a witness; and

(F) discuss the importance of a pre-trial meeting with a prosecutor.

(5) The student recognizes the importance of using interpersonal communication techniques to resolve conflicts and reduce anger. The student is expected to:

(A) examine interpersonal communication techniques used in law enforcement;

(B) distinguish between passive, passive-aggressive, aggressive, and assertive behavior;

(C) discuss strategies for dealing with difficult people;
and

(D) examine factors that contribute to a person's hostility.

(6) The student examines the techniques used to manage crisis situations and maintain public safety. The student is expected to:

(A) demonstrate crisis negotiations to promote the safety of individuals and the general public;

(B) participate in a simulated scenario as a crisis negotiation team member;

(C) demonstrate effective communication techniques in a simulated crisis negotiation;

(D) examine hostage safety considerations during a simulated crisis negotiation; and

(E) differentiate between public safety and individual rights during crisis negotiation.

(7) The student understands techniques to foster public cooperation for victims in a variety of law enforcement situations. The student is expected to:

(A) demonstrate procedures for advising crime victims' legal recourse;

(B) explain step-by-step court procedures for suspects, victims, and witnesses entering the system;

(C) explain the procedures for providing appropriate assistance to individuals with disabilities such as autism, Alzheimer's disease, hearing impairment, visual impairment, and mobility impairment;

(D) define the steps involved in conducting the preliminary investigation of specialized crimes such as hate crimes, bullying, sexual harassment, and terroristic threat;

(E) analyze the elements of conducting a death notification; and

(F) interpret legal requirements of law enforcement to victims of crime.

(8) The student analyzes procedures and protocols for domestic violence. The student is expected to:

(A) recognize techniques to enforce domestic violence laws;

(B) diffuse a simulated domestic violence incident; and

(C) apply laws in making an arrest.

(9) The student explores civil law enforcement procedures for serving writs, warrants, and summons. The student is expected to:

(A) research civil law procedures such as attachment, garnishment, claim, and delivery;

(B) identify limits on use of force and entry to private property during civil process service;

(C) differentiate among domestic violence protective orders, no-contact orders, and orders to pick up children; and

(D) identify requirements for emergency mental health evaluation.

(10) The student analyzes local and state law enforcement procedures pertaining to alcohol and beverage laws. The student is expected to:

(A) explain alcohol and beverage laws and procedures controlling illegal sales and consumption;

(B) define alcoholic beverages;

(C) differentiate between legal and illegal alcohol sales;
and

(D) identify circumstances under which alcoholic beverages may be legally consumed.

(11) The student explores laws and procedures to enforce violations of driving while intoxicated and driving under the influence. The student is expected to:

(A) execute and interpret tests related to driving under the influence such as the National Traffic Highway Safety Administration Standardized Field Sobriety Test and the Horizontal Gaze Nystagmus, Walk-and-Turn, and One-Leg Stand tests;

(B) recognize and interpret indicators of impaired driving;

(C) describe methods used to detect and apprehend drivers under the influence; and

(D) prepare evidence and reports required to give court testimony related to driving under the influence.

(12) The student identifies crowd control methods. The student is expected to:

(A) explain the deployment of less-than-lethal and chemical crowd control measures;

(B) identify the need assessment of crowd management, including officer safety, surveillance, protection of life, protection of property, and requests for assistance from other officers and agencies;

(C) demonstrate establishing perimeters for crowd control; and

(D) explain the importance of identifying group leaders, followers, and victims.

(13) The student evaluates situations requiring the use of force. The student is expected to:

(A) demonstrate the use of the force continuum in simulated situations requiring varied degrees of force;

(B) explain the guidelines and restrictions imposed by state and federal governments related to the use of deadly force;

(C) identify the legal authority for the use of force;

(D) analyze and evaluate the use of less-than-lethal use of force; and

(E) analyze and evaluate the use of deadly force.

(14) The student describes procedures designed to safely transport a person in custody. The student is expected to:

(A) demonstrate a search of an individual incidental to an arrest;

(B) demonstrate the procedures for transporting a person without violating personal rights or jeopardizing personal safety;

(C) demonstrate different methods of restraining a person being transported; and

(D) discuss transporting non-custodial persons and juveniles.

(15) The student conducts interviews and interrogations of individuals ensuring protection of rights as outlined in the U.S. Constitution. The student is expected to:

(A) demonstrate interviewing and interrogation techniques; and

(B) simulate interviews of rape victims, child witnesses, and child victims.

(16) The student investigates and documents a motor vehicle accident. The student is expected to:

(A) record simulated crash scene evidence using standard report procedures;

(B) analyze simulated crash scene evidence using standard laws, regulations, and procedures;

(C) perform mathematical calculations using speed, velocity, time, and distance;

(D) draw scale diagrams of simulated collisions using templates; and

(E) interpret crash scene evidence.

(17) The student recognizes law enforcement roles in preparedness and response systems for disaster situations. The student is expected to:

(A) demonstrate knowledge of the incident command system;

(B) coordinate with response partners from all levels of government and with the private sector;

(C) evaluate incident command system applications, organizational principles and elements, positions and responsibilities, facilities and functions, and planning; and

(D) apply Federal Emergency Management Agency Incident Command Structure to a simulated scenario.

(18) The student explores procedures for handling and managing explosives and hazardous material incidents. The student is expected to:

(A) identify and classify hazardous materials;

(B) respond to a simulated situation involving explosive materials using protocols and procedures designed to maintain personal and public safety;

(C) explain procedures for responding to reports of bomb threats and suspicious objects;

(D) conduct a simulated building and property search to locate explosive devices and materials; and

(E) explain procedures for responding to hazardous material incidents.

(19) The student examines law enforcement functions regarding critical infrastructure protection from potential terrorist and natural disaster threats. The student is expected to:

(A) analyze critical infrastructure protection techniques; and

(B) develop a plan for protecting a potential target.

(20) The student explores new and emerging technologies in law enforcement. The student is expected to:

(A) research new technologies used in law enforcement such as robots to diffuse potential explosives; and

(B) explain the importance of continuing education in law enforcement.

(21) The student evaluates patrol procedures and response to calls for service encountered by first responders. The student is expected to:

(A) demonstrate the legal justification and the application of probable cause for first responders' actions during a response to a suspected offense or an actual offense;

(B) simulate conducting a misdemeanor and a high-risk traffic stop;

(C) analyze pursuit procedures such as incidents involving vehicles, motorcycles, and foot pursuits;

(D) simulate responding to a delayed crime and a crime in progress;

(E) simulate conducting a building search;

(F) simulate conducting an arrest with a warrant or a warrantless arrest;

(G) differentiate procedures when responding with one-person units, two-person units, multiple units, other agency units, and specialized units such as air, K-9, and undercover operations;

(H) compare patrol responses when responding to offenses on-view, dispatched calls, and public information requests; and

(I) demonstrate the importance of being safety conscious when in the role of being a first responder.

(22) The student evaluates the importance of first responders in developing a positive community relationship. The student is expected to:

(A) explore the development of community policing in the United States;

(B) evaluate the role of school resource officers;

(C) evaluate the role of neighborhood service officers;

(D) evaluate the role of crime prevention officers such as McGruff Safe Kids, neighborhood watch programs, store front officers, and citizens on patrol;

(E) evaluate the responsibilities of the public information officer; and

(F) conduct a crime prevention analysis.

(23) The student demonstrates procedures in investigating a crime scene. The student is expected to:

(A) identify the legal requirements for first responders to enter, remain, release, and return to a crime scene;

(B) demonstrate procedures prior to entering a crime scene and securing a crime scene;

(C) demonstrate procedures in conducting a proper search of a crime scene for evidence such as using a strip-line search, grid-quadrant search, zone-wheel search, spiral search, or base-line search;

(D) demonstrate procedures for marking and collecting evidence found in a crime scene;

(E) demonstrate procedures for measuring and sketching evidence and important landmarks in a crime scene;

(F) demonstrate procedures for photographing the crime scene and evidence during the process of investigating a crime scene, including wide angle, mid-range, spatial relationship, and close-up photographs; and

(G) demonstrate chain of custody and proper packaging of various types of evidence for transportation.

§127.632. Criminal Investigation (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisite: Principles of Law, Public Safety, Corrections, and Security. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Law, Public Safety, Corrections, and Security Career Cluster focuses on planning, managing, and providing legal services, public safety, protective services, and homeland security, including professional and technical support services.

(3) Criminal Investigation is a course that introduces students to the profession of criminal investigations. Students will understand basic functions of criminal investigations and procedures and will learn how to investigate or follow up during investigations. Students will learn terminology and investigative procedures related to criminal investigation, crime scene processing, evidence collection, fingerprinting, and courtroom presentation. Through case studies and simulated crime scenes, students will collect and analyze evidence such as fin-

gerprint analysis, bodily fluids, hairs, fibers, shoe and tire impressions, bite marks, drugs, tool marks, firearms and ammunition, blood spatter, digital evidence, and other types of evidence.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to achieve business and industry employability skills standards such as attendance, on-time arrival, meeting deadlines, working toward personal/team goals every day, and ethical use of technology.

(2) The student explores criminal investigative procedures, investigations, and follow-up according to the profession and its job functions. The student is expected to:

(A) analyze the field of criminal investigations;

(B) compare and contrast the characteristics of an effective investigator;

(C) examine preliminary investigations such as initial response, point of arrival, priorities, emergency situations, and protection of the crime scene;

(D) research follow-up procedures for an investigation;

and

(E) evaluate the effectiveness of interrelationships with individuals involved in investigations such as police officers, dispatchers, prosecutors, defense counsel, physicians, coroners, medical examiners and forensic crime laboratories, citizens, witnesses, victims, complainants, and media.

(3) The student uses proper equipment in documenting the crime scene during field investigations. The student is expected to:

(A) explain the use of field notes;

(B) demonstrate an understanding of when, what, where, and how to take notes;

(C) demonstrate how to effectively take notes during an investigation;

(D) distinguish between the advantages and disadvantages of photographs and video at a crime scene and an investigation;

(E) plan how to use digital investigative photography during an investigation at a crime scene;

(F) collect and organize a photographic sequence of photographs of a crime scene such as injuries, tool marks, fingerprints, tire impressions, footprints, bite marks, and other related evidence;

(G) analyze, evaluate, make inferences, and predict occurrences of events based on photographic evidence; and

(H) formulate ideas on admissibility of photographs in a court of law.

(4) The student uses critical-thinking and problem-solving skills to create sketches for indoor and outdoor crime scenes. The student is expected to:

(A) create a plan and make observations before sketching a crime scene, both as an individual and as a team;

(B) describe the elements of a crime scene sketch such as measurements, compass directions, scale of proportion, legend/key, and title;

(C) develop a crime scene sketch using coordinates or measurements from fixed points;

(D) summarize the crime scene by taking notes and recording details;

(E) analyze and evaluate to assess the crime scene sketch; and

(F) research and describe the final sketch such as finished scale drawing and computer assisted drawing.

(5) The student explores writing effective reports for criminal investigations. The student is expected to:

(A) distinguish among organizing information, structuring the narrative, and composing the content;

(B) identify the importance and uses of reports;

(C) analyze common problems with many investigative reports;

(D) research ways to record and dictate for future report writing; and

(E) demonstrate different ways to write a report such as in writing and computerized.

(6) The student recognizes legal searches and the Fourth Amendment as it applies to searches. The student is expected to:

(A) analyze the exclusionary rule, inevitable discovery exception, and good faith exception;

(B) explain when an officer needs a search warrant or consent to search during an investigation;

(C) research Terry v. Ohio and the legal ramifications it has on pat downs and frisks;

(D) evaluate a search incident to an arrest;

(E) describe searching during emergency situations and warrantless searches of vehicles; and

(F) demonstrate how to conduct an inventory of a vehicle.

(7) The student determines what search patterns should be used in exterior and interior searches of crime scenes. The student is expected to:

(A) analyze the precedents that were established by the Carrol v. United States, Chambers v. Florida, Chimel v. California, Mapp v. Ohio, Terry v. Ohio, and Weeks v. United States decisions;

(B) conduct a systematic search of a simulated crime scene for physical evidence following crime scene search patterns such as spiral, line, grid, and strip;

(C) demonstrate how to conduct building, vehicle, suspect, and dead body searches; and

(D) explain how police canines are used to conduct legal searches.

(8) The student recognizes the procedures of evidence collection while maintaining the integrity of a crime scene. The student is expected to:

(A) compare and contrast the roles of crime scene investigators, detectives, and crime scene investigators;

(B) demonstrate the ability to work as a member of a team;

(C) discover and recognize evidence at a simulated crime scene;

(D) apply knowledge of the elements of criminal law that guide search and seizure of persons, property, and evidence;

(E) outline the chain-of-custody procedure for evidence discovered in a crime scene;

(F) demonstrate proper techniques for collecting, marking, photographing, packaging, preserving, and transporting physical evidence found at a crime scene;

(G) explain and demonstrate the use of video and still photography to preserve a simulated crime scene; and

(H) analyze the use of evidence in a court of law.

(9) The student recognizes the methods to process and analyze trace evidence commonly found in a crime scene. The student is expected to:

(A) demonstrate how to process trace evidence such as glass, blood, paint, fibers, and hair collected in a simulated crime scene;

(B) identify shoe and tire impressions from sample impressions;

(C) determine the direction of a projectile by examining glass fractures;

(D) analyze bite marks from crime scenes and investigations;

(E) compare and contrast the microscopic characteristics of the human hair and animal hair; and

(F) differentiate between natural and synthetic fibers.

(10) The student analyzes collected fingerprints or impressions from a simulated crime scene. The student is expected to:

(A) compare the three major fingerprint patterns of arches, loops, and whorls and their respective subclasses;

(B) identify minutiae of fingerprints, including bifurcations, ending ridges, islands, dots, short ridges, and enclosures;

(C) distinguish among patent, plastic, and latent impressions;

(D) perform laboratory procedures for lifting latent prints on porous and nonporous objects using chemicals such as iodine, ninhydrin, silver nitrate, and cyanoacrylate resin;

(E) perform laboratory procedures for lifting latent prints on nonporous objects using fingerprint powders such as black powder and florescent powders;

(F) explain the Automated Fingerprint Identification System (AFIS) and describe the characteristics examined in AFIS; and

(G) compare impression evidence collected at a simulated crime scene with the known impression.

(11) The student analyzes blood spatter at a simulated crime scene. The student is expected to:

(A) analyze blood stain patterns based on source, direction, and angle of trajectory; and

(B) explain the method of chemically identifying and locating an invisible blood stain using reagents such as luminol.

(12) The student explores toxicology laboratory procedures in crime labs. The student is expected to:

(A) analyze the absorption, distribution, and elimination of alcohol through the human body;

(B) research the blood alcohol laboratory procedures as they relate to blood alcohol concentration;

(C) explain the levels of tolerance and impairment due to alcohol consumption; and

(D) explain the precautions necessary for proper preservation of blood samples while at a crime scene.

(13) The student explores serology laboratory procedures in criminal investigations. The student is expected to:

(A) explain crime laboratory procedures to determine if a stain detected in a crime scene is blood; and

(B) research methodologies used to collect and analyze other body fluids.

(14) The student identifies drugs found at a simulated crime scene. The student is expected to:

(A) classify controlled substances using the schedules under the Controlled Substances Act; and

(B) identify controlled substances.

(15) The student evaluates bullet and tool mark impressions in a criminal investigation. The student is expected to:

(A) explain the individual characteristics of tool marks;

(B) describe the mechanism of modern firearms;

(C) recognize characteristics of bullet and cartridge cases;

(D) describe the composition of and method of analysis for gunshot residue and primer residue; and

(E) recognize the type of information available through the National Integrated Ballistics Information Network.

(16) The student calculates the time and cause of death in relationship to decomposition of the human body. The student is expected to:

(A) explain the process and timeline of rigor mortis and its role in calculating time of death;

(B) explain post mortem lividity and its importance when processing a crime scene;

(C) determine time of death using entomology; and

(D) determine time and cause of death methodologies through case studies.

(17) The student understands how physical evidence can provide a basis for questioning people about a crime and how questioning can provide leads for finding physical evidence. The student is expected to:

(A) explain the terms victim, complainant, witness, and suspect as they apply to a criminal investigation;

(B) demonstrate interviewing and interrogating throughout an investigation;

(C) demonstrate effective questioning techniques and positive communication skills;

(D) analyze the importance of reading the Miranda Warnings during interviewing and interrogating; and

(E) describe the techniques used to interview and question children and juveniles.

(18) The student develops a suspect profile when there is not a suspect at the crime scene and a suspect is not apprehended nearby. The student is expected to:

(A) compile information provided by victims, witnesses, and other persons likely to know about the crime or the suspect;

(B) examine physical evidence left at the crime scene to determine a suspect profile;

(C) identify a suspect Modus Operandi at a crime scene;

(D) analyze computerized composite sketch applications such as Identi-Kit;

(E) describe techniques used to create photo line ups, identification, and mug shots; and

(F) research audio, video, and electronic surveillance.

§127.633. Forensic Science (One Credit), Adopted 2015.

(a) General requirements. The course is recommended for students in Grades 11 and 12. Prerequisites: Biology and Chemistry. Recommended prerequisite or corequisite: any Law, Public Safety, Corrections, and Security Career Cluster course. Students must meet the 40% laboratory and fieldwork requirement. This course satisfies a high school science graduation requirement. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Law, Public Safety, Corrections, and Security Career Cluster focuses on planning, managing, and providing legal services, public safety, protective services, and homeland security, including professional and technical support services.

(3) Forensic Science is a course that introduces students to the application of science to connect a violation of law to a specific criminal, criminal act, or behavior and victim. Students will learn terminology and procedures related to the search and examination of physical evidence in criminal cases as they are performed in a typical crime laboratory. Using scientific methods, students will collect and analyze evidence such as fingerprints, bodily fluids, hairs, fibers, paint, glass, and cartridge cases. Students will also learn the history and the legal aspects as they relate to each discipline of forensic science.

(4) Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not scientifically testable.

(5) Scientific inquiry is the planned and deliberate investigation of the natural world. Scientific methods of investigation can be

experimental, descriptive, or comparative. The method chosen should be appropriate to the question being asked.

(6) Scientific decision making is a way of answering questions about the natural world. Students should be able to distinguish between scientific decision-making methods and ethical and social decisions that involve the application of scientific information.

(7) A system is a collection of cycles, structures, and processes that interact. All systems have basic properties that can be described in terms of space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically tested. Students should analyze a system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(8) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(9) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to achieve business and industry employability skills standards such as attendance, punctuality, meeting deadlines, working toward personal/team goals every day, and ethical use of technology.

(2) The student, for at least 40% of instructional time, conducts laboratory and/or field investigations using safe, environmentally appropriate, and ethical practices. The student is expected to:

(A) demonstrate safe practices during laboratory and field investigations; and

(B) demonstrate an understanding of the use and conservation of resources and the proper disposal or recycling of materials.

(3) The student uses scientific methods and equipment during laboratory and field investigations. The student is expected to:

(A) know the definition of science and understand that it has limitations, as specified in subsection (b)(4) of this section;

(B) know that scientific hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power that have been tested over a wide variety of conditions are incorporated into theories;

(C) know scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers. Unlike hypotheses, scientific theories are well-established and highly reliable explanations, but they may be subject to change as new areas of science and new technologies are developed;

(D) distinguish between scientific hypotheses and scientific theories;

(E) plan and implement descriptive, comparative, and experimental investigations, including asking questions, formulating testable hypotheses, and selecting equipment and technology;

(F) collect and organize qualitative and quantitative data and make measurements with accuracy and precision using tools such as calculators, spreadsheet software, data-collecting probes, computers, standard laboratory glassware, microscopes, various

prepared slides, stereoscopes, metric rulers, electronic balances, gel electrophoresis apparatuses, micropipettors, hand lenses, Celsius thermometers, hot plates, lab notebooks or journals, timing devices, cameras, Petri dishes, lab incubators, dissection equipment, meter sticks, and models, diagrams, or samples of biological specimens or structures;

(G) analyze, evaluate, make inferences, and predict trends from data; and

(H) communicate valid conclusions supported by the data through methods such as investigative reports, lab reports, labeled drawings, graphic organizers, journals, summaries, oral reports, and technology-based reports.

(4) The student uses critical thinking, scientific reasoning, and problem solving to make informed decisions within and outside the classroom. The student is expected to:

(A) analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, including examining all sides of scientific evidence of those scientific explanations, to encourage critical thinking;

(B) communicate and apply scientific information extracted from various sources such as current events, news reports, published journal articles, and marketing materials;

(C) draw inferences based on data related to criminal investigation;

(D) evaluate the impact of scientific research on criminal investigation, society, and the environment;

(E) evaluate models according to their limitations in representing biological objects or events; and

(F) research and describe the history of science and contributions of scientists within the criminal justice system.

(5) The student explores the history, legal aspects, and career options within forensic science. The student is expected to:

(A) distinguish between criminalistics and criminology;

(B) identify and illustrate roles, functions, and responsibilities of different forensic science disciplines such as serology-DNA, controlled substances, toxicology, trace evidence, firearms, fingerprints, and questioned documents;

(C) summarize the ethical standards required of a forensic science professional;

(D) identify and illustrate roles, functions, and responsibilities of professionals in the criminal justice system, including crime scene investigators, criminalists, attorneys, and medical examiners;

(E) explore and demonstrate an understanding of the terminology and the procedures employed in the criminal justice system; and

(F) illustrate the history of forensic science and recognize the major contributors in the development of forensic science.

(6) The student recognizes the procedures of evidence collection while maintaining the integrity of a crime scene. The student is expected to:

(A) compare and contrast the roles of forensic scientists and crime scene investigators;

(B) demonstrate the ability to work as a member of a team;

(C) conduct a systematic search of a simulated crime scene for physical evidence following crime scene search patterns such as spiral, line, grid, and strip;

(D) apply knowledge of the elements of criminal law that guide search and seizure of persons, property, and evidence;

(E) describe the elements of a crime scene sketch such as measurements, compass directions, scale of proportion, legend-key, and title;

(F) develop a crime scene sketch using coordinates/measurements from fixed points;

(G) outline the chain of custody procedure for evidence discovered in a crime scene; and

(H) demonstrate proper techniques for collecting, packaging, and preserving physical evidence found at a crime scene.

(7) The student recognizes the methods to process and analyze trace evidence commonly found in a crime scene. The student is expected to:

(A) demonstrate how to process trace evidence such as glass, paint, fibers, hair, soil, grass, and blood collected in a simulated crime scene;

(B) compare and contrast the composition of various types of glass such as soda lime, borosilicate, leaded, and tempered;

(C) determine the direction of a projectile by examining glass fractures;

(D) define refractive index and explain how it is used in forensic glass analysis;

(E) describe the instrumental analysis of trace evidence such as microscopy and spectrometry;

(F) compare and contrast the microscopic characteristics of human hair and animal hair, including medulla, pigment distribution, and scales;

(G) describe and illustrate the different microscopic characteristics used to determine the racial and somatic origin of a human hair sample;

(H) differentiate between natural and synthetic fibers;
and

(I) describe various examinations performed in forensic paint analysis, including microscopic morphology, binder, and pigment characterization.

(8) The student analyzes impression evidence in forensic science. The student is expected to:

(A) compare the three major fingerprint patterns of arches, loops, and whorls and their respective subclasses;

(B) identify the minutiae of fingerprints, including bifurcations, ending ridges, dots, short ridges, and enclosures;

(C) distinguish among patent, plastic, and latent impressions;

(D) perform laboratory procedures for lifting latent prints on porous and nonporous objects using chemicals such as iodine, ninhydrin, silver nitrate, and cyanoacrylate resin;

(E) perform laboratory procedures for lifting latent prints on nonporous objects using fingerprint powders such as black powder and florescent powders;

(F) explain the Automated Fingerprint Identification System (AFIS) and describe the characteristics examined in the AFIS; and

(G) compare impression evidence collected at a simulated crime scene with the known impression.

(9) The student analyzes blood spatter at a simulated crime scene. The student is expected to:

(A) analyze blood stain patterns based on source, direction, and angle of trajectory; and

(B) explain the method of chemically isolating an invisible blood stain using reagents such as luminol.

(10) The student explores toxicology laboratory procedures in forensic science. The student is expected to:

(A) explain the absorption, distribution, and elimination of alcohol through the human body;

(B) describe the blood alcohol laboratory procedures as they relate to blood alcohol concentration;

(C) explain the levels of tolerance and impairment due to alcohol consumption; and

(D) explain the precautions necessary in the forensic laboratory for proper preservation of blood samples.

(11) The student explores serology laboratory procedures in forensic science. The student is expected to:

(A) explain forensic laboratory procedures to determine if a stain detected in a crime scene is blood;

(B) identify the red blood cell antigens and antibodies as they relate to human blood types;

(C) determine genotypes and phenotypes in the human red blood cell system using Punnet Squares; and

(D) research methodologies used to collect and analyze other body fluids.

(12) The student analyzes deoxyribonucleic acid (DNA) laboratory procedures in forensic science. The student is expected to:

(A) describe the structure of a DNA molecule and its function;

(B) describe the steps used in extraction of DNA;

(C) explain the analytical procedure for forensic DNA typing, including electrophoresis, polymerase chain reaction, and short tandem repeat; and

(D) interpret the components of an electropherogram.

(13) The student identifies drugs found at a simulated crime scene. The student is expected to:

(A) classify controlled substances using the schedules under the Controlled Substances Act; and

(B) identify controlled substances using laboratory procedures such as microchemical tests, microscopy, chromatography, and spectrophotometry.

(14) The student evaluates bullet and tool mark impressions in a criminal investigation. The student is expected to:

- (A) explain the individual characteristics of tool marks;
- (B) describe the mechanism of modern firearms;
- (C) recognize characteristics of bullet and cartridge cases;

(D) describe the composition of and method of analysis for gunshot residue and primer residue; and

(E) recognize the type of information available through the National Integrated Ballistics Information Network.

(15) The student explores principles of questioned document analysis in forensic science. The student is expected to:

(A) describe different types of examinations performed by a questioned document examiner in a forensic laboratory, including counterfeiting, handwriting, ink, and paper analysis;

(B) describe the security features incorporated in the U.S. currency to prevent counterfeiting;

(C) perform handwriting comparisons of an unknown sample with exemplars by analyzing characteristics such as letter, line, and formatting; and

(D) describe the process of ink analysis using chromatography.

(16) The student explores principles of anthropology relevant to forensic science. The student is expected to:

(A) identify the major bones of the human skeletal system;

(B) compare composition and structure of human bones with other animals;

(C) describe the techniques used to excavate bones from a crime scene;

(D) explain the characteristics of the human skeletal system indicative of specific gender, racial origin, and approximate range of age and height; and

(E) explain the role of dental records in identification of human remains.

(17) The student calculates the time and cause of death in relationship to decomposition of the human body. The student is expected to:

(A) explain the process and timeline of rigor mortis and its role in calculating time of death;

(B) explain post mortem lividity and its importance when processing a crime scene;

(C) determine time of death using entomology; and

(D) determine time and cause of death methodologies through case studies.

§127.634. Court Systems and Practices (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisite: Law Enforcement I or Principles of Government or Public Administration. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Law, Public Safety, Corrections, and Security Career Cluster focuses on planning, managing, and providing legal services, public safety, protective services, and homeland security, including professional and technical support services.

(3) Court Systems and Practices is an overview of the federal and state court systems. The course identifies the roles of judicial officers and the trial processes from pretrial to sentencing and examines the types and rules of evidence. Emphasis is placed on constitutional laws for criminal procedures such as search and seizure, stop and frisk, and interrogation.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to achieve business and industry employability skills standards such as attendance, on-time arrival, meeting deadlines, working toward personal/team goals every day, and ethical use of technology.

(2) The student examines the structure of the legal system in the United States. The student is expected to:

(A) trace the history, structure, and function of state and federal court systems and criminal procedure;

(B) compare and contrast the state court system and the federal court system;

(C) explain and illustrate how jurisdiction impacts criminal charges and trial proceedings;

(D) explain and interpret the purposes of law regarding criminal acts and behaviors;

(E) distinguish between constitutional law, case law, statutory law, and administrative law;

(F) identify the differences in processing a misdemeanor and felony case;

(G) describe and interpret the impact of the grand jury process on court proceedings regarding criminal scenarios;

(H) examine relationship of the U.S. Constitution and the Bill of Rights upon the court system; and

(I) describe the impact of public opinion and the legislature on the U.S. court system.

(3) The student explores the roles and responsibilities of members of courtroom work groups. The student is expected to:

(A) explain the roles of professionals such as the police, prosecutor, judge, victim advocates, and criminal defense attorney in the criminal process;

(B) examine the roles and importance of members of the courtroom such as the jury, bailiff, and court reporter;

(C) analyze the impact of the victim and the defendant upon the courtroom process; and

(D) discuss the dynamics of assembly line justice and discretion found in court proceedings.

(4) The student recognizes communication skills needed for courtroom policies and procedures. The student is expected to:

(A) use communication skills to evaluate body language such as gestures, verbal tone, and inflection during testimony;

(B) demonstrate interpersonal communication skills;
and

(C) apply writing skills to formulate effective field note taking and report writing.

(5) The student examines the steps by which a criminal charge is processed through pretrial, trial, adjudication, and the appellate stages. The student is expected to:

(A) examine the interaction between police and prosecutor in filing complaints and making a decision to charge such as Defenses to Prosecution and application of various definitions of intent;

(B) explain pretrial court proceedings such as rules of discovery, challenges to evidence, and the bail process;

(C) distinguish between direct and circumstantial evidence and burden of proof for federal and state courts;

(D) explore the impact of pleas and plea bargaining on the trial proceedings;

(E) identify the trial process from pretrial to sentencing;

(F) evaluate a simulated criminal case; and

(G) conduct a mock trial demonstrating understanding of the criminal trial procedure.

(6) The student explains the structure and provisions of the U.S. Constitution and the Bill of Rights and how they impact the criminal trial process. The student is expected to:

(A) apply the police responsibilities under the Fourth Amendment regarding search and seizure in a simulated arrest scenario;

(B) determine if a search initiated in a scenario is proper under the provisions of the Fourth Amendment;

(C) analyze the exclusionary rule and the fruit of the poisonous tree doctrine to determine if evidence obtained in an illegal search scenario is admissible in court;

(D) explain the impact of the Eighth, Ninth, and Tenth amendments on the criminal justice system;

(E) analyze the effect of landmark cases such as *Miranda v. Arizona*, *Weeks v. United States*, *Mapp v. Ohio*, *Douglas v. California*, and *Escobedo v. Illinois* on individuals entering the criminal justice system;

(F) describe the due process rights of a criminal suspect in the trial and sentencing process; and

(G) explain the impact of the Fifth and Sixth amendments on the criminal trial process.

§127.635. *Federal Law Enforcement and Protective Services (One Credit), Adopted 2015.*

(a) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisite: Principles of Law, Public Safety, Corrections, and Security. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Law, Public Safety, Corrections, and Security Career Cluster focuses on planning, managing, and providing legal services, public safety, protective services, and homeland security, including professional and technical support services.

(3) Federal Law Enforcement and Protective Services provides the knowledge and skills necessary to prepare for certification in security services for federal law enforcement and protective services. The course provides an overview of security elements and types of organizations with a focus on security measures used to protect lives, property, and proprietary information, to ensure computer security, to provide information assurance, and to prevent cybercrime.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to achieve business and industry employability skills standards such as attendance, on-time arrival, meeting deadlines, working toward personal/team goals every day, and ethical use of technology.

(2) The student demonstrates professional standards as required by federal law enforcement and protective services. The student is expected to:

(A) demonstrate positive work behaviors and attitudes and professional standards in federal law enforcement and protective services;

(B) support and apply ethical reasoning to a variety of simulation situations in order to make ethical decisions;

(C) demonstrate teamwork skills through working cooperatively with others to achieve tasks such as team building, consensus, continuous improvement, respect of opinions of others, cooperation, adaptability, and conflict resolution;

(D) demonstrate sensitivity to and value for diversity and confidentiality; and

(E) demonstrate an understanding of content, technical concepts, and vocabulary when analyzing information, following directions, conveying information, and accessing information sources such as texts, Internet websites, and technical materials.

(3) The student explores the history of federal law enforcement and protective services in the United States. The student is expected to:

(A) research the development of federal law enforcement and protective services through the history of the United States; and

(B) explain the importance of the interface between federal law enforcement and protective services and other aspects of law enforcement.

(4) The student identifies health, safety, and environmental responsibilities of federal law enforcement and protective services per-

sonnel in establishing and maintaining a safe work environment. The student is expected to:

(A) identify workplace hazards to health, safety, and the environment;

(B) inspect a workplace to identify potential health, safety, and environmental problems;

(C) investigate and document findings in simulated workplace incidents and accidents; and

(D) summarize issues and problems associated with hazardous materials.

(5) The student analyzes the impact of ethical and legal responsibilities relevant to federal law enforcement and protective services. The student is expected to:

(A) differentiate between civil and criminal law;

(B) analyze the impact of legal issues relevant to federal law enforcement and protective services;

(C) describe the importance of good public relations techniques as they relate to federal law enforcement and protective services and crisis situations;

(D) analyze the connections between constitutional and federal laws, federal law enforcement, and private security operations by referencing relevant constitutional amendments;

(E) analyze specific federal, state, and local laws and regulations affecting government security operations;

(F) summarize specific juvenile laws affecting security operations;

(G) compare alternative responses in simulated security scenarios that require application of ethical and legal behavior;

(H) discuss the possible ramifications of unethical behavior on the part of security professionals;

(I) analyze the importance of the Fourth Amendment with respect to security officer powers of arrest, search, and seizure;

(J) summarize the due process rights granted to individuals by the Fifth Amendment during an interrogation;

(K) analyze the impact of the Fourteenth Amendment as it relates to due process and equal protection of the law; and

(L) analyze the importance of social media and be familiar with its effects on federal law enforcement and protective services.

(6) The student explains risk management principles as they apply to security functions for the protection of assets. The student is expected to:

(A) describe the sources of natural, intentional, and unintentional threats such as information assurance, computer security, cybercrime, human trafficking, border security, and domestic and foreign terrorism;

(B) present examples that depict potential physical, electronic, procedural, and personnel vulnerabilities;

(C) summarize the concept of risk management from a local, state, federal, and national security perspective, including the importance of knowing what to protect and the consequences of loss; and

(D) explain how security operations and the criminal justice field interface and rely upon each other.

(7) The student analyzes the role of computer forensics in security operations. The student is expected to:

(A) summarize the role of computer applications relating to forensics investigations; and

(B) investigate criminal activity in areas such as cyber-crime, the Internet, and Internet trafficking.

(8) The student analyzes security systems and their role in an overall security strategy. The student is expected to:

(A) summarize the purposes, types, and applications of physical and electronic access control systems, surveillance systems, and intrusion detection systems;

(B) analyze how physical and electronic systems work together as an integrated system to support an overall protection strategy; and

(C) analyze the roles of security surveys, inspections, and exercises to test existing protection measures.

(9) The student investigates disaster response in emergency situations as it relates to the duties of a security officer for the protection of persons, property, and information. The student is expected to:

(A) summarize the characteristics of terrorism as a criminal act; and

(B) examine the elements and techniques of critical infrastructure protection to reduce the risk to key terrorist targets and the impact of natural disasters.

(10) The student recognizes the role of intelligence analysis in crime prevention and homeland security. The student is expected to:

(A) summarize the steps of the intelligence cycle such as planning, collection, collation, evaluation, analysis, dissemination, and feedback; and

(B) execute a crime pattern analysis identifying links between a given crime and a set of potentially related incidents.

(11) The student applies crime prevention concepts. The student is expected to:

(A) diagram the crime triangle of ability, opportunity, and motive;

(B) describe the concepts of deter, detect, delay, and deny; and

(C) evaluate the security of a business or residence by using crime prevention through environmental design strategies.

(12) The student evaluates situations requiring the use of force. The student is expected to:

(A) demonstrate the use of the force continuum in simulated situations requiring varied degrees of force; and

(B) explain the guidelines and restrictions imposed by state and federal governments related to the use of deadly force.

(13) The student analyzes procedures and protocols for self-defense in homeland security and protective services. The student is expected to demonstrate self-defense and defensive tactics such as ready stance, escort positions, strikes, kicks, punches, handcuffing, and searching.

(14) The student recognizes the importance of critical infrastructures and key assets. The student is expected to:

(A) discuss the importance of critical infrastructure and key assets within federal law enforcement and protective services such as water, power and energy, information, transportation, banking and finance, defense, postal and shipping, agricultural and food, public health, and emergency services; and

(B) create a plan of action for city and state for situations involving threats to critical infrastructure and key assets.

(15) The student identifies chemical and biological threat identification, protection, detection, and decontamination concepts. The student is expected to:

(A) analyze research on the cause and effects of chemical threats such as airborne pathogens and toxic, nuclear, biological, and manmade chemicals; and

(B) create research projects on the cause and effects of chemical threats such as airborne pathogens and toxic, nuclear, biological, and manmade chemicals.

(16) The student recognizes law enforcement roles in preparedness and response systems for disaster situations. The student is expected to:

(A) develop a plan of action for disaster preparedness within home, school, or community;

(B) evaluate the effectiveness of the actions in place for all natural disasters;

(C) evaluate the effectiveness of preparedness and response systems during and after a disaster;

(D) appraise a disaster situation to determine the appropriate course of action;

(E) examine and implement the Community Emergency Response Team (CERT) guidelines for home, school, or community such as fire safety, disaster medical operations, search and rescue, and terrorism; and

(F) construct a CERT disaster simulation within the school or community.

§127.636. *Practicum in Law, Public Safety, Corrections, and Security (Two Credits), Adopted 2015.*

(a) General requirements. This course is recommended for students in Grades 11 and 12. The practicum course is a paid or unpaid capstone experience for students participating in a coherent sequence of career and technical education courses in the Law, Public Safety, Corrections, and Security Career Cluster. Students shall be awarded two credits for successful completion of this course. A student may repeat this course once for credit provided that the student is experiencing different aspects of the industry and demonstrating proficiency in additional and more advanced knowledge and skills.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Law, Public Safety, Corrections, and Security Career Cluster focuses on planning, managing, and providing legal services, public safety, protective services, and homeland security, including professional and technical support services.

(3) The practicum course is designed to give students supervised practical application of previously studied knowledge and skills in law, public safety, corrections, and security. Practicum experiences can occur in a variety of locations appropriate to the nature and level of experience.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to achieve business and industry employability skills standards such as attendance, on-time arrival, meeting deadlines, working toward personal/team goals every day, and ethical use of technology.

(2) The student demonstrates professional standards as required by business and industry. The student is expected to:

(A) adhere to policies and procedures;

(B) demonstrate positive work behaviors and attitudes such as punctuality, time management, initiative, and cooperation;

(C) accept constructive criticism;

(D) apply ethical reasoning to a variety of situations in order to make ethical decisions;

(E) complete tasks with the highest standards to ensure quality services;

(F) describe professional standards in law, public safety, corrections, and security careers such as dress, grooming, and personal protective equipment as appropriate; and

(G) comply with practicum setting safety such as rules and regulations to maintain safe and healthful working conditions and environments.

(3) The student applies concepts of critical thinking and problem solving. The student is expected to:

(A) analyze elements of a problem to develop creative and innovative solutions;

(B) critically analyze information to determine its value for the problem-solving task;

(C) compare and contrast alternatives using a variety of critical-thinking skills; and

(D) conduct technical research to gather information necessary for decision making.

(4) The student demonstrates leadership and teamwork skills in collaborating with others to accomplish goals and objectives. The student is expected to:

(A) analyze leadership characteristics such as trust, positive attitude, integrity, and willingness to accept key responsibilities in a work situation;

(B) demonstrate teamwork skills through working cooperatively with others to achieve tasks;

(C) demonstrate teamwork processes that promote skills such as team building, consensus, continuous improvement,

respect for the opinions of others, cooperation, adaptability, and conflict resolution;

(D) demonstrate responsibility for shared group and individual work tasks;

(E) maintain effective working relationships in order to accomplish objectives and tasks;

(F) demonstrate effective working relationships using interpersonal skills;

(G) apply positive interpersonal skills to work cooperatively with others;

(H) demonstrate respect for individuals such as those from different cultures, genders, and backgrounds; and

(I) demonstrate sensitivity to and value for diversity.

(5) The student demonstrates verbal, nonverbal, and written communication skills in creating, expressing, and interpreting information and ideas, including technical terminology and information. The student is expected to:

(A) demonstrate the use of content, technical concepts, and vocabulary when analyzing information and following directions;

(B) employ verbal skills when obtaining and conveying information;

(C) access information sources for occupational tasks using technical materials and informational texts such as Internet websites;

(D) evaluate the reliability of information from technical materials, resources, and informational texts such as Internet websites;

(E) interpret verbal and nonverbal behaviors to enhance communication;

(F) apply active listening skills to obtain and clarify information; and

(G) use academic skills to facilitate effective written and verbal communication such as emails, texting, and written documents.

(6) The student demonstrates technical knowledge and skills required to pursue a career in the Law, Public Safety, Corrections, and Security Career Cluster. The student is expected to:

(A) develop advanced technical knowledge and skills related to the student's occupational objective;

(B) evaluate strengths and weaknesses in technical skill proficiency; and

(C) accept critical feedback provided by the supervisor.

(7) The student documents technical knowledge and skills. The student is expected to:

(A) update a professional portfolio reflecting items such as work quality and productivity; technical skills; problem solving; creativity and innovation; communication skills; teamwork and flexibility; initiative and self-direction; accountability and integrity; attendance; licensures or certifications, including awards and scholarships, extended learning experiences, community service, and active participation in career and technical student and professional organizations; abstract of technical competencies mastered during the practicum; updated and current resume; samples of work; and evaluation from the practicum supervisor; and

(B) present the portfolio to interested stakeholders.

§127.637. Extended Practicum in Law, Public Safety, Corrections, and Security (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 11 and 12. The practicum course is a paid or unpaid capstone experience for students participating in a coherent sequence of career and technical education courses in the Law, Public Safety, Corrections, and Security Career Cluster. Corequisite: Practicum in Law, Public Safety, Corrections, and Security. This course must be taken concurrently with Practicum in Law, Public Safety, Corrections, and Security and may not be taken as a stand-alone course. Students shall be awarded one credit for successful completion of this course. A student may repeat this course once for credit provided that the student is experiencing different aspects of the industry and demonstrating proficiency in additional and more advanced knowledge and skills.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Law, Public Safety, Corrections, and Security Career Cluster focuses on planning, managing, and providing legal services, public safety, protective services, and homeland security, including professional and technical support services.

(3) Extended Practicum in Law, Public Safety, Corrections, and Security is designed to give students supervised practical application of previously studied knowledge and skills in law, public safety, corrections, and security. Practicum experiences can occur in a variety of locations appropriate to the nature and level of experience.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) participate in a paid or unpaid, laboratory- or work-based application of previously studied knowledge and skills related to law, public safety, corrections, or security;

(B) participate in training, education, or preparation for licensure, certification, or other relevant credentials to prepare for employment;

(C) demonstrate professional standards and personal qualities needed to be employable such as self-discipline, positive attitude, integrity, leadership, appreciation for diversity, customer service, work ethic, and adaptability with increased fluency;

(D) use personal information management, email, Internet, writing and publishing, presentation, and spreadsheet or database applications with increased fluency;

(E) employ teamwork and conflict-management skills with increased fluency to achieve collective goals; and

(F) employ planning and time-management skills and tools with increased fluency to enhance results and complete work tasks.

(2) The student implements advanced professional communications strategies. The student is expected to:

(A) demonstrate verbal and non-verbal communication consistently in a clear, concise, and effective manner;

(B) analyze, interpret, and effectively communicate information, data, and observations;

(C) observe and interpret verbal and nonverbal cues and behaviors to enhance communication; and

(D) apply active listening skills to obtain and clarify information.

(3) The student applies concepts of critical thinking and problem solving. The student is expected to:

(A) employ critical-thinking skills with increased fluency both independently and in groups to solve problems and make decisions;

(B) analyze elements of a problem to develop creative and innovative solutions; and

(C) conduct technical research to gather information necessary for decision making.

(4) The student understands and applies proper safety techniques in the workplace. The student is expected to:

(A) demonstrate an understanding of and consistently follow workplace safety rules and regulations; and

(B) demonstrate knowledge of procedures for reporting and handling accidents and safety incidents.

(5) The student understands the professional, ethical, and legal responsibilities in teaching and training. The student is expected to:

(A) demonstrate a positive, productive work ethic by performing assigned tasks as directed;

(B) apply ethical reasoning to a variety of situations in order to make ethical decisions; and

(C) comply with all applicable rules, laws, and regulations in a consistent manner.

(6) The student participates in a supervised law, public safety, corrections, or security experience. The student is expected to:

(A) conduct, document, and evaluate learning activities in a supervised law, public safety, corrections, or security experience;

(B) develop advanced technical knowledge and skills related to the student's occupational objective;

(C) examine, understand, and articulate job-specific technical vocabulary;

(D) evaluate strengths and weaknesses in technical skill proficiency; and

(E) collect representative work samples.

§127.638. Implementation of Texas Essential Knowledge and Skills for Government and Public Administration, Adopted 2015.

(a) The provisions of this subchapter shall be implemented by school districts beginning with the 2017-2018 school year.

(b) No later than August 31, 2016, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the

essential knowledge and skills for career and technical education as adopted in §§127.639-127.648 of this subchapter.

(c) If the commissioner makes the determination that instructional materials funding has been made available under subsection (b) of this section, §§127.639-127.648 of this subchapter shall be implemented beginning with the 2017-2018 school year and apply to the 2017-2018 and subsequent school years.

(d) If the commissioner does not make the determination that instructional materials funding has been made available under subsection (b) of this section, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that §§127.639-127.648 of this subchapter shall be implemented for the following school year.

§127.639. Principles of Government and Public Administration (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 9-11. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Government and Public Administration Career Cluster focuses on planning and performing governmental functions at the local, state, and federal levels, including governance, national security, foreign service, planning, revenue and taxation, and regulations.

(3) Principles of Government and Public Administration introduces students to foundations of governmental functions and career opportunities within the United States and abroad. Students will examine governmental documents such as the U.S. Constitution, current U.S. Supreme Court and federal court decisions, and the Bill of Rights.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) communicate effectively with others using oral and written skills;

(B) demonstrate collaboration skills through teamwork;

(C) demonstrate professionalism by conducting oneself in a manner appropriate for the profession and workplace;

(D) demonstrate a positive, productive work ethic by performing assigned tasks as directed;

(E) show integrity by choosing the ethical course of action and complying with all applicable rules, laws, and regulations; and

(F) demonstrate time-management skills by prioritizing tasks, following schedules, and tending to goal-relevant activities in a way that uses time wisely and optimizes efficiency and results.

(2) The student explores major political ideas and forms of government in history. The student is expected to:

(A) explain major political ideas in history such as natural law, natural rights, divine right of kings, and social contract theory;

(B) identify the characteristics of classic forms of government such as absolute monarchy, authoritarianism, classical republic, despotism, feudalism, liberal democracy, and totalitarianism; and

(C) explore aspects of public service and related careers at international, federal, state, and local levels.

(3) The student understands how constitutional government, as developed in the United States, has been influenced by people, ideas, and historical documents. The student is expected to:

(A) analyze the principles and ideas that underlie the Declaration of Independence and the U.S. Constitution;

(B) explain the importance of a written constitution and how the federal government serves the purposes set forth in the U.S. Constitution;

(C) explore how the Federalist Papers explain the principles of the U.S. constitutional system of government;

(D) evaluate constitutional provisions for limiting the role of government such as republicanism, checks and balances, federalism, separation of powers, popular sovereignty, and individual rights;

(E) analyze the contributions of the political philosophies of the founding fathers and explain why they created a distinctly new form of federalism and adopted a federal system of government instead of a unitary system;

(F) evaluate the limits on the national and state governments in the U.S. federal system of government and how the U.S. Constitution can be amended;

(G) categorize, diagram, or create a descriptive representation of the government powers as national, state, or shared government;

(H) analyze historical conflicts over the respective roles of national and state governments in the United States; and

(I) identify significant individuals and their roles in the field of government and politics, including ambassadors, elected officials, and appointed officials.

(4) The student compares the similarities and differences that exist among the U.S. system of government and other political systems. The student is expected to:

(A) compare and contrast the U.S. system of government with other political systems; and

(B) analyze advantages and disadvantages of presidential and parliamentary systems of government.

(5) The student explores rights guaranteed by the U.S. Constitution. The student is expected to:

(A) identify the rights guaranteed by the Bill of Rights;

(B) evaluate the role of limited government and the rule of law for the protection of individual rights;

(C) identify and recognize issues addressed in critical cases that involve U.S. Supreme Court interpretations of rights guaranteed by the U.S. Constitution;

(D) define the roles of each branch of government in protecting the rights of individuals;

(E) explain the importance of due process rights to the protection of individual rights and to the limits on the powers of government; and

(F) recognize the impact of the incorporation doctrine involving due process and the Bill of Rights on individual rights, federalism, and majority rule.

(6) The student recognizes the difference between personal and civic responsibilities. The student is expected to:

(A) explain the difference between personal and civic responsibilities of citizens versus non-citizens;

(B) present how, why, and when the rights of individuals are inviolable even against claims for the public good;

(C) analyze the consequences on society of political decisions and actions; and

(D) investigate the role of municipal management in serving public and personal good.

(7) The student recognizes the importance of voluntary individual participation in the U.S. democratic society. The student is expected to:

(A) present how to measure the effectiveness of participation in the political process at local, state, and national levels;

(B) review, document, and explain how historical and contemporary examples of citizen movements were used to bring about political change or to maintain continuity;

(C) evaluate different leadership styles and their impact on participation;

(D) explain the factors that influence an individual's political attitudes and actions;

(E) compare effectiveness of leadership characteristics of state and national leaders; and

(F) explain the importance of volunteer public service in bringing about political change and maintaining continuity.

(8) The student recognizes the relationship between government policies and the culture of the United States. The student is expected to:

(A) identify a political policy or decision in the United States that was a result of changes in American culture;

(B) discuss changes in American culture brought about by government policies such as voting rights, the GI Bill, and racial integration;

(C) present an example of a government policy that has affected a particular racial, ethnic, or religious group; and

(D) explain the influence of individuals and/or groups that have affected change in society.

(9) The student identifies the influence of geography on governmental and public administrative functions. The student is expected to:

(A) draw conclusions about the political significance to the United States of the location and geographic characteristics of critical regions compared to the economic significance of the geographic characteristics of selected places such as oil fields in the Middle East using maps and Global Positioning System (GPS) locations;

(B) interpret geographical influences on requirements for international, national, state, and local governments;

(C) predict how geographical considerations impact regional change over time;

(D) interpret the importance of cultural symbols in the planning of government activities;

(E) explore how geographic information systems assist in gathering information; and

(F) connect a positive or negative effect of a government policy to the physical and human characteristics of a place or region.

(10) The student interprets and applies concepts of governance to assess functions of government and public administration in society. The student is expected to:

(A) recall historical debates and recognize the compromises necessary to reach landmark political decisions;

(B) give examples of the processes used by individuals, political parties, interest groups, or the media to affect public policy;

(C) explore the impact of political changes brought about by individuals, political parties, interest groups, or the media;

(D) recognize how the American beliefs and principles reflected in the U.S. Constitution contribute to our national identity;

(E) evaluate the alignment of institutions of government and public administration with the principles of U.S. and international law to guide policy development; and

(F) analyze how U.S. foreign policy affects other countries.

(11) The student works with different forms and methods of communication used to manage and facilitate the flow of ideas and information among government, public administration, the business community, and the general public. The student is expected to:

(A) analyze the structure and functions of the legislative branch of government such as the bicameral structure of Congress, the role of committees, and the procedure for enacting laws;

(B) analyze the structure and functions of the executive branch of government such as the constitutional powers of the president, the growth of presidential power, and the role of the cabinet and executive departments;

(C) analyze the structure and functions of the judicial branch of government, including the federal court system and types of jurisdiction;

(D) analyze the functions of selected independent executive and regulatory agencies;

(E) explain how certain provisions of the U.S. Constitution provide for checks and balances among the three branches of government;

(F) analyze selected issues raised by judicial activism and judicial restraint;

(G) compare and contrast the structures and functions of the Texas state government to the federal system;

(H) analyze the structure and functions of local government;

(I) document, report, and record information to conform to legal requirements;

(J) research safety standards and practices ensuring public safety and environmental protection;

(K) investigate how to comply with directives to ensure protection of confidential information while carrying out duties as a government or public administration employee;

(L) compare and contrast the concepts of ethical conduct to comply with all laws and regulations affecting governmental agencies; and

(M) describe the accepted principles of financial management to administer budgets, programs, and human resources.

(12) The student uses technologies to research common objectives of government and public administration. The student is expected to:

(A) access appropriate information technologies to accomplish tasks;

(B) integrate appropriate information technologies to accomplish tasks;

(C) identify examples of government-assisted research that, when shared with the private sector, has resulted in improved consumer products such as computer and communication technologies;

(D) analyze how U.S. government policies fostering competition and entrepreneurship have resulted in scientific discoveries and technological innovations;

(E) analyze the potential impact on society of recent scientific discoveries and technological innovations;

(F) analyze the reaction of government to scientific discoveries and technological innovations; and

(G) explain the concept of intellectual property.

§127.640. Political Science I (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisite: Principles of Government and Public Administration. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Government and Public Administration Career Cluster focuses on planning and performing governmental functions at the local, state, and federal levels, including governance, national security, foreign service, planning, revenue and taxation, and regulations.

(3) Political Science I introduces students to political theory through the study of governments; public policies; and political processes, systems, and behavior.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) communicate effectively with others using oral and written skills;

(B) demonstrate collaboration skills through teamwork;

(C) demonstrate professionalism by conducting oneself in a manner appropriate for the profession and workplace;

(D) demonstrate a positive, productive work ethic by performing assigned tasks as directed;

(E) show integrity by choosing the ethical course of action and complying with all applicable rules, laws, and regulations; and,

(F) demonstrate time-management skills by prioritizing tasks, following schedules, and tending to goal-relevant activities in a way that uses time wisely and optimizes efficiency and results.

(2) The student compares and contrasts current, classic, or contemporary political theories. The student is expected to:

(A) discuss why theories are important to the study of political science;

(B) draw conclusions about the classic political theorists such as Plato, Aristotle, Cicero, Machiavelli, Confucius, Hobbes, Locke, Hegel, and Marx;

(C) define the characteristics of contemporary political theories such as behaviorialism, postbehaviorialism, systems theory, modernization theory, structural-functionalism, developmentalism, rational-choice theory, and new institutionalism;

(D) compare and contrast the evolution of classic and contemporary theories; and

(E) make predictions and defend opinions about the future of political science theory.

(3) The student explores historical origins of government. The student is expected to:

(A) describe the features of different types of government such as democracy, theocracy, republic, monarchy, dictatorship, communism, and socialism;

(B) use a map to label where each form of government is currently practiced or has been practiced in the past;

(C) explain how each form of government arose throughout history;

(D) develop a logical argument for the origin of different types of government; and

(E) hypothesize why some forms of government became obsolete.

(4) The student analyzes belief systems that claim to improve society. The student is expected to:

(A) define political ideologies such as feminism, Marxism, Nazism, and capitalism;

(B) coordinate the four elements of perception, evaluation, prescription, and movement with political ideologies; and

(C) predict what national or global trends could stimulate the formation of a new ideology.

(5) The student applies the concepts learned in the history and ideology of political science. The student is expected to:

(A) make observations regarding the political culture of emerging nations or nations with recent current events; and

(B) research and present the political culture of a country.

(6) The student identifies the roles played by local, state, and national governments in public and private sectors of the U.S. free enterprise system. The student is expected to:

(A) recognize that government policies influence the economy at the local, state, and national levels;

(B) identify the sources of revenue of the U.S. government and analyze their impact on the U.S. economy;

(C) identify the sources of expenditures of the U.S. government and analyze their impact on the U.S. economy;

(D) compare and contrast the role of government in the U.S. free enterprise system and other economic systems; and

(E) explain the effects of international trade on U.S. economic and political policies.

(7) The student analyzes public opinion. The student is expected to:

(A) investigate sources and influences of public opinion;

(B) analyze the effect of public opinion on leadership;

(C) critique the reliability of public opinion and how it is measured; and

(D) compare and contrast the effects of expressed public opinion on poll items such as elections, elected official behavior, tax policy, services, and environmental protection.

(8) The student identifies interest groups. The student is expected to compare and contrast the positive and negative aspects of interest groups such as public interest research groups, lobbies, and political action committees.

(9) The student analyzes the election process. The student is expected to:

(A) review the process of electing public officials;

(B) recognize the influence of political parties in elections;

(C) explore the phenomenon of political image;

(D) describe the cause-and-effect relationship of communication style in a campaign; and

(E) compare and contrast the effectiveness of telephones, television, print media, focus groups, and online resources in elections.

(10) The student explores the processes for filling public offices in the U.S. system of government. The student is expected to:

(A) compare and contrast different methods of filling public offices such as elected and appointed offices at the local, state, and national levels; and

(B) analyze and evaluate the processes of electing the president of the United States.

(11) The student examines the role of political parties in the U.S. system of government. The student is expected to:

(A) discuss the functions of the two-party system;

(B) compare and contrast the role of third parties in the United States;

(C) recognize the role of political parties in the electoral process at the local, state, and national levels; and

(D) identify opportunities for citizens to participate in the electoral process at the local, state, and national levels.

(12) The student applies the concepts of statistical analysis to political science. The student is expected to:

(A) examine concepts used in research such as theories, hypotheses, independent and dependent variables, sampling, reliability, validity, and generalizability; and

(B) compare and contrast the types of statistical data such as in political science journals, public opinion polls, and surveys.

§127.641. Political Science II (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisite: Principles of Government and Public Administration or Political Science I. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Government and Public Administration Career Cluster focuses on planning and performing governmental functions at the local, state, and federal levels, including governance, national security, foreign service, planning, revenue and taxation, and regulations.

(3) Political Science II uses a variety of learning methods and approaches to examine the processes, systems, and political dynamics of the United States and other nations. The dynamic component of this course includes current U.S. and world events.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) communicate effectively with others using oral and written skills;

(B) demonstrate collaboration skills through teamwork;

(C) demonstrate professionalism by conducting oneself in a manner appropriate for the profession and workplace;

(D) demonstrate a positive, productive work ethic by performing assigned tasks as directed;

(E) show integrity by choosing the ethical course of action and complying with all applicable rules, laws, and regulations; and

(F) demonstrate time-management skills by prioritizing tasks, following schedules, and tending to goal-relevant activities in a way that uses time wisely and optimizes efficiency and results.

(2) The student analyzes public administration and public affairs. The student is expected to:

(A) explore the ancient history of public administration;

(B) consider whether current practices of public administration are improvements upon older practices;

(C) explain the term bureaucracy and draw conclusions as to why public perception of bureaucracy is poor;

(D) analyze the effects of poor public perception on leadership style;

(E) analyze political pluralism, displacement and concentration hypothesis, and technological complexity;

(F) recognize that public management involves evaluation of productivity, budgets, and human resources; and

(G) research, investigate, and explain specific examples of ethics issues in public administration.

(3) The student identifies the cause and effect of expression of different viewpoints in a democratic society. The student is expected to:

(A) compare different points of view of political parties and interest groups on important contemporary issues;

(B) analyze the importance of free speech and press in a democratic society; and

(C) express the student's point of view on an issue of contemporary interest in the United States.

(4) The student analyzes international relations. The student is expected to:

(A) examine the historical development of the international system;

(B) compare and contrast the classical international system, the transitional international system, the post-World War II international system, and the contemporary international system;

(C) research national actors and international interactions;

(D) examine the rational actor model;

(E) analyze what a nation-state does when faced with a problem that requires resolution;

(F) make observations about ethics in foreign policy; and

(G) draw conclusions about the role of morality in decision making such as Cold War spying and humanitarian intervention.

(5) The student explores diplomacy as the management of international relations by negotiation. The student is expected to:

(A) compare and contrast the ancient practice of sending emissaries with current embassy activities;

(B) identify embassy and ambassador roles in international relations;

(C) distinguish between types of diplomacy such as public versus secret, multilateral versus bilateral, and tacit versus formal;

(D) use concepts of bargaining and game theory to solve problems;

(E) recognize national versus state approaches to armed force when diplomacy breaks down;

(F) analyze force without war, causes of war, and the consequences of war; and

(G) analyze the role of international law in treaties, customs, immigration, and human rights.

(6) The student analyzes international governmental organizations and non-governmental organizations. The student is expected to:

(A) identify prominent international governmental organizations and non-governmental organizations;

(B) explore the methods of operation and function of international governmental organizations and non-governmental organizations in global problem solving; and

(C) propose a solution for an international relations problem such as arms control, terrorism, commerce, currency, natural resource management, food, or population control.

(7) The student analyzes the flow of ideas and information among the federal government, public administration, the business community, and the global societies. The student is expected to:

(A) examine concepts of authority, rights, and responsibilities to evaluate their impact on the governance of societies;

(B) explain the major responsibilities of the federal government for domestic and foreign policy;

(C) practice communication techniques used to stimulate the exchange of ideas and develop international, national, state, and local networks to accomplish governmental goals; and

(D) interpret the impact of international, national, state, or local politics on the goals of governmental or public administrative agencies.

§127.642. Foreign Service and Diplomacy (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisite: Principles of Government and Public Administration or Principles of Law, Public Safety, Corrections, and Security. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Government and Public Administration Career Cluster focuses on planning and performing governmental functions at the local, state, and federal levels, including governance, national

security, foreign service, planning, revenue and taxation, and regulations.

(3) Foreign Service and Diplomacy provides the opportunity for students to investigate the knowledge and skills necessary for careers in foreign service. The course includes law, history, media communication, and international relations associated with the diplomatic environment.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) communicate effectively with others using oral and written skills;

(B) demonstrate collaboration skills through teamwork;

(C) demonstrate professionalism by conducting oneself in a manner appropriate for the profession and workplace;

(D) demonstrate a positive, productive work ethic by performing assigned tasks as directed;

(E) show integrity by choosing the ethical course of action and complying with all applicable rules, laws, and regulations; and

(F) demonstrate time-management skills by prioritizing tasks, following schedules, and tending to goal-relevant activities in a way that uses time wisely and optimizes efficiency and results.

(2) The student integrates knowledge and presentation skills related to diplomacy and representing the United States to host-country officials, media personnel, and traveling officials. The student is expected to:

(A) demonstrate the ability to provide host-country officials with information on U.S. government and culture;

(B) demonstrate an understanding of organizing exchange programs to familiarize future host-country decision makers with U.S. institutions, customs, and culture;

(C) analyze the effectiveness of foreign support programs and other efforts of U.S. economic, intelligence, and affiliate agencies;

(D) demonstrate how to address and respond to media personnel on matters of U.S. policy raised in conjunction with visits of U.S. officials; and

(E) demonstrate how to address and respond to media personnel on matters of U.S. policy in reaction to unanticipated events.

(3) The student applies knowledge of foreign history, law, geography, and natural resources to recommend new or modified foreign service efforts. The student is expected to:

(A) describe responses of host-country personnel to U.S. programs and official visits;

(B) analyze and report the impact of American travelers and popular culture on a host country; and

(C) assess the impact of host-country responses to catastrophic events.

(4) The student applies U.S. and host-country laws, regulations, policies, and procedures to administrative management. The student is expected to:

(A) apply U.S. immigration laws and regulations to determine eligibility of individuals;

(B) explain grounds for refusal of visas;

(C) research documents and databases related to U.S. and host-country laws, regulations, policies, or procedures; and

(D) apply identification and documentation procedures.

(5) The student applies knowledge of host-country laws, customs, and effective administrative practices to manage the conduct of diplomatic operations. The student is expected to:

(A) model negotiations with a host government on reciprocity issues, taxation, diplomatic status, and other matters affecting welfare, security, and status of mission; and

(B) design a program that buys and sells goods and services for diplomatic operations.

§127.643. Planning and Governance (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisite: Principles of Government and Public Administration. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Government and Public Administration Career Cluster focuses on planning and performing governmental functions at the local, state, and federal levels, including governance, national security, foreign service, planning, revenue and taxation, and regulations.

(3) Planning and Governance provides the opportunity for students to formulate plans and policies to meet social, economic, and physical needs of communities.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) communicate effectively with others using oral and written skills;

(B) demonstrate collaboration skills through teamwork;

(C) demonstrate professionalism by conducting oneself in a manner appropriate for the profession and workplace;

(D) demonstrate a positive, productive work ethic by performing assigned tasks as directed;

(E) show integrity by choosing the ethical course of action and complying with all applicable rules, laws, and regulations; and

(F) demonstrate time-management skills by prioritizing tasks, following schedules, and tending to goal-relevant activities in a way that uses time wisely and optimizes efficiency and results.

(2) The student identifies the skills necessary to manage and modify the community planning process. The student is expected to:

(A) relate physical design to functioning of environment;

(B) analyze data relative to a project on present and future needs;

(C) assess legal aspects of regulatory compliance in planning;

(D) evaluate the presentation of class activity in regard to regulations and procedures;

(E) perform mapping and graphic functions skills;

(F) predict the interaction between economy, transportation, health and human services, and land regulation and make recommendations for the future of an activity or project; and

(G) record or document observations about local, state, and federal programs in order to provide future planning recommendations.

(3) The student develops a workplace or activity-based project and plans for land use, housing, parks and recreation, transportation, economic development, and public facilities to manage change. The student is expected to:

(A) identify emerging trends and barrier issues;

(B) practice or perform problem-solving techniques to overcome barriers to plan implementation; and

(C) evaluate the style of strategies available and necessary for achieving goals.

(4) The student creates a coherent plan for project management. The student is expected to:

(A) initiate a project, including securing class or instructor approval of project scope;

(B) plan a project;

(C) execute a project, including responding to requests for information;

(D) monitor and control a project, including demonstrating effective, cogent presentation skills for public meetings and creating a format to monitor plan budgets;

(E) close a project; and

(F) maintain professionalism in challenging group and one-on-one situations.

(5) The student uses advanced research and organizational skills to influence matters of public policy. The student is expected to:

(A) extract and evaluate ideas from research library resources and online materials;

(B) organize, structure, and conduct practice interviews with students; and

(C) compile original data and reliable source information into a student-designed objective database.

(6) The student develops reasoned, persuasive arguments to support public policy options or positions. The student is expected to:

(A) analyze and implement classical and modern patterns of rhetoric;

(B) analyze differing political, social, ideological, and philosophical perspectives;

(C) critique facts and statistical claims for accuracy and relevance; and

(D) ensure materials meet ethical standards.

(7) The student develops political instincts and understanding of political processes to gain consensus. The student is expected to:

(A) compare and contrast interests of various individuals, groups, and their representatives;

(B) explore options for promoting tolerance toward individuals and groups;

(C) employ mediation techniques;

(D) suggest alternative proposals that keep discussions from collapsing; and

(E) discuss methods of openness for decision-making or problem-solving processes.

(8) The student advocates new policies or policy changes to gain support for new or revised laws, regulations, ordinances, programs, or procedures. The student is expected to:

(A) deliver compelling arguments regarding issues or proposals;

(B) create effective media presentations and projects;

(C) employ workplace skills to show the process reactions and responses and adjust appeals accordingly;

(D) evaluate and employ techniques for motivating staff; and

(E) create project steps and activities for avoiding ethical pitfalls.

§127.644. National Security (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisites: Principles of Government and Public Administration and Public Management and Administration or Principles of Law, Public Safety, Corrections, and Security or Junior Reserve Officer Training Corps (JROTC) coursework. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Government and Public Administration Career Cluster focuses on planning and performing governmental functions at the local, state, and federal levels, including governance, national security, foreign service, planning, revenue and taxation, and regulations.

(3) National Security introduces the students to the aspects of disaster management. The course includes engaging simulation exercises related to natural disasters, man-made disasters, and terroristic events using homeland security programs and National Incident Management System (NIMS) programs.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) communicate effectively with others using oral and written skills;

(B) demonstrate collaboration skills through teamwork;

(C) demonstrate professionalism by conducting oneself in a manner appropriate for the profession and workplace;

(D) demonstrate a positive, productive work ethic by performing assigned tasks as directed;

(E) show integrity by choosing the ethical course of action and complying with all applicable rules, laws, and regulations; and

(F) demonstrate time-management skills by prioritizing tasks, following schedules, and tending to goal-relevant activities in a way that uses time wisely and optimizes efficiency and results.

(2) The student explores and examines the personnel and organizational structure within a security agency. The student is expected to:

(A) explore, develop, plan, and implement goals and objectives of an organization within a project or classroom activity;

(B) create and make personnel assignments and align them with job demands within a project or classroom activity;

(C) explore the processes used to implement evaluation systems and standards of a security agency; and

(D) explore and review the usage of available counseling and training resources using online or written materials.

(3) The student analyzes the leadership skills necessary to ensure compliance with rules of engagement and other applicable ethical standards. The student is expected to:

(A) identify rules of engagement for local, state, federal, and international agencies;

(B) evaluate U.S. and international laws, treaties, and conventions applicable to military or other security agency conduct;

(C) employ and evaluate the usage of effective training materials;

(D) facilitate and participate in group discussions of ethical issues raised by current events;

(E) investigate compliance with procedures and laws such as U.S. military, international military, maritime, criminal, and civil laws;

(F) apply current rulings and regulatory laws, rules, or standards to appropriate situations; and

(G) recognize and evaluate actions in violation of laws, rules, and standards.

(4) The student analyzes intelligence information from within and outside the United States through simulated exercises. The student is expected to:

(A) explore the scope and limits of an assigned mission in a simulated exercise;

(B) evaluate physical, psychological, cultural, and military threats of a simulated exercise;

(C) define the specific goals and intentions of foreign entities relevant to a mission;

(D) analyze physical characteristics of areas that could become battlegrounds in time of war;

(E) explore and review methods used to direct ground and sea surveillance;

(F) explore and review methods used to intercept foreign military communications; and

(G) explore and review methods used to coordinate information with other national security agencies.

(5) The student practices methods that translate and analyze signals to discover elements indicative of intent, plans, and operations of potentially hostile governments, groups, or individuals. The student is expected to:

(A) organize evidence to facilitate discovery of a potentially hostile nature; and

(B) evaluate agency and national actions of a potentially hostile nature.

(6) The student prepares and coordinates strategies to defend against the effects of chemical, biological, nuclear, and cyberterrorism or natural disasters. The student is expected to:

(A) create plans for response to both hostile and unintended events;

(B) explore and evaluate what form of safety equipment and supplies are needed for protection against chemical, biological, or nuclear effects;

(C) explore and evaluate the available intelligence information for determination of response plan implementation;

(D) create a device or project for monitoring local and global intelligence such as using information about weather and geophysical events;

(E) explore and discuss what methods are needed to maintain communications with federal, state, and local agencies; and

(F) identify and review issues that exist within the security and safety of network cyber-based systems.

(7) The student develops strategies to train persons potentially performing national security tasks. The student is expected to:

(A) explore methods and materials used to analyze missions for which training is to be provided;

(B) plan and evaluate current and past training methods;
and

(C) explore and review how agencies devise means of evaluating trainee progress.

§127.645. Public Management and Administration (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisite: Principles of Government and Public Administration or Business Management or Business Law. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Government and Public Administration Career Cluster focuses on planning and performing governmental functions at the local, state, and federal levels, including governance, national security, foreign service, planning, revenue and taxation, and regulations.

(3) Public Management and Administration reviews actions and activities that governments and nonprofit administrations commonly use and that resemble private-sector management. Students will be introduced to management tools that maximize the effectiveness of different types and styles of administrators and affect the quality of life of citizens in the community.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) communicate effectively with others using oral and written skills;

(B) demonstrate collaboration skills through teamwork;

(C) demonstrate professionalism by conducting oneself in a manner appropriate for the profession and workplace;

(D) demonstrate a positive, productive work ethic by performing assigned tasks as directed;

(E) show integrity by choosing the ethical course of action and complying with all applicable rules, laws, and regulations; and

(F) demonstrate time-management skills by prioritizing tasks, following schedules, and tending to goal-relevant activities in a way that uses time wisely and optimizes efficiency and results.

(2) The student analyzes management theories. The student is expected to:

(A) explore the various management theories such as Venn Diagram, Theory X, Theory Y, and Theory Z and how they are used effectively in public administration and management; and

(B) compare and contrast management of government and nonprofit agencies to management in the private sector.

(3) The student compares and contrasts department vision, goals, and mission to support those of a public agency. The student is expected to:

(A) analyze economic, political, and social trends likely to impact an agency or department;

(B) develop expansive professional networks internally and with other organizations to broaden communication;

(C) practice and participate in the process of determining how to recruit a diverse workforce in an equitable manner;

(D) apply interpersonal skills to grasp opportunities and manage conflicts in a positive and constructive manner;

(E) emphasize the need to infuse understanding of vision, missions, and goals into all departmental activities;

(F) analyze the concept of risk management; and

(G) legally publicize all meetings at which budget and allocation decisions are to be discussed.

(4) The student practices the process of facilitating the flow of ideas and information to keep the agency and its constituency informed of departmental policies and operations. The student is expected to:

(A) address reluctance of employees to share work product and intellectual property;

(B) restate complex technical information or issues in language the general public can understand;

(C) explain, justify, or discuss public issues effectively;

(D) present techniques effectively to handle difficult interviews and situations effectively; and

(E) afford the public equal opportunity of access to all open records.

(5) The student uses agency expertise used by elected officials and others to identify, implement, and achieve common goals and objectives. The student is expected to:

(A) obtain relevant data relating to public management and non-public management from reliable sources;

(B) apply pertinent research and analytical methodologies; and

(C) assess the impact of probable changes on the public.

(6) The student uses planning and fiscal services used to fund agency priorities. The student is expected to:

(A) estimate costs according to standards for government accounting;

(B) propose options over a range of cost requirements;

(C) analyze government resources to find possibilities for new or increased funding of programs; and

(D) prepare budgets.

(7) The student develops and manages plans and systems that would meet agency needs without wasting funds or engaging in unethical behavior. The student is expected to:

(A) demonstrate an understanding of how to assist departmental staff to fulfill procurement requirements;

(B) recommend process changes to improve vendor reliability and performance;

(C) determine means of public announcements to elicit vendor interest and bids from qualified sources;

(D) identify sources that match approved vendor criteria;

(E) manage an evaluation process that would ensure each bid, proposal, or offer is evaluated completely in terms of all relevant and ethical criteria; and

(F) identify ways to safeguard proprietary information of bidders and the rights of procurement and determine the need for outside consults.

(8) The student applies laws and policies to protect or disclose information as appropriate. The student is expected to:

(A) maintain thorough familiarity with public information requirements and records maintenance and retention requirements such as the Public Information Act (Texas Government Code, Chapter 552) and the records retention requirements of Texas Government Code, Chapter 441, and Texas Local Government Code, Chapters 201-205;

(B) identify how to explain policy background and rationale to persons denied access to certain public information; and

(C) compare and contrast the reliable controls to prevent unauthorized access to or release of privileged information.

§127.646. Revenue, Taxation, and Regulation (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisite: Principles of Government and Public Administration or Accounting I and II. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Government and Public Administration Career Cluster focuses on planning and performing governmental functions at the local, state, and federal levels, including governance, national security, foreign service, planning, revenue and taxation, and regulations.

(3) Revenue, Taxation, and Regulation provides an overview of law and investigative principles and follows agency procedures to examine evidence and ensure revenue compliance. In addition, students will learn to facilitate clear and positive communication with taxpayers and become familiar with data analysis systems and revenue-related financial problems. Students will prepare projects and class activities to simulate the skills needed to enforce legal compliance and regulatory standards.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) communicate effectively with others using oral and written skills;

(B) demonstrate collaboration skills through teamwork;

(C) demonstrate professionalism by conducting oneself in a manner appropriate for the profession and workplace;

(D) demonstrate a positive, productive work ethic by performing assigned tasks as directed;

(E) show integrity by choosing the ethical course of action and complying with all applicable rules, laws, and regulations; and

(F) demonstrate time-management skills by prioritizing tasks, following schedules, and tending to goal-relevant activities in a way that uses time wisely and optimizes efficiency and results.

(2) The student explores the investigation and evidence collection process in mock situations similar to regulatory commissions and agents. The student is expected to:

(A) investigate potential violators by exploring leads and conducting mock client interviews;

(B) model persuasive techniques to gain cooperation such as subpoenas and other ethically and legally acceptable means;

(C) identify and differentiate between relevant and irrelevant evidence and information;

(D) examine evidence of crimes and violations while preserving and observing the rules of evidence;

(E) examine business, commercial, industrial, and agency records for accuracy and compliance;

(F) organize facts accurately, objectively, logically, and concisely;

(G) analyze matters that are prohibited or concern invasion of privacy; and

(H) simulate conducting surveillance while recording facts about observed persons, objects, and events.

(3) The student analyzes the process of agency communication with the public. The student is expected to:

(A) analyze the common accounting problem of costs deviating from standards;

(B) compare and contrast ways to coordinate work and organize information with others performing similar tasks;

(C) simulate releasing public information to minimize controversy;

(D) identify problems that arise regarding flow of information after research responsibilities are assigned and completed;

(E) create a solution to the problem of information flow and communication; and

(F) demonstrate the ability to present authoritative advice to interested parties and acquainting them with available services.

(4) The student uses critical-thinking and problem-solving skills for revenue, taxation, and regulation by analysis and interpretation of accounting data and collection activities. The student is expected to:

(A) analyze data to identify matters needing negotiations for resolution;

(B) explore and identify different noncompliant practices;

(C) recommend application of administrative and judicial remedies; and

(D) produce mock reports to provide a basis for handling similar cases or audits.

(5) The student is expected to scrutinize regulatory investigations and enforcement. The student is expected to:

(A) conduct dimensional, operational, and process inspections;

(B) measure compliance with standards, specifications, and requirements;

(C) monitor a variety of quality characteristics;

(D) research consequences of degrees of noncompliance;

(E) investigate history and circumstances of violations; and

(F) secure expertise and make referrals as needed.

§127.647. Practicum in Local, State, and Federal Government (Two Credits), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 11 and 12. The practicum course is a paid or unpaid capstone experience for students participating in a coherent sequence of courses in the Government and Public Administration Career Cluster. Students shall be awarded two credits for successful completion of this course. A student may repeat this course once for credit provided that the student is experiencing different aspects of the industry and demonstrating proficiency in additional and more advanced knowledge and skills.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Government and Public Administration Career Cluster focuses on planning and performing governmental functions at the local, state, and federal levels, including governance, national security, foreign service, planning, revenue and taxation, and regulations.

(3) Students in the Practicum in Local, State, and Federal Government will concurrently learn advanced concepts of political science and government workings in the classroom setting and in the workplace. In addition, students will apply technical skills pertaining to government and public administration in a direct mentorship by individuals in professional settings such as government, public management and administration, national security, municipal planning, foreign service, revenue, taxation, and regulation.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) communicate effectively with others using oral and written skills;

(B) demonstrate collaboration skills through teamwork;

(C) demonstrate professionalism by conducting oneself in a manner appropriate for the profession and workplace;

(D) demonstrate a positive, productive work ethic by performing assigned tasks as directed;

(E) show integrity by choosing the ethical course of action and complying with all applicable rules, laws, and regulations; and

(F) demonstrate time-management skills by prioritizing tasks, following schedules, and tending to goal-relevant activities in a way that uses time wisely and optimizes efficiency and results.

(2) The student analyzes classical and modern political theories. The student is expected to:

(A) review the works of theorists such as Plato, Aristotle, Cicero, Machiavelli, Confucius, Hobbes, Locke, Hegel, and Marx; and

(B) analyze contributions to modern political science from classical theorists such as Polybius, St. Thomas Aquinas, Dante, Bodin, Montesquieu, Kautilya, Ibn Khaldun, Hume, Rousseau, Kant, Smith, Nietzsche, Gandhi, and Keynes.

(3) The student analyzes the U.S. Constitution and constitutional law. The student is expected to:

(A) review basic information related to the U.S. Constitution such as the Articles of Confederation, framers of the Constitution, constitutional conventions, separation of powers, checks and balances, ratification, and the amendment process; and

(B) create a classroom Constitution and Bill of Rights simulating the U.S. Constitution.

(4) The student explores government ethics. The student is expected to formulate a plan for avoiding ethical problems in the future.

(5) The student conducts a project using analytical problem-solving techniques. The student is expected to:

(A) research a problem such as a government and public administration issue, a feasibility study, or a product evaluation;

(B) investigate the issues associated with the problem;

(C) collect primary data such as interviews, surveys, and observations;

(D) express thoughts logically and sequentially in preparing a formal report;

(E) interpret and present quantitative data in graph format within the report;

(F) prepare visuals and handouts to support the presentation; and

(G) make a final presentation of the study to the appropriate stakeholders.

(6) The student documents knowledge and skills attained in the practicum. The student is expected to:

(A) update a professional portfolio to include recognitions, awards, scholarships, a resume, a sample of work, and an evaluation from the practicum supervisor; and

(B) present the portfolio to interested stakeholders.

§127.648. Extended Practicum in Local, State, and Federal Government (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 11 and 12. The practicum course is a paid or unpaid capstone experience for students participating in a coherent sequence of career and technical education courses in the Government and Public Administration Career Cluster. Corequisite: Practicum in Local, State, and Federal Government. This course must be taken concurrently with Practicum in Local, State, and Federal Government and may not be taken as a stand-alone course. Students shall be awarded one credit for successful completion of this course. A student may repeat this course once for credit provided that the student is experiencing different aspects of the industry and demonstrating proficiency in additional and more advanced knowledge and skills.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Government and Public Administration Career Cluster focuses on planning and performing governmental functions at the local, state, and federal levels, including governance, national security, foreign service, planning, revenue and taxation, and regulations.

(3) Students in the Extended Practicum in Local, State, and Federal Government will concurrently learn advanced concepts of political science and government workings in the classroom setting and in the workplace. In addition, students will apply technical skills pertaining to government and public administration in a direct mentorship by individuals in professional settings such as government, public management and administration, national security, municipal planning, foreign service, revenue, taxation, and regulation.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) participate in a paid or unpaid, laboratory- or work-based application of previously studied knowledge and skills related to government or public administration;

(B) participate in training, education, or preparation for licensure, certification, or other relevant credentials to prepare for employment;

(C) demonstrate professional standards and personal qualities needed to be employable such as leadership, teamwork, appreciation for diversity, conflict management, work ethic, and adaptability with increased fluency;

(D) demonstrate technology applications skills such as effective use of social media, email, Internet, publishing tools, presentation tools, spreadsheets, or databases to enhance work products with increased fluency; and

(E) employ effective planning and time-management skills with increased fluency by prioritizing tasks, following schedules, and tending to goal-relevant activities in a way that uses time wisely and optimizes efficiency and results.

(2) The student implements advanced professional communications strategies. The student is expected to:

(A) demonstrate verbal and non-verbal communication consistently in a clear, concise, and effective manner;

(B) analyze, interpret, and effectively communicate information, data, and observations;

(C) create and deliver formal and informal presentations in an effective manner; and

(D) observe and interpret verbal and nonverbal cues and behaviors to enhance communication.

(3) The student applies concepts of critical thinking and problem solving. The student is expected to:

(A) employ critical-thinking skills with increased fluency both independently and in groups to solve problems and make decisions; and

(B) analyze elements of a problem to develop creative and innovative solutions.

(4) The student understands the professional, ethical, and legal responsibilities in government and public administration. The student is expected to:

(A) demonstrate a positive, productive work ethic by performing assigned tasks as directed;

(B) show integrity by choosing the ethical course of action when making decisions; and

(C) comply with all applicable rules, laws, and regulations in a consistent manner.

(5) The student conducts a project using analytical problem-solving techniques. The student is expected to:

(A) conduct, document, and evaluate learning activities in a supervised government or public administration experience;

(B) research a problem, complete a feasibility study, or complete a product evaluation related to a government and public administration issue;

(C) collect primary data such as interviews, surveys, and observations;

(D) interpret and present quantitative data;

(E) evaluate strengths and weaknesses in technical skill proficiency; and

(F) collect representative work samples.

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 December 6, 2021.

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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



SUBCHAPTER O. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS

19 TAC §§127.742 - 127.776

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(n), which allows the SBOE to by rule develop and implement a plan designed to incorporate foundation curriculum requirements into the career and technical education (CTE) curriculum required in TEC, §28.002; TEC, §28.002(o), which requires the SBOE to determine that at least 50% of the approved CTE courses are cost effective for a school district to implement; TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002; TEC, §28.025(b-2), which requires the SBOE to by rule allow a student to comply with the curriculum requirements for the third and fourth mathematics credits under TEC, §28.025(b-1)(2), or the third and fourth science credits under TEC, §28.025(b-1)(3), by successfully completing a CTE course designated by the SBOE as containing substantially similar and rigorous content; and TEC, §28.025(b-17), which requires the SBOE by rule to ensure that a student may comply with curriculum requirements under TEC, §28.025(b-1)(6), by successfully completing an advanced CTE course, including a course that may lead to an industry-recognized credential or certificate or an associate degree.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (n), and (o); and 28.025(a), (b-2), and (b-17).

§127.742. Implementation of Texas Essential Knowledge and Skills for Science, Technology, Engineering, and Mathematics, Adopted 2015.

(a) The provisions of this subchapter shall be implemented by school districts beginning with the 2017-2018 school year.

(b) No later than August 31, 2016, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills for career and technical education as adopted in §§127.743-127.760 of this subchapter.

(c) If the commissioner makes the determination that instructional materials funding has been made available under subsection (b) of this section, §§127.743-127.760 of this subchapter shall be implemented beginning with the 2017-2018 school year and apply to the 2017-2018 and subsequent school years.

(d) If the commissioner does not make the determination that instructional materials funding has been made available under subsection (b) of this section, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that §§127.743-127.760 of this subchapter shall be implemented for the following school year.

§127.743. Principles of Applied Engineering (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 9 and 10. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, including laboratory and testing services, and research and development services.

(3) Principles of Applied Engineering provides an overview of the various fields of science, technology, engineering, and mathematics and their interrelationships. Students will develop engineering communication skills, which include computer graphics, modeling, and presentations, by using a variety of computer hardware and software applications to complete assignments and projects. Upon completing this course, students will have an understanding of the various fields of engineering and will be able to make informed career decisions. Further, students will have worked on a design team to develop a product or system. Students will use multiple software applications to prepare and present course assignments.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate knowledge of how to dress, speak, and conduct oneself in a manner appropriate for the profession;

(B) show the ability to cooperate, contribute, and collaborate as a member of a group in an effort to achieve a positive collective outcome;

(C) present written and oral communication in a clear, concise, and effective manner;

(D) demonstrate time-management skills in prioritizing tasks, following schedules, and performing goal-relevant activities in a way that produces efficient results; and

(E) demonstrate punctuality, dependability, reliability, and responsibility in performing assigned tasks as directed.

(2) The student investigates the components of engineering and technology systems. The student is expected to:

(A) investigate and report on the history of engineering science;

(B) identify the inputs, processes, and outputs associated with technological systems;

(C) describe the difference between open and closed systems;

(D) describe how technological systems interact to achieve common goals;

(E) compare and contrast engineering, science, and technology careers;

(F) conduct and present research on emerging and innovative technology; and

(G) demonstrate proficiency of the engineering design process.

(3) The student presents conclusions, research findings, and designs using a variety of media throughout the course. The student is expected to:

(A) use clear and concise written, verbal, and visual communication techniques;

(B) maintain a design and computation engineering notebook;

(C) use sketching and computer-aided drafting and design (CADD) to develop and present ideas;

(D) use industry standard visualization techniques and media; and

(E) use the engineering documentation process to maintain a paper or digital portfolio.

(4) The student uses appropriate tools and demonstrates safe work habits. The student is expected to:

(A) master relevant safety tests;

(B) follow lab safety guidelines as prescribed by instructor in compliance with local, state, and federal regulations;

(C) recognize the classification of hazardous materials and wastes;

(D) dispose of hazardous materials and wastes appropriately;

(E) maintain, safely handle, and properly store laboratory equipment;

(F) describe the implications of negligent or improper maintenance; and

(G) demonstrate the use of precision measuring instruments.

(5) The student describes the factors that affect the progression of technology and the potential intended and unintended consequences of technological advances. The student is expected to:

(A) describe how technology has affected individuals, societies, cultures, economies, and environments;

(B) describe how the development and use of technology influenced past events;

(C) describe how and why technology progresses; and

(D) predict possible changes caused by the advances of technology.

(6) The student thinks critically and applies fundamental principles of system modeling and design to multiple design projects. The student is expected to:

(A) identify and describe the fundamental processes needed for a project, including the design process and prototype development and initiating, planning, executing, monitoring and controlling, and closing a project;

(B) identify the chemical, mechanical, and physical properties of engineering materials;

(C) use problem-solving techniques to develop technological solutions;

(D) use consistent units for all measurements and computations; and

(E) assess the risks and benefits of a design solution.

(7) The student understands the opportunities and careers in fields related to robotics, process control, and automation systems. The student is expected to:

(A) describe applications of robotics, process control, and automation systems;

(B) apply design concepts to problems in robotics, process control, and automation systems;

(C) identify fields and career opportunities related to robotics, process control, and automation systems; and

(D) identify emerging trends in robotics, process control, and automation systems.

(8) The student understands the opportunities and careers in fields related to electrical and mechanical systems. The student is expected to:

(A) describe the applications of electrical and mechanical systems;

(B) describe career opportunities in electrical and mechanical systems;

(C) identify emerging trends in electrical and mechanical systems; and

(D) describe and apply basic electronic theory.

(9) The student demonstrates the ability to function as a team member while completing a comprehensive project. The student is expected to:

(A) apply the design process as a team participant;

(B) assume different roles as a team member within the project;

(C) maintain an engineering notebook for the project;

(D) develop and test the model for the project; and

(E) demonstrate communication skills by preparing and presenting the project.

(10) The student demonstrates a knowledge of drafting by completing a series of drawings that can be published by various media. The student is expected to:

(A) set up, create, and modify drawings;

(B) store and retrieve geometry;

(C) demonstrate an understanding of the use of line-types in engineering drawings;

(D) draw 2-D single view objects;

(E) create multi-view working drawings using orthographic projection;

(F) dimension objects using current American National Standards Institute (ANSI) standards;

(G) draw single line 2-D pictorial representations;

(H) create working drawings that include section views;
and

(I) demonstrate a knowledge of screw thread design per ANSI standards by drawing a hex head bolt with standard, square, and acme threads.

§127.744. Principles of Biosciences (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 9 and 10. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, including laboratory and testing services, and research and development services.

(3) Principles of Biosciences is a strong reinforcement of Biology content that provides an overview of biotechnology, bioengineering, and related fields. Topics include genetics, cell structure, proteins, nucleic acids, and the impact of immunological events in biotechnology. Students will further study the increasingly important agricultural, environmental, economic, and political roles of bioenergy and biological remediation; the roles of nanoscience and nanotechnology in biotechnology medical research; and future trends in biological science and biotechnology.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate knowledge of how to dress appropriately, speak politely, and conduct oneself in a manner appropriate for the profession;

(B) show the ability to cooperate, contribute, and collaborate as a member of a group in an effort to achieve a positive collective outcome;

(C) present written and oral communication in a clear, concise, and effective manner;

(D) demonstrate time-management skills in prioritizing tasks, following schedules, and performing goal-relevant activities in a way that produces efficient results; and

(E) demonstrate punctuality, dependability, reliability, and responsibility in performing assigned tasks as directed.

(2) The student explores biotechnology career opportunities. The student is expected to:

(A) determine interests and aptitudes through conversations with biotechnology professionals;

(B) identify career options in the field of biotechnology;

(C) identify reliable sources of career information;

(D) research interests, knowledge, educational level, abilities, and skills needed in a biotechnology-related occupation;

(E) seek a mentor in the biotechnology area;

(F) identify conventional and non-conventional career opportunities that match interests and aptitudes;

(G) research applications of biotechnology and biomaterials such as the areas of medicine and the environment and pharmaceutical, agricultural, and industrial settings; and

(H) use technology to research biotechnology topics, identify pertinent scientific articles, obtain articles of interest, and write a formal research paper in the format used by academic and professional journals and magazines.

(3) The student evaluates ethical and legal issues in biotechnology. The student is expected to:

(A) identify current ethical and legal issues;

(B) describe the history of biotechnology and related current issues;

(C) discuss legal and technology issues for at least two biotechnology related areas; and

(D) compare and contrast examples of objective and subjective scientific, economic, and political data and positions used to defend biotechnology views.

(4) The student examines federal, state, local, and industry regulations as applied to biotechnical processes through library research and Internet research. The student is expected to:

(A) identify local, state, and federal agencies responsible for regulating the biotechnology industry;

(B) identify professional organizations participating in the development of biotechnology policies;

(C) identify and define terms related to biotechnology regulations; and

(D) outline the methods and procedures used in biotechnology laboratories to follow and enforce local, state, and federal regulations such as those in the agricultural and health areas.

(5) The student demonstrates knowledge of the business climate for biotechnology industry sectors in the current market. The student is expected to:

(A) identify professional publications;

(B) identify the various biotechnology industry sectors;

and

(C) investigate and report on career opportunities in the biotechnology industry sectors.

(6) The student researches and exhibits employability skills that support a career in the biotechnology industry. The student is expected to:

(A) demonstrate verbal, nonverbal, written, and electronic communication skills;

(B) demonstrate skills used to secure and maintain employment;

(C) demonstrate appropriate workplace etiquette; and

(D) display productive work habits and attitudes.

(7) The student investigates the origins of waste and examines the relationship of biotechnology to resource recovery. The student is expected to:

(A) investigate at least three end products from biotechnology manufacturing processes;

(B) investigate the effects of waste on environmental and biological life cycles;

(C) investigate the impacts of waste on the environment;

(D) analyze the results of manufacturing refuse;

(E) explain the negative impacts of waste with respect to the individual, society, and the global population;

(F) research solutions to biological waste with respect to commercial applications through investigation of various pollution waste treatments using natural organisms;

(G) investigate biotechnology as it relates to health and well-being; and

(H) cite evidence regarding regulations, patents and public policy, design development and testing, and safety.

(8) The student examines the relationship of biotechnology to the development of commercial products. The student is expected to:

(A) identify the ability to change or enhance genetic characteristics;

(B) identify applications of genetic engineering;

(C) identify applications of nanotechnology in biotechnology;

(D) identify applications of bioinformatics in biotechnology;

(E) identify the applications of biotechnology in fields such as medicine, forensics, and law enforcement; and

(F) research ethical considerations, laws, and regulations governing genetic engineering and nanotechnology.

§127.745. Principles of Technology (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 10-12. Prerequisites: one credit of high school science and Algebra I. Students must meet the 40% laboratory and field-work requirement. This course satisfies a high school science graduation requirement. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, including laboratory and testing services, and research and development services.

(3) In Principles of Technology, students will conduct laboratory and field investigations, use scientific practices during investigations, and make informed decisions using critical thinking and scientific problem solving. Various systems will be described in terms of space, time, energy, and matter. Students will study a variety of topics that include laws of motion, conservation of energy, momentum, electricity, magnetism, thermodynamics, and characteristics and behavior of waves. Students will apply physics concepts and perform laboratory experiments for at least 40% of instructional time using safe practices.

(4) Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not currently scientifically testable by empirical science.

(5) Scientific inquiry is the planned and deliberate investigation of the natural world. Scientific methods of investigation are experimental, descriptive, or comparative. The method chosen should be appropriate to the question being asked.

(6) Scientific decision making is a way of answering questions about the natural world. Students should be able to distinguish between scientific decision-making methods (scientific methods) and ethical and social decisions that involve science (the application of scientific information).

(7) A system is a collection of cycles, structures, and processes that interact. All systems have basic properties that can be described in terms of space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically tested. Students should analyze a system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(8) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(9) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate knowledge of how to dress appropriately, speak politely, and conduct oneself in a manner appropriate for the profession;

(B) show the ability to cooperate, contribute, and collaborate as a member of a group in an effort to achieve a positive collective outcome;

(C) present written and oral communication in a clear, concise, and effective manner;

(D) demonstrate time-management skills in prioritizing tasks, following schedules, and performing goal-relevant activities in a way that produces efficient results; and

(E) demonstrate punctuality, dependability, reliability, and responsibility in performing assigned tasks as directed.

(2) The student, for at least 40% of instructional time, conducts laboratory and field investigations using safe, environmentally appropriate, and ethical practices. The student is expected to:

(A) demonstrate safe practices during laboratory and field investigations; and

(B) demonstrate an understanding of the use and conservation of resources and the proper disposal or recycling of materials.

(3) The student uses scientific methods and equipment during laboratory and field investigations. The student is expected to:

(A) know the definition of science and understand that it has limitations, as specified in subsection (b)(4) of this section;

(B) know that hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power, which have been tested over a wide variety of conditions, are incorporated into theories;

(C) know that scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers. Unlike hypotheses, scientific theories are well-established and highly-reliable explanations, but may be subject to change as new areas of science and new technologies are developed;

(D) distinguish between scientific hypotheses and scientific theories;

(E) design and implement investigative procedures, including making observations, asking well-defined questions, formulating testable hypotheses, identifying variables, selecting appropriate equipment and technology, and evaluating numerical answers for reasonableness;

(F) collect and organize qualitative and quantitative data and make measurements with accuracy and precision using tools such as multimeters (current, voltage, resistance), balances, batteries, dynamics demonstration equipment, collision apparatus, lab masses, magnets, plane mirrors, convex lenses, stopwatches, trajectory apparatus, graph paper, magnetic compasses, protractors, metric rulers, spring scales, thermometers, and slinky springs;

(G) use a wide variety of additional course equipment as appropriate such as ripple tank with wave generator, wave motion rope, tuning forks, hand-held visual spectrosopes, discharge tubes with power supply (H, He, Ne, Ar), electromagnetic spectrum charts, laser pointers, micrometer, caliper, computer, data acquisition probes, scientific calculators, graphing technology, electrostatic kits, electroscope, inclined plane, optics bench, optics kit, polarized film, prisms, pulley with table clamp, motion detectors, photogates, friction blocks, ballistic carts or equivalent, resonance tube, stroboscope, resistors, copper wire, switches, iron filings, and/or other equipment and materials that will produce the same results;

(H) make measurements and record data with accuracy and precision using scientific notation and International System (SI) units;

(I) organize, evaluate, and make inferences from data, including the use of tables, charts, and graphs;

(J) communicate valid conclusions supported by the data through various methods such as lab reports, labeled drawings, graphic organizers, journals, summaries, oral reports, and technology-based reports; and

(K) express relationships among physical variables quantitatively, including the use of graphs, charts, and equations.

(4) The student uses critical thinking, scientific reasoning, and problem solving to make informed decisions within and outside the classroom. The student is expected to:

(A) analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, so as to encourage critical thinking by the student;

(B) communicate and apply scientific information extracted from various sources such as current events, news reports, published journal articles, and marketing materials;

(C) explain the impacts of the scientific contributions of a variety of historical and contemporary scientists on scientific thought and society;

(D) research and describe the connections between physics and future careers; and

(E) express, manipulate, and interpret relationships symbolically to make predictions and solve problems mathematically.

(5) The student uses the scientific process to investigate physical concepts. The student is expected to:

(A) demonstrate an understanding that scientific hypotheses are tentative and testable statements that must be capable of being supported by observational evidence;

(B) demonstrate an understanding that scientific theories are based on physical phenomena and are capable of being tested by multiple independent researchers;

(C) design and implement investigative procedures;

(D) demonstrate the appropriate use and care of laboratory equipment;

(E) demonstrate accurate measurement techniques using precision instruments;

(F) record data using scientific notation and International System (SI) of units;

(G) identify and quantify causes and effects of uncertainties in measured data;

(H) organize and evaluate data, including the use of tables, charts, and graphs;

(I) communicate conclusions supported through various methods such as laboratory reports, labeled drawings, graphic organizers, journals, summaries, oral reports, or technology-based reports; and

(J) record, express, and manipulate data using graphs, charts, and equations.

(6) The student demonstrates appropriate safety techniques in the field and laboratory environments. The student is expected to:

(A) master relevant safety procedures;

(B) comply with safety guidelines as described in various manuals, instructions, and regulations;

(C) identify and classify hazardous materials and wastes; and

(D) make prudent choices in the conservation and use of resources and the appropriate disposal of hazardous materials and wastes.

(7) The student describes and applies the laws governing motion in a variety of situations. The student is expected to:

(A) generate and interpret relevant equations using graphs and charts for one- and two-dimensional motion, including:

(i) using and describing one-dimensional equations and graphical vector addition for displacement, distance, speed, velocity, average velocity, frames of reference, acceleration, and average acceleration;

(ii) using and describing two-dimensional equations for projectile and circular motion; and

(iii) using and describing vector forces and resolution; and

(B) describe and calculate the effects of forces on objects, including law of inertia and impulse and conservation of momentum, using methods, including free-body force diagrams.

(8) The student describes the nature of forces in the physical world. The student is expected to:

(A) describe the concepts of gravitational, electromagnetic, weak nuclear, and strong nuclear forces;

(B) describe and calculate the magnitude of gravitational forces between two objects;

(C) describe and calculate the magnitude of electric forces;

(D) describe the nature and identify everyday examples of magnetic forces and fields;

(E) describe the nature and identify everyday examples of electromagnetic forces and fields;

(F) characterize materials as conductors or insulators based on their electric properties; and

(G) design and construct both series and parallel circuits and calculate current, potential difference, resistance, and power of various circuits.

(9) The student describes and applies the laws of the conservation of energy and momentum. The student is expected to:

(A) describe the transformational process between work, potential energy, and kinetic energy (work-energy theorem);

(B) use examples to analyze and calculate the relationships among work, kinetic energy, and potential energy;

(C) describe and calculate the mechanical energy of, the power generated within, the impulse applied to, and the momentum of a physical system; and

(D) describe and apply the laws of conservation of energy and conservation of momentum.

(10) The student analyzes the concept of thermal energy. The student is expected to: explain technological examples such as solar and wind energy that illustrate the four laws of thermodynamics and the processes of thermal energy transfer.

(11) The student analyzes the properties of wave motion and optics. The student is expected to:

(A) examine and describe oscillatory motion and wave propagation in various types of media;

(B) investigate and analyze characteristics of waves, including period, velocity, frequency, amplitude, and wavelength;

(C) investigate and calculate the relationship between wave speed, frequency, and wavelength;

(D) compare and contrast the characteristics and behaviors of transverse waves, including electromagnetic waves and the electromagnetic spectrum, and longitudinal waves, including sound waves;

(E) investigate behaviors of waves, including reflection, refraction, diffraction, interference, resonance, polarization, and the Doppler effect; and

(F) describe and predict image formation as a consequence of reflection from a plane mirror and refraction through a thin convex lens.

(12) The student analyzes the concepts of atomic, nuclear, and quantum phenomena. The student is expected to:

(A) describe the photoelectric effect and the dual nature of light;

(B) compare and explain emission spectra produced by various atoms;

(C) calculate and describe the applications of mass-energy equivalence;

(D) describe the process of radioactive decay given an isotope and half-life;

(E) describe the role of mass-energy equivalence for areas such as nuclear stability, fission, and fusion; and

(F) explore technology applications of atomic, nuclear, and quantum phenomena using the standard model such as nuclear stability, fission, and fusion, nanotechnology, radiation therapy, diagnostic imaging, semiconductors, superconductors, solar cells, and nuclear power.

§127.746. AC/DC Electronics (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisite: Principles of Applied Engineering. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, including laboratory and testing services, and research and development services.

(3) AC/DC Electronics focuses on the basic electricity principles of alternating current/direct current (AC/DC) circuits.

Students will demonstrate knowledge and applications of circuits, electronic measurement, and electronic implementation. Through use of the design process, students will transfer academic skills to component designs in a project-based environment. Students will use a variety of computer hardware and software applications to complete assignments and projects. Additionally, students will explore career opportunities, employer expectations, and educational needs in the electronics industry.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate knowledge of how to dress appropriately, speak politely, and conduct oneself in a manner appropriate for the profession;

(B) show the ability to cooperate, contribute, and collaborate as a member of a group in an effort to achieve a positive collective outcome;

(C) present written and oral communication in a clear, concise, and effective manner, including explaining and justifying actions;

(D) demonstrate time-management skills in prioritizing tasks, following schedules, and performing goal-relevant activities in a way that produces efficient results; and

(E) demonstrate punctuality, dependability, reliability, and responsibility in performing assigned tasks as directed.

(2) The student demonstrates the skills necessary for success in a technical career. The student is expected to:

(A) identify training, education, employment, and career opportunities, including differences between an electronic technician, electronic technologist, and electrical engineer;

(B) investigate and work toward industry certifications;

(C) discuss ethical issues related to electronics;

(D) identify and demonstrate respect for diversity in the workplace;

(E) identify and demonstrate appropriate actions and consequences relating to discrimination, harassment, and inequality;

(F) explore career preparation learning experiences, including job shadowing, mentoring, and apprenticeship training; and

(G) discuss Accreditation Board for Engineering and Technology (ABET) accreditation and implications.

(3) The student participates in team projects in various roles. The student is expected to:

(A) explain the importance of teamwork in the field of electronics;

(B) apply principles of effective teamwork and problem solving, including collaboration and conflict resolution; and

(C) demonstrate proper attitudes as a team leader and team member.

(4) The student develops skills for managing a project. The student is expected to:

(A) implement project management methodologies, including initiating, planning, executing, monitoring and controlling, and closing a project;

(B) develop a project schedule and complete work according to established criteria;

(C) participate in the organization and operation of a real or simulated engineering project; and

(D) develop a plan for production of an individual product.

(5) The student practices safe and proper work habits. The student is expected to:

(A) master relevant safety tests;

(B) comply with safety guidelines as described in various manuals, instructions, and regulations;

(C) identify governmental and organizational regulations for health and safety in the workplace related to electronics;

(D) identify and classify hazardous materials according to Occupational Safety and Health Administration (OSHA) regulations and industry standards;

(E) dispose of hazardous materials appropriately;

(F) perform maintenance on selected tools, equipment, and machines;

(G) handle and store tools and materials correctly; and

(H) describe the results of improper maintenance of material, tools, and equipment.

(6) The student develops an understanding of basic direct current (DC) electricity principles. The student is expected to:

(A) describe DC and give examples of its application and generation;

(B) demonstrate an understanding of atomic theory and the relationship between atomic number and a material's conductivity and insulation characteristics;

(C) identify and apply the proper use of electronic schematics and symbols, including switches, voltage, current, ground, resistors, fuses, circuit breakers, volt meters, and amp meters;

(D) define and describe switches, voltage source, current source, ground, resistors, fuses, circuit breakers, volt meters, amp meters, voltage, current, and resistance;

(E) identify the resistance value from the resistor color code;

(F) express Ohm's Law in three forms with appropriate symbols and units;

(G) express the Power Law in three forms with appropriate symbols and units;

(H) describe series, parallel, and combination circuits;

(I) apply Ohm's Law to calculate current, voltage drops, and resistance for each component in a multi-component series, parallel, and combination circuit;

(J) apply the Power Law to calculate current, voltage drops, resistance, and power for each component in a multi-component series, parallel, and combination circuit; and

(K) express current and resistance values in both scientific notation and engineering notation.

(7) The student develops an understanding of basic alternating current (AC) electricity principles. The student is expected to:

(A) describe AC and give examples of its application and generation;

(B) calculate peak, peak-to-peak, average, and root mean square (RMS) voltage;

(C) explain the relationship between mechanical load and current in a generator;

(D) identify the purpose and application of a transformer;

(E) identify voltage and current values relative to a turns ratio in a transformer;

(F) describe and calculate capacitance and capacitive reactance; and

(G) describe and calculate inductance and inductive reactance.

(8) The student implements the concepts and skills that form the technical knowledge of electronics using project-based assessments. The student is expected to:

(A) apply Ohm's law, Kirchhoff's laws, and power laws to actual or simulated circuits;

(B) build series, parallel, and combination circuits;

(C) demonstrate an understanding of magnetism and induction as they relate to electronic circuits;

(D) perform electrical-electronic troubleshooting assignments;

(E) identify actual electronic components, including resistors, capacitors, switches, fuses, power sources, and inductors;

(F) explain how torque is produced in a motor; and

(G) explain where counter electromotive force (CEMF) comes from in a motor.

(9) The student applies the concepts and skills to simulated and actual work situations. The student is expected to:

(A) measure and calculate resistance, current, voltage, and power in series, parallel, and complex circuits;

(B) apply electrical theory to generators, electric motors, and transformers; and

(C) design analog circuits using common components.

(10) The student learns the function and application of the tools, equipment, and materials used in electronics through project-based assignments. The student is expected to:

(A) use tools and laboratory equipment in a safe manner to construct and repair circuits;

(B) use precision measuring instruments to analyze circuits and prototypes;

(C) demonstrate an understanding of the difference between current and voltage measurement;

(D) use a multimeter to perform resistance, voltage, and current measurements;

(E) describe and perform measurements, including period and amplitude, using an oscilloscope;

(F) use multiple software applications to simulate circuit behavior and present concepts; and

(G) use a project notebook to record measured values, lab observations and results, circuit operational requirements, and circuit design and modifications.

(11) The student designs a circuit using appropriate design processes and techniques. The student is expected to:

(A) interpret industry standard circuit schematics;

(B) identify areas where quality, reliability, and safety can be designed into a circuit;

(C) improve a circuit design to meet a specified need;

(D) sketch schematics; and

(E) explore new technologies that may affect electronics.

(12) The student builds a prototype circuit using the appropriate tools, materials, and techniques. The student is expected to:

(A) identify and describe the steps needed to produce a prototype;

(B) identify and use appropriate tools, equipment, machines, and materials to produce the prototype; and

(C) present a final project using a variety of media.

§127.747. Solid State Electronics (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 11 and 12. Prerequisite: AC/DC Electronics. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, including laboratory and testing services, and research and development services.

(3) In Solid State Electronics, students will demonstrate knowledge and applications of advanced circuits, electrical measurement, and electrical implementation used in the electronics and computer industries. Students will transfer advanced academic skills to apply engineering principles and technical skills to troubleshoot, repair, and modify electronic components, equipment, and power electronic systems in a project-based environment. Additionally, students will explore career opportunities, employer expectations, and educational needs in the electronics industry.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate knowledge of how to dress appropriately, speak politely, and conduct oneself in a manner appropriate for the profession;

(B) show the ability to cooperate, contribute, and collaborate as a member of a group in an effort to achieve a positive collective outcome;

(C) present written and oral communication in a clear, concise, and effective manner, including explaining and justifying actions;

(D) demonstrate time-management skills in prioritizing tasks, following schedules, and performing goal-relevant activities in a way that produces efficient results; and

(E) demonstrate punctuality, dependability, reliability, and responsibility in performing assigned tasks as directed.

(2) The student demonstrates the skills necessary for success in a technical career. The student is expected to:

(A) identify training, education, employment, and career opportunities, including differences between an electronic technician, electronic technologist, and electrical engineer;

(B) identify employment and career opportunities;

(C) identify industry certifications;

(D) discuss ethical issues related to electronics and incorporate proper ethics in submitted projects;

(E) identify and demonstrate respect for diversity in the workplace;

(F) identify appropriate actions and consequences relating to discrimination, harassment, and inequality;

(G) explore electronics career and preparation programs;

(H) explore career preparation learning experiences, including, but not limited to, job shadowing, mentoring, and apprenticeship training; and

(I) discuss Accreditation Board for Engineering and Technology (ABET) accreditation and implications.

(3) The student participates in team projects in various roles. The student is expected to:

(A) explain the importance of teamwork in the field of electronics;

(B) apply principles of effective teamwork and problem solving, including collaboration and conflict resolution; and

(C) demonstrate proper attitudes as a team leader and team member.

(4) The student develops skills for managing a project. The student is expected to:

(A) implement project management methodologies, including initiating, planning, executing, monitoring and controlling, and closing a project;

(B) develop a project schedule and complete work according to established criteria;

(C) participate in the organization and operation of a real or simulated engineering project; and

(D) develop a plan for production of an individual product.

(5) The student demonstrates principles of project documentation and work flow. The student is expected to:

(A) complete work orders and related documentation;

(B) identify factors affecting cost and strategies to minimize costs;

(C) prepare a project budget;

(D) prepare a production schedule;

(E) identify intellectual property and other legal restrictions; and

(F) read and interpret technical drawings, manuals, and bulletins.

(6) The student practices safe and proper work habits. The student is expected to:

(A) master relevant safety tests;

(B) comply with safety guidelines as described in various manuals, instructions, and regulations;

(C) identify governmental and organizational regulations for health and safety in the workplace related to electronics;

(D) identify and classify hazardous materials and wastes according to Occupational Safety and Health Administration (OSHA) regulations and industry standards;

(E) dispose of hazardous materials and wastes appropriately;

(F) perform maintenance on selected tools, equipment, and machines;

(G) handle and store tools and materials correctly; and

(H) describe the results of negligent or improper maintenance of material, tools, and equipment.

(7) The student implements the concepts and skills that form advanced knowledge of electronics using project-based rubrics. The student is expected to:

(A) apply Ohm's law, Kirchhoff's laws, and power laws to advanced circuit theory;

(B) demonstrate advanced knowledge of the theory of direct current, alternating current, digital circuits, and semi-conductor circuits through Thevenin and Norton's theorems;

(C) apply knowledge of voltage regulation devices;

(D) apply knowledge of the design and use of diodes, transistors, and analog components with integrated circuits;

(E) implement knowledge of solid-state components and devices such as a power supply design;

(F) demonstrate knowledge of the similarities and differences in optoelectronic devices;

(G) implement knowledge of transmission theory;

(H) implement knowledge of microprocessor applications;

(I) apply electronic theory to generators, electric motors, power supplies, electronic amplifiers, electronic oscillators, communication circuits, and systems; and

(J) complete advanced electrical-electronic troubleshooting assignments to industry standards.

(8) The student learns the function and application of the tools, equipment, and materials used in electronics through specific project-based assessments. The student is expected to:

(A) use tools and laboratory equipment in a safe manner to construct and repair circuits;

(B) use precision measuring instruments to analyze circuits and prototypes;

(C) describe and perform measurement techniques with analog, digital, or storage oscilloscopes;

(D) use multiple software applications to simulate circuit behavior and present concepts; and

(E) identify and describe the functions of computer hardware devices.

(9) The student designs products using appropriate design processes and techniques. The student is expected to:

(A) interpret advanced industry standard schematics;

(B) identify areas where quality, reliability, and safety can be designed into a product;

(C) improve a product design to meet a specified need;

(D) produce advanced schematics to industry standards;

(E) discuss the process of obtaining a patent;

(F) use a variety of technologies to design components such as computer simulation software; and

(G) explore innovative technologies that may affect electronics.

(10) The student builds a simulated or physical prototype using the appropriate tools, materials, and techniques. The student is expected to:

(A) identify and describe the steps needed to produce a prototype;

(B) identify and use appropriate tools, equipment, machines, and materials to produce the prototype; and

(C) present the prototype using a variety of media to a panel.

§127.748. Digital Electronics (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 10-12. Prerequisites: Algebra I and Geometry. This course satisfies a high school mathematics graduation requirement. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, including laboratory and testing services, and research and development services.

(3) Digital Electronics is the study of electronic circuits that are used to process and control digital signals. In contrast to analog electronics, where information is represented by a continuously varying voltage, digital signals are represented by two discreet voltages or logic levels. This distinction allows for greater signal speed and storage capabilities and has revolutionized the world of electronics. Digital electronics is the foundation of modern electronic devices such as cellular phones, digital audio players, laptop computers, digital cameras, and high-definition televisions. The primary focus of Digital Electronics is to expose students to the design process of combinational and sequential logic design, teamwork, communication methods, engineering standards, and technical documentation.

(4) The mathematical process standards describe ways in which students are expected to engage in the content. The placement of the process standards at the beginning of the knowledge and skills listed for each grade and course is intentional. The process standards weave the other knowledge and skills together so that students may be successful problem solvers and use mathematics efficiently and effectively in daily life. The process standards are integrated at every grade level and course. When possible, students will apply mathematics to problems arising in everyday life, society, and the workplace. Students will use a problem-solving model that incorporates analyzing given information, formulating a plan or strategy, determining a solution, justifying the solution, and evaluating the problem-solving process and the reasonableness of the solution. Students will select appropriate tools such as real objects, manipulatives, paper and pencil, and technology and techniques such as mental math, estimation, and number sense to solve problems. Students will effectively communicate mathematical ideas, reasoning, and their implications using multiple representations such as symbols, diagrams, graphs, and language. Students will use mathematical relationships to generate solutions and make connections and predictions. Students will analyze mathematical relationships to connect and communicate mathematical ideas. Students will display, explain, or justify mathematical ideas and arguments using precise mathematical language in written or oral communication.

(5) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(6) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate knowledge of how to dress appropriately, speak politely, and conduct oneself in a manner appropriate for the profession;

(B) show the ability to cooperate, contribute, and collaborate as a member of a group in an effort to achieve a positive collective outcome;

(C) present written and oral communication in a clear, concise, and effective manner, including explaining and justifying actions;

(D) demonstrate time-management skills in prioritizing tasks, following schedules, and performing goal-relevant activities in a way that produces efficient results; and

(E) demonstrate punctuality, dependability, reliability, and responsibility in performing assigned tasks as directed.

(2) The student uses mathematical processes to acquire and demonstrate mathematical understanding. The student is expected to:

(A) apply mathematics to problems arising in everyday life, society, and the workplace;

(B) use a problem-solving model that incorporates analyzing given information, formulating a plan or strategy, determining a solution, justifying the solution, and evaluating the problem-solving process and the reasonableness of the solution;

(C) select tools, including real objects, manipulatives, paper and pencil, and technology as appropriate, and techniques, including mental math, estimation, and number sense as appropriate, to solve problems;

(D) communicate mathematical ideas, reasoning, and their implications using multiple representations, including symbols, diagrams, graphs, and language as appropriate;

(E) create and use representations to organize, record, and communicate mathematical ideas;

(F) analyze mathematical relationships to connect and communicate mathematical ideas; and

(G) display, explain, and justify mathematical ideas and arguments using precise mathematical language in written or oral communication.

(3) The student demonstrates the skills necessary for success in a technical career. The student is expected to:

(A) distinguish the differences between an engineering technician, engineering technologist, and engineer;

(B) identify employment and career opportunities;

(C) identify industry certifications;

(D) discuss ethical issues related to engineering and technology and incorporate proper ethics in submitted projects;

(E) identify and demonstrate respect for diversity in the workplace;

(F) identify and demonstrate appropriate actions and identify consequences relating to discrimination, harassment, and inequality;

(G) explore electronics engineering careers and preparation programs;

(H) explore career preparation learning experiences, including job shadowing, mentoring, and apprenticeship training; and

(I) discuss Accreditation Board for Engineering and Technology (ABET) accreditation and implications.

(4) The student participates in team projects in various roles. The student is expected to:

(A) explain the importance of teamwork in the field of electronics;

(B) apply principles of effective problem solving in teams to practice collaboration and conflict resolution; and

(C) demonstrate proper attitudes as a team leader and team member.

(5) The student develops skills for managing a project. The student is expected to:

(A) implement project management methodologies, including initiating, planning, executing, monitoring and controlling, and closing a project;

(B) develop a project schedule and complete work according to established criteria;

(C) participate in the organization and operation of a real or simulated engineering project; and

(D) develop a plan for production of an individual product.

(6) The student practices safe and proper work habits. The student is expected to:

(A) master relevant safety tests;

(B) comply with safety guidelines as described in various manuals, instructions, and regulations;

(C) identify governmental and organizational regulations for health and safety in the workplace related to electronics;

(D) identify and classify hazardous materials and wastes according to Occupational Safety and Health Administration (OSHA) regulations;

(E) dispose of hazardous materials and wastes appropriately;

(F) perform maintenance on selected tools, equipment, and machines;

(G) handle and store tools and materials correctly; and

(H) describe the results of improper maintenance of material, tools, and equipment.

(7) The student explores the fundamentals of analog and digital electronics. The student uses appropriate notation and understands the logic of circuit design and logic gates. The student is expected to:

(A) use scientific notation, engineering notation, and Systems International (SI) notation to conveniently write very large or very small numbers frequently encountered when working with electronics;

(B) describe the process of soldering and how it is used in the assembly of electronic components;

(C) explain the different waveforms and distinctive characteristics of analog and digital signals;

(D) identify the voltage levels of analog and digital signals;

(E) determine whether a material is a conductor, an insulator, or a semiconductor based on its atomic structure;

(F) analyze the three fundamental concepts of voltage, current, and resistance;

(G) define circuit design software and explain its purpose;

(H) identify the fundamental building block of sequential logic;

(I) identify the components of a manufacturer's datasheet, including a logic gate's general description, connection diagram, and function table;

(J) categorize integrated circuits by their underlying circuitry, scale of integration, and packaging style;

(K) describe the advantages and disadvantages of the various sub-families of transistor-transistor logic (TTL) gates;

(L) explain that a logic gate is depicted by its schematic symbol, logic expression, and truth table;

(M) evaluate the different functions of input and output values of combinational and sequential logic;

(N) explain combinational logic designs implemented with AND gates, OR gates, and INVERTER gates; and

(O) identify the fundamental building block of sequential logic.

(8) The student understands and uses multiple forms of AND-OR-Invert (AOI) logic. The student is expected to:

(A) develop an understanding of the binary number system and its relationship to the decimal number system as an essential component in the combinational logic design process;

(B) translate a set of design specifications into a truth table to describe the behavior of a combinational logic design by listing all possible input combinations and the desired output for each;

(C) derive logic expressions from a given truth table;

(D) demonstrate logic expressions in sum-of-products (SOP) form and products-of-sum (POS) form;

(E) explain how all logic expressions, whether simplified or not, can be implemented using AND gates and INVERTER gates or OR gates and INVERTER gates; and

(F) apply a formal design process to translate a set of design specifications into a functional combinational logic circuit.

(9) The student understands, explains, and applies NAND and NOR Logic and understands the benefits of using universal gates. The student is expected to:

(A) apply the Karnaugh Mapping graphical technique to simplify logic expressions containing two, three, and four variables;

(B) define a "don't care" condition and explain its significance;

(C) explain why NAND and NOR gates are considered universal gates;

(D) demonstrate implementation of a combinational logic expression using only NAND gates or only NOR gates;

(E) discuss the formal design process used for translating a set of design specifications into a functional combinational logic circuit implemented with NAND or NOR gates; and

(F) explain why combinational logic designs implemented with NAND gates or NOR gates will typically require fewer integrated circuits (IC) than AOI equivalent implementations.

(10) The student understands combinational logic systems, including seven-segment displays, Exclusive OR and Exclusive NOR gates, and multiplexer/de-multiplexer pairs. The student understands

the relative value of various logic approaches. The student is expected to:

(A) use seven-segment displays used to display the digits 0-9 as well as some alpha characters;

(B) identify the two varieties of seven-segment displays;

(C) describe the formal design process used for translating a set of design specifications into a functional combinational logic circuit;

(D) develop an understanding of the hexadecimal and octal number systems and their relationships to the decimal number system;

(E) explain the primary intended purpose of Exclusive OR (XOR) and Exclusive NOR (XNOR) gates;

(F) describe how to accomplish the addition of two binary numbers of any bit length;

(G) explain when multiplexer/de-multiplexer pairs are most frequently used;

(H) explain the purpose of using de-multiplexers in electronic displays that use multiple seven-segment displays;

(I) identify the most commonly used method for handling negative numbers in digital electronics;

(J) discuss the use of programmable logic devices and explain designs for which they are best suited; and

(K) compare and contrast circuits implemented with programmable logic devices with circuits implemented with discrete logic.

(11) The student understands and describes multiple types of sequential logic and various uses of sequential logic. The student is expected to:

(A) explain the capabilities of flip-flop and transparent latch logic devices;

(B) discuss synchronous and asynchronous inputs of flip-flops and transparent latches;

(C) explore the use of flip-flops, including designing single event detection circuits, data synchronizers, shift registers, and frequency dividers;

(D) explain how asynchronous counters are characterized and how they can be implemented;

(E) explore the use of the asynchronous counter method to implement up counters, down counters, and modulus counters;

(F) explain how synchronous counters are characterized and how they can be implemented;

(G) explore the use of the synchronous counter method to implement up counters, down counters, and modulus counters;

(H) describe a state machine;

(I) identify common everyday devices that machines are used to control such as elevator doors, traffic lights, and combinational or electronic locks; and

(J) discuss various ways state machines can be implemented.

(12) The student explores microcontrollers, specifically their usefulness in real-world applications. The student is expected to:

(A) demonstrate an understanding of the use of flowcharts as graphical organizers by technicians, computer programmers, engineers, and other professionals and the benefits of various flowcharting techniques;

(B) develop an understanding of basic programming skills, including variable declaration, loops, and debugging;

(C) identify everyday products that use microcontrollers such as robots, garage door openers, traffic lights, and home thermostats;

(D) describe a servo motor;

(E) explore the way microcontrollers sense and respond to outside stimuli;

(F) explain why digital devices are only relevant if they can interact with the real world;

(G) explain the importance of digital control devices, including microcontrollers in controlling mechanical systems; and

(H) demonstrate an understanding that realistic problem solving with a control system requires the ability to interface analog inputs and outputs with a digital device.

§127.749. *Robotics I (One Credit), Adopted 2015.*

(a) General requirements. This course is recommended for students in Grades 9 and 10. Recommended prerequisite: Principles of Applied Engineering. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, including laboratory and testing services, and research and development services.

(3) In Robotics I, students will transfer academic skills to component designs in a project-based environment through implementation of the design process. Students will build prototypes or use simulation software to test their designs. Additionally, students will explore career opportunities, employer expectations, and educational needs in the robotic and automation industry.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate knowledge of how to dress appropriately, speak politely, and conduct oneself in a manner appropriate for the profession;

(B) demonstrate the ability to cooperate, contribute, and collaborate as a member of a group in an effort to achieve a positive collective outcome;

(C) present written and oral communication in a clear, concise, and effective manner, including explaining and justifying actions;

(D) demonstrate time-management skills in prioritizing tasks, following schedules, and performing goal-relevant activities in a way that produces efficient results; and

(E) demonstrate punctuality, dependability, reliability, and responsibility in performing assigned tasks as directed.

(2) The student demonstrates the skills necessary for success in a technical career. The student is expected to:

(A) distinguish the differences among an engineering technician, engineering technologist, and engineer;

(B) identify employment and career opportunities;

(C) identify industry certifications;

(D) discuss ethical issues related to engineering and technology and incorporate proper ethics in submitted projects;

(E) identify and demonstrate respect for diversity in the workplace;

(F) identify appropriate actions and consequences relating to discrimination, harassment, and inequality;

(G) explore robotic engineering careers and preparation programs;

(H) explore career preparation learning experiences, including job shadowing, mentoring, and apprenticeship training; and

(I) discuss *Accreditation Board for Engineering and Technology* (ABET) accreditation and implications.

(3) The student participates in team projects in various roles. The student is expected to:

(A) explain the importance of teamwork in the field of robotics;

(B) apply principles of effective problem solving in teams to collaboration and conflict resolution; and

(C) demonstrate proper attitudes as a team leader and team member.

(4) The student develops skills for managing a project. The student is expected to:

(A) implement project management methodologies, including initiating, planning, executing, monitoring and controlling, and closing a project;

(B) develop a project schedule and complete work according to established criteria;

(C) participate in the organization and operation of a real or simulated engineering project; and

(D) develop a plan for production of an individual product.

(5) The student practices safe and proper work habits. The student is expected to:

(A) master relevant safety tests;

(B) comply with safety guidelines as described in various manuals, instructions, and regulations;

(C) identify governmental and organizational regulations for health and safety in the workplace related to electronics;

(D) identify and classify hazardous materials and wastes according to Occupational Safety and Health Administration (OSHA) regulations;

(E) dispose of hazardous materials and wastes appropriately;

(F) perform maintenance on selected tools, equipment, and machines;

(G) handle and store tools and materials correctly; and

(H) describe the results of improper maintenance of material, tools, and equipment.

(6) The student develops the ability to use and maintain technological products, processes, and systems. The student is expected to:

(A) demonstrate the use of computers to manipulate a robotic or automated system and associated subsystems;

(B) maintain systems to ensure safe and proper function and precision operation;

(C) describe feedback control loops used to provide information; and

(D) describe types and functions of sensors used in robotic systems.

(7) The student develops an understanding of engineering principles and fundamental physics. The student is expected to:

(A) demonstrate knowledge of Newton's Laws as applied to robotics such as rotational dynamics, torque, weight, friction, and traction factors required for the operation of robotic systems;

(B) demonstrate knowledge of motors, gears, gear ratios, and gear trains used in the robotic systems;

(C) describe the application of the six simple machines to robotics;

(D) describe the operation of direct current (DC) motors, including control, speed, and torque; and

(E) describe the operation of servo motors, including control, angle, and torque.

(8) The student develops an understanding of the characteristics and scope of manipulators, accumulators, and end effectors required for a robotic or automated system to function. The student is expected to:

(A) describe the relationship between robotic arm construction and robot stability;

(B) describe the relationship between torque and gear ratio to weight of payload in a robotic arm operation; and

(C) demonstrate knowledge of linkages and gearing in end effectors used in a robotic arm system.

(9) The student uses engineering design methodologies. The student is expected to:

(A) demonstrate an understanding of and discuss the design process;

(B) think critically, identify the system constraints, and make fact-based decisions;

(C) apply testing and reiteration strategies to develop or improve a product;

(D) apply decision-making strategies when developing solutions;

(E) identify quality-control issues in engineering design and production;

(F) describe perceptions of the quality of products and how they affect engineering decisions;

(G) use an engineering notebook to document the project design process as a legal document; and

(H) interpret industry standard system schematics.

(10) The student learns the function and application of the tools, equipment, and materials used in robotic and automated systems through specific project-based assessments. The student is expected to:

(A) use tools and laboratory equipment in a safe manner to construct and repair systems;

(B) use precision measuring instruments to analyze systems and prototypes; and

(C) use multiple software applications to simulate robot behavior and present concepts.

(11) The student produces a product using the appropriate tools, materials, and techniques. The student is expected to:

(A) identify and describe the steps needed to produce a prototype;

(B) identify and use appropriate tools, equipment, machines, and materials to produce the prototype;

(C) construct a robotic or automated system to perform specified operations using the design process;

(D) test and evaluate the design in relation to pre-established requirements such as criteria and constraints;

(E) refine the design of a robotic or automated system to ensure quality, efficiency, and manufacturability of the final product; and

(F) present the final product using a variety of media.

§127.750. Robotics II (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 10-12. Prerequisite: Robotics I. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, including laboratory and testing services, and research and development services.

(3) In Robotics II, students will explore artificial intelligence and programming in the robotic and automation industry. Through implementation of the design process, students will transfer

academic skills to component designs in a project-based environment. Students will build prototypes and use software to test their designs.

(4) The mathematical process standards describe ways in which students are expected to engage in the content. The placement of the process standards at the beginning of the knowledge and skills listed for each grade and course is intentional. The process standards weave the other knowledge and skills together so that students may be successful problem solvers and use mathematics efficiently and effectively in daily life. The process standards are integrated at every grade level and course. When possible, students will apply mathematics to problems arising in everyday life, society, and the workplace. Students will use a problem-solving model that incorporates analyzing given information, formulating a plan or strategy, determining a solution, justifying the solution, and evaluating the problem-solving process and the reasonableness of the solution. Students will select appropriate tools such as real objects, manipulatives, paper and pencil, and technology and techniques such as mental math, estimation, and number sense to solve problems. Students will effectively communicate mathematical ideas, reasoning, and their implications using multiple representations such as symbols, diagrams, graphs, and language. Students will use mathematical relationships to generate solutions and make connections and predictions. Students will analyze mathematical relationships to connect and communicate mathematical ideas. Students will display, explain, or justify mathematical ideas and arguments using precise mathematical language in written or oral communication.

(5) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(6) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) distinguish the differences among an engineering technician, engineering technologist, and engineer;

(B) identify employment and career opportunities;

(C) identify industry certifications;

(D) recognize the principles of teamwork related to engineering and technology;

(E) identify and use appropriate work habits;

(F) locate and report on governmental regulations and laws, including health, safety, and labor codes related to engineering;

(G) discuss ethical issues related to engineering and technology and incorporate proper ethics in submitted projects;

(H) demonstrate respect for diversity in the workplace;

(I) demonstrate appropriate actions and identify consequences relating to discrimination, harassment, and inequality;

(J) demonstrate effective oral and written communication skills using a variety of software applications and media; and

(K) explore robotic engineering careers and preparation programs.

(2) The student uses mathematical processes to acquire and demonstrate mathematical understanding. The student is expected to:

(A) apply mathematics to problems arising in everyday life, society, and the workplace;

(B) use a problem-solving model that incorporates analyzing given information, formulating a plan or strategy, determining a solution, justifying the solution, and evaluating the problem-solving process and the reasonableness of the solution;

(C) select tools, including real objects, manipulatives, paper and pencil, and technology as appropriate, and techniques, including mental math, estimation, and number sense as appropriate, to solve problems;

(D) communicate mathematical ideas, reasoning, and their implications using multiple representations, including symbols, diagrams, graphs, and language as appropriate;

(E) create and use representations to organize, record, and communicate mathematical ideas;

(F) analyze mathematical relationships to connect and communicate mathematical ideas; and

(G) display, explain, and justify mathematical ideas and arguments using precise mathematical language in written or oral communication.

(3) The student learns and contributes productively as an individual and as a member of a project team. The student is expected to:

(A) demonstrate an understanding of and discuss how teams function;

(B) apply teamwork to solve problems;

(C) follow directions and decisions of responsible individuals of the project team;

(D) participate in establishing team procedures and team norms; and

(E) work cooperatively with others to set and accomplish goals in both competitive and non-competitive situations.

(4) The student develops skills of project management. The student is expected to:

(A) implement project management methodologies, including initiating, planning, executing, monitoring and controlling, and closing a project;

(B) develop a project schedule and complete work according to established criteria;

(C) participate in the organization and operation of a real or simulated engineering project; and

(D) translate and employ a Project Management Plan for production of a product.

(5) The student practices safe and proper work habits. The student is expected to:

(A) master relevant safety tests;

(B) comply with safety guidelines as described in various manuals, instructions, and regulations;

(C) identify and classify hazardous materials and wastes according to Occupational Safety and Health Administration (OSHA) regulations;

(D) dispose of hazardous materials and wastes appropriately;

(E) comply with established guidelines for working in a lab environment;

(F) handle and store tools and materials correctly;

(G) employ established inventory control and organization procedures; and

(H) describe the results of negligent or improper maintenance.

(6) The student develops the ability to use and maintain technological products, processes, and systems. The student is expected to:

(A) demonstrate the use of computers to manipulate a robotic or automated system and associated subsystems;

(B) troubleshoot and maintain systems and subsystems to ensure safe and proper function and precision operation;

(C) implement feedback control loops used to provide information; and

(D) implement different types of sensors used in robotic or automated systems and their operations.

(7) The student demonstrates an understanding of advanced mathematics and physics in robotic and automated systems. The student is expected to:

(A) apply the concepts of acceleration and velocity as they relate to robotic and automated systems;

(B) describe the term degrees of freedom and apply it to the design of joints used in robotic and automated systems;

(C) describe angular momentum and integrate it in the design of robotic joint motion, stability, and mobility;

(D) use the impulse-momentum theory in the design of robotic and automated systems;

(E) explain translational, rotational, and oscillatory motion in the design of robotic and automated systems;

(F) apply the operation of direct current (DC) motors, including control, speed, and torque;

(G) apply the operation of servo motors, including control, angle, and torque;

(H) interpret sensor feedback and calculate threshold values;

(I) apply measurement and geometry to calculate robot navigation;

(J) implement movement control using encoders; and

(K) implement path planning using geometry and multiple sensor feedback.

(8) The student creates a program to control a robotic or automated system. The student is expected to:

(A) use coding languages and proper syntax;

(B) use programming best practices for commenting and documentation;

(C) describe how and why logic is used to control the flow of the program;

(D) create a program flowchart and write the pseudocode for a program to perform an operation;

(E) create algorithms for evaluating a condition and performing an appropriate action using decisions;

(F) create algorithms that loop through a series of actions for a specified increment and for as long as a given condition exists;

(G) create algorithms that evaluate sensor data as variables to provide feedback control;

(H) use output commands and variables;

(I) use selection programming structures such as jumps, loops, switch, and case; and

(J) implement subroutines and functions.

(9) The student develops an understanding of the characteristics and scope of manipulators, accumulators, and end effectors required for a robotic or automated system to function. The student is expected to:

(A) demonstrate knowledge of robotic or automated system arm construction;

(B) demonstrate an understanding and apply the concepts of torque, gear ratio, stability, and weight of payload in a robotic or automated system arm operation; and

(C) demonstrate an understanding and apply the concepts of linkages and gearing in end effectors and their use in a robotic or an automated arm system.

(10) The student uses engineering design methodologies. The student is expected to:

(A) implement the design process;

(B) demonstrate critical thinking, identify the system constraints, and make fact-based decisions;

(C) apply formal testing and reiteration strategies to develop or improve a product;

(D) apply and defend decision-making strategies when developing solutions;

(E) identify and improve quality-control issues in engineering design and production;

(F) apply Six Sigma to analyze the quality of products and how it affects engineering decisions;

(G) use an engineering notebook to document the project design process as a legal document; and

(H) create and interpret industry standard system schematics.

(11) The student learns the function and application of the tools, equipment, and materials used in robotic and automated systems through specific project-based assessments. The student is expected to:

(A) use and maintain tools and laboratory equipment in a safe manner to construct and repair systems;

(B) use precision measuring instruments to analyze systems and prototypes;

(C) implement a system to identify and track all components of the robotic or automated system and all elements involved with the operation, construction, and manipulative functions; and

(D) use multiple software applications to simulate robot behavior and present concepts.

(12) The student produces a product using the appropriate tools, materials, and techniques. The student is expected to:

(A) use the design process to design a robotic or automated system that meets pre-established criteria and constraints;

(B) identify and use appropriate tools, equipment, machines, and materials to produce the prototype;

(C) implement sensors in the robotic or automated system;

(D) construct the robotic or automated system;

(E) use the design process to evaluate and formally test the design;

(F) refine the design of the robotic or automated system to ensure quality, efficiency, and manufacturability of the final robotic or automated system; and

(G) present the final product using a variety of media.

§127.751. Engineering Design and Presentation I (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 10-12. Prerequisite: Algebra I Recommended prerequisite: Principles of Applied Engineering. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, including laboratory and testing services, and research and development services.

(3) Engineering Design and Presentation I is a continuation of knowledge and skills learned in Principles of Applied Engineering. Students enrolled in this course will demonstrate knowledge and skills of the design process as it applies to engineering fields using multiple software applications and tools necessary to produce and present working drawings, solid model renderings, and prototypes. Students will use a variety of computer hardware and software applications to complete assignments and projects. Through implementation of the design process, students will transfer advanced academic skills to component designs. Additionally, students explore career opportunities in engineering, technology, and drafting and what is required to gain and maintain employment in these areas.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate knowledge of how to dress appropriately, speak politely, and conduct oneself in a manner appropriate for the profession and work site;

(B) cooperate, contribute, and collaborate as a member of a group in an effort to attain agreement and achieve a collective outcome;

(C) present written and oral communication in a clear, concise, and effective manner, including explaining and justifying actions;

(D) use time-management skills in prioritizing tasks, following schedules, and tending to goal-relevant activities in a way that optimizes efficiency and results; and

(E) complete a consistent demonstration of punctuality, dependability, reliability, and responsibility in reporting for duty and performing assigned tasks as directed.

(2) The student gains knowledge of and demonstrates the skills necessary for success in the workplace. The student is expected to:

(A) distinguish the differences between an engineering technician, engineering technologist, and engineer;

(B) identify employment and career opportunities;

(C) investigate and work toward industry certifications;

(D) demonstrate the principles of teamwork related to engineering and technology;

(E) identify and use appropriate work habits;

(F) demonstrate knowledge related to governmental regulations, including health and safety;

(G) discuss ethical issues related to engineering and technology and incorporate proper ethics in submitted projects;

(H) demonstrate respect for diversity in the workplace;

(I) demonstrate appropriate actions and identify consequences relating to discrimination, harassment, and inequality;

(J) demonstrate effective oral and written communication skills using a variety of software applications and media; and

(K) explore career preparation learning experiences, including job shadowing, mentoring, and apprenticeship training.

(3) The student participates in team projects in various roles. The student is expected to:

(A) demonstrate an understanding of and discuss how teams function;

(B) apply teamwork to solve problems; and

(C) serve as both a team leader and member and demonstrate appropriate attitudes while participating in team projects.

(4) The student develops skills for managing a project. The student is expected to:

(A) implement project management methodologies, including initiating, planning, executing, monitoring and controlling, and closing a project;

(B) develop a project schedule and complete work according to established criteria;

(C) participate in the organization and operation of a real or simulated engineering project; and

(D) develop a plan for production of an individual product.

(5) The student practices safe and proper work habits. The student is expected to:

(A) master relevant safety tests;

(B) comply with safety guidelines as described in various manuals, instructions, and regulations;

(C) identify and classify hazardous materials and wastes according to Occupational Safety and Health Administration (OSHA) regulations;

(D) dispose of hazardous materials and wastes appropriately;

(E) perform maintenance on selected tools, equipment, and machines;

(F) handle and store tools and materials correctly; and

(G) describe the results of negligent or improper maintenance.

(6) The student applies the concepts of sketching and skills associated with computer-aided drafting and design. The student is expected to:

(A) use single and multi-view projections;

(B) use orthographic and pictorial views;

(C) use auxiliary views;

(D) use section views;

(E) use advanced construction techniques;

(F) prepare and revise annotated multi-dimensional production drawings in computer-aided drafting and design to industry standards;

(G) demonstrate knowledge of effective file structure and management;

(H) use advanced dimensioning techniques;

(I) construct and use basic 3D parametric drawings; and

(J) develop and use prototype drawings for presentation.

(7) The student uses engineering design methodologies. The student is expected to:

(A) demonstrate an understanding of and discuss principles of ideation;

(B) demonstrate critical thinking, identify the system constraints, and make fact-based decisions;

(C) use rational thinking to develop or improve a product;

(D) apply decision-making strategies when developing solutions;

(E) use an engineering notebook to record prototypes, corrections, and/or mistakes in the design process; and

(F) use an engineering notebook and portfolio to record the final design, construction, and manipulation of finished projects.

(8) The student applies concepts of engineering to specific problems. The student is expected to:

(A) use a variety of technologies to design components;

(B) use tools, laboratory equipment, and precision measuring instruments to develop prototypes;

(C) research applications of different types of computer-aided drafting and design software; and

(D) use multiple software applications for concept presentations.

(9) The student designs products using appropriate design processes and techniques. The student is expected to:

(A) interpret engineering drawings;

(B) identify areas where quality, reliability, and safety can be designed into a product;

(C) improve a product design to meet a specified need;

(D) produce engineering drawings to industry standards; and

(E) describe potential patents and the patenting process.

(10) The student builds a prototype using the appropriate tools, materials, and techniques. The student is expected to:

(A) identify and describe the steps needed to produce a prototype;

(B) identify and use appropriate tools, equipment, machines, and materials to produce the prototype; and

(C) present the prototype using a variety of media.

§127.752. Engineering Design and Presentation II (Two Credits), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 11 and 12. Prerequisites: Algebra I and Geometry. Recommended prerequisite: Principles of Applied Engineering or Engineering Design and Presentation I. Students shall be awarded two credits for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, including laboratory and testing services, and research and development services.

(3) Engineering Design and Presentation II is a continuation of knowledge and skills learned in Engineering Design and Presentation I. Students enrolled in this course will demonstrate knowledge and skills of the design process as it applies to engineering fields using multiple software applications and tools necessary to produce and present working drawings, solid model renderings, and prototypes. Students will use a variety of computer hardware and software applications to complete assignments and projects. Through implementation of the design process, students will transfer advanced academic skills to component designs. Emphasis will be placed on using skills from ideation through prototyping.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) distinguish the differences between an engineering technician, engineering technologist, and engineer;

(B) identify employment and career opportunities;

(C) investigate and work toward industry certifications;

(D) demonstrate the principles of teamwork related to engineering and technology;

(E) identify and use appropriate work habits;

(F) demonstrate knowledge related to governmental regulations, including health and safety;

(G) discuss ethical issues related to engineering and technology and incorporate proper ethics in submitted projects;

(H) demonstrate respect for diversity in the workplace;

(I) demonstrate appropriate actions and identify consequences relating to discrimination, harassment, and inequality;

(J) demonstrate effective oral and written communication skills using a variety of software applications and media; and

(K) explore career preparation learning experiences, including job shadowing, mentoring, and apprenticeship training.

(2) The student participates in team projects in various roles. The student is expected to:

(A) demonstrate an understanding of and discuss how teams function;

(B) apply teamwork to solve problems; and

(C) serve as a team leader and member and demonstrate appropriate attitudes while participating in team projects.

(3) The student develops skills for managing a project. The student is expected to:

(A) implement project management methodologies, including initiating, planning, executing, monitoring and controlling, and closing a project;

(B) develop a project schedule and complete projects according to established criteria;

(C) participate in the organization and operation of a real or simulated engineering project; and

(D) develop a plan for production of an individual product.

(4) The student demonstrates principles of project documentation and work flow. The student is expected to:

(A) complete work orders and related documentation;

(B) identify factors affecting cost and strategies to minimize costs;

(C) prepare a project budget;

(D) prepare a production schedule;

(E) identify intellectual property and other legal restrictions; and

(F) read and interpret technical drawings, manuals, and bulletins.

(5) The student applies the concepts and skills of computer-aided drafting and design software to perform the following tasks. The student is expected to:

(A) prepare drawings to American National Standards Institute (ANSI) and International Organization for Standardization (ISO) graphic standards;

(B) customize software user interface;

(C) prepare and use advanced views such as auxiliary, section, and break-away;

(D) draw detailed parts, assembly diagrams, and sub-assembly diagrams;

(E) indicate tolerances and standard fittings using appropriate library functions;

(F) demonstrate understanding of annotation styles and setup by defining units, fonts, dimension styles, notes, and leader lines;

(G) identify and incorporate the use of advanced layout techniques and viewports using paper-space and modeling areas;

(H) use management techniques by setting up properties to define and control individual layers;

(I) create and use custom templates for advanced project management;

(J) prepare and use advanced development drawings;

(K) use advanced polar tracking and blocking techniques to increase drawing efficiency;

(L) create drawings that incorporate external referencing;

(M) create and render objects using parametric modeling tools; and

(N) model individual parts or assemblies and produce rendered or animated output.

(6) The student practices safe and proper work habits. The student is expected to:

(A) master relevant safety tests;

(B) comply with safety guidelines as described in various manuals, instructions, and regulations;

(C) identify and classify hazardous materials and wastes according to Occupational Safety and Health Administration (OSHA) regulations;

(D) dispose of hazardous materials and wastes appropriately;

(E) perform maintenance on selected tools, equipment, and machines;

(F) handle and store tools and materials correctly; and

(G) describe the results of negligent or improper maintenance.

(7) The student uses engineering design methodologies. The student is expected to:

(A) demonstrate an understanding of and discuss principles of system ideation;

(B) demonstrate critical thinking, identify the system constraints, and make fact-based decisions;

(C) use rational thinking to develop or improve a system;

(D) apply decision-making strategies when developing solutions;

(E) identify quality-control issues in engineering design and production;

(F) describe perceptions of the quality of products and how they affect engineering decisions;

(G) use an engineering notebook to record prototypes, corrections, and/or mistakes in the design process; and

(H) use an engineering notebook to record the final design, construction, and manipulation of finished projects.

(8) The student applies concepts of engineering to specific problems. The student is expected to:

(A) use a variety of technologies to design systems;

(B) use tools, laboratory equipment, and precision measuring instruments to develop prototypes;

(C) research applications of different types of computer-aided drafting and design software; and

(D) use multiple software applications for concept presentations.

(9) The student designs systems using appropriate design processes and techniques. The student is expected to:

(A) interpret engineering drawings;

(B) identify areas where quality, reliability, and safety can be designed into a system;

(C) improve a system design to meet a specified need, including properties of materials selected;

(D) produce engineering drawings to industry standards; and

(E) describe potential patents and the patenting process.

(10) The student builds a prototype using the appropriate tools, materials, and techniques. The student is expected to:

(A) identify and describe the steps needed to produce a prototype;

(B) identify and use appropriate tools, equipment, machines, and materials to produce the prototype; and

(C) present the prototype using a variety of media.

§127.753. *Engineering Design and Problem Solving (One Credit), Adopted 2015.*

(a) General requirements. This course is recommended for students in Grades 11 and 12. Prerequisites: Algebra I and Geometry. Recommended prerequisites: two Science, Technology, Engineering, and Mathematics (STEM) Career Cluster credits. Students must meet the 40% laboratory and fieldwork requirement. This course satisfies a high school science graduation requirement. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The STEM Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, including laboratory and testing services, and research and development services.

(3) The Engineering Design and Problem Solving course is the creative process of solving problems by identifying needs and then devising solutions. The solution may be a product, technique, structure, or process depending on the problem. Science aims to understand the natural world, while engineering seeks to shape this world to meet human needs and wants. Engineering design takes into consideration limiting factors or "design under constraint." Various engineering disciplines address a broad spectrum of design problems using specific concepts from the sciences and mathematics to derive a solution. The design process and problem solving are inherent to all engineering disciplines.

(4) Engineering Design and Problem Solving reinforces and integrates skills learned in previous mathematics and science courses. This course emphasizes solving problems, moving from well-defined toward more open-ended, with real-world application. Students will apply critical-thinking skills to justify a solution from multiple design options. Additionally, the course promotes interest in and understanding of career opportunities in engineering.

(5) This course is intended to stimulate students' ingenuity, intellectual talents, and practical skills in devising solutions to engineering design problems. Students use the engineering design process cycle to investigate, design, plan, create, and evaluate solutions. At the same time, this course fosters awareness of the social and ethical implications of technological development.

(6) Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not scientifically testable.

(7) Scientific inquiry is the planned and deliberate investigation of the natural world. Scientific methods of investigation are experimental, descriptive, or comparative. The method chosen should be appropriate to the question being asked.

(8) Scientific decision making is a way of answering questions about the natural world. Students should be able to distinguish between scientific decision-making methods (scientific methods) and ethical and social decisions that involve science (the application of scientific information).

(9) A system is a collection of cycles, structures, and processes that interact. All systems have basic properties that can be described in space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically tested. Students should analyze a system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(10) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(11) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate knowledge of how to dress appropriately, speak politely, and conduct oneself in a manner appropriate for the profession;

(B) show the ability to cooperate, contribute, and collaborate as a member of a group in an effort to achieve a positive collective outcome;

(C) present written and oral communication in a clear, concise, and effective manner;

(D) demonstrate time-management skills in prioritizing tasks, following schedules, and performing goal-relevant activities in a way that produces efficient results; and

(E) demonstrate punctuality, dependability, reliability, and responsibility in performing assigned tasks as directed.

(2) The student, for at least 40% of instructional time, conducts engineering laboratory and field activities using safe, environmentally appropriate, and ethical practices. The student is expected to:

(A) demonstrate safe practices during engineering laboratory and field activities; and

(B) demonstrate an understanding of the use and conservation of resources and the proper disposal or recycling of materials.

(3) The student uses scientific methods and equipment during laboratory and field investigations. The student is expected to:

(A) know the definition of science and understand that it has limitations, as specified in subsection (b)(6) of this section;

(B) know that hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power that have been tested over a wide variety of conditions are incorporated into theories;

(C) know that scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers. Unlike hypotheses, scientific theories are well-established and highly-reliable explanations, but they may be subject to change as new areas of science and new technologies are developed;

(D) distinguish between scientific hypotheses and scientific theories;

(E) plan and implement descriptive, comparative, and experimental investigations, including asking questions, formulating testable hypotheses, and selecting equipment and technology;

(F) collect and organize qualitative and quantitative data and make measurements with accuracy and precision using tools such as calculators, spreadsheet software, data-collecting probes, computers, standard laboratory glassware, microscopes, various prepared slides, stereoscopes, metric rulers, electronic balances, gel electrophoresis apparatuses, micropipettors, hand lenses, Celsius thermometers, hot plates, lab notebooks or journals, timing devices, cameras, Petri dishes, lab incubators, dissection equipment, meter

sticks, and models, diagrams, or samples of biological specimens or structures;

(G) analyze, evaluate, make inferences, and predict trends from data; and

(H) communicate valid conclusions supported by the data through methods such as lab reports, labeled drawings, graphic organizers, journals, summaries, oral reports, and technology-based reports.

(4) The student uses critical thinking, scientific reasoning, and problem solving to make informed decisions within and outside the classroom. The student is expected to:

(A) in all fields of science, analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, including examining all sides of scientific evidence of those scientific explanations, so as to encourage critical thinking by the student;

(B) communicate and apply scientific information extracted from various sources such as current events, news reports, published journal articles, and marketing materials;

(C) draw inferences based on data related to promotional materials for products and services;

(D) evaluate the impact of scientific research on society and the environment;

(E) evaluate models according to their limitations in representing biological objects or events; and

(F) research and describe the history of biology and contributions of scientists.

(5) The student applies knowledge of science and mathematics and the tools of technology to solve engineering design problems. The student is expected to:

(A) apply scientific processes and concepts outlined in the Texas essential knowledge and skills (TEKS) for Biology, Chemistry, or Physics relevant to engineering design problems;

(B) apply concepts, procedures, and functions outlined in the TEKS for Algebra I, Geometry, and Algebra II relevant to engineering design problems;

(C) select appropriate mathematical models to develop solutions to engineering design problems;

(D) integrate advanced mathematics and science skills as necessary to develop solutions to engineering design problems;

(E) judge the reasonableness of mathematical models and solutions;

(F) investigate and apply relevant chemical, mechanical, biological, electrical, and physical properties of materials to engineering design problems;

(G) identify the inputs, processes, outputs, control, and feedback associated with open and closed systems;

(H) describe the difference between open-loop and closed-loop control systems;

(I) make measurements with accuracy and precision and specify tolerances;

(J) use appropriate measurement systems, including customary and International System (SI) of units; and

(K) use conversions between measurement systems to solve real-world problems.

(6) The student communicates through written documents, presentations, and graphic representations using the tools and techniques of professional engineers. The student is expected to:

(A) communicate visually by sketching and creating technical drawings using established engineering graphic tools, techniques, and standards;

(B) read and comprehend technical documents, including specifications and procedures;

(C) prepare written documents such as memorandums, emails, design proposals, procedural directions, letters, and technical reports using the formatting and terminology conventions of technical documentation;

(D) organize information for visual display and analysis using appropriate formats for various audiences, including graphs and tables;

(E) evaluate the quality and relevance of sources and cite appropriately; and

(F) defend a design solution in a presentation.

(7) The student recognizes the history, development, and practices of the engineering professions. The student is expected to:

(A) identify and describe career options, working conditions, earnings, and educational requirements of various engineering disciplines such as those listed by the Texas Board of Professional Engineers;

(B) recognize that engineers are guided by established codes emphasizing high ethical standards;

(C) explore the differences, similarities, and interactions among engineers, scientists, and mathematicians;

(D) describe how technology has evolved in the field of engineering and consider how it will continue to be a useful tool in solving engineering problems;

(E) discuss the history and importance of engineering innovation on the U.S. economy and quality of life; and

(F) describe the importance of patents and the protection of intellectual property rights.

(8) The student creates justifiable solutions to open-ended real-world problems using engineering design practices and processes. The student is expected to:

(A) identify and define an engineering problem;

(B) formulate goals, objectives, and requirements to solve an engineering problem;

(C) determine the design parameters associated with an engineering problem such as materials, personnel, resources, funding, manufacturability, feasibility, and time;

(D) establish and evaluate constraints pertaining to a problem, including health, safety, social, environmental, ethical, political, regulatory, and legal;

(E) identify or create alternative solutions to a problem using a variety of techniques such as brainstorming, reverse engineering, and researching engineered and natural solutions;

(F) test and evaluate proposed solutions using methods such as models, prototypes, mock-ups, simulations, critical design review, statistical analysis, or experiments;

(G) apply structured techniques to select and justify a preferred solution to a problem such as a decision tree, design matrix, or cost-benefit analysis;

(H) predict performance, failure modes, and reliability of a design solution; and

(I) prepare a project report that clearly documents the designs, decisions, and activities during each phase of the engineering design process.

(9) The student manages an engineering design project. The student is expected to:

(A) participate in the design and implementation of a real-world or simulated engineering project using project management methodologies, including initiating, planning, executing, monitoring and controlling, and closing a project;

(B) develop a plan and project schedule for completion of a project;

(C) work in teams and share responsibilities, acknowledging, encouraging, and valuing contributions of all team members;

(D) compare and contrast the roles of a team leader and other team responsibilities;

(E) identify and manage the resources needed to complete a project;

(F) use a budget to determine effective strategies to meet cost constraints;

(G) create a risk assessment for an engineering design project;

(H) analyze and critique the results of an engineering design project; and

(I) maintain an engineering notebook that chronicles work such as ideas, concepts, inventions, sketches, and experiments.

§127.754. *Engineering Mathematics (One Credit), Adopted 2015.*

(a) General requirements. This course is recommended for students in Grades 11 and 12. Prerequisite: Algebra II. This course satisfies a high school mathematics graduation requirement. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, including laboratory and testing services, and research and development services.

(3) Engineering Mathematics is a course where students solve and model design problems. Students will use a variety of mathematical methods and models to represent and analyze problems that represent a range of real-world engineering applications such as robotics, data acquisition, spatial applications, electrical measurement, manufacturing processes, materials engineering, mechanical drives,

pneumatics, process control systems, quality control, and computer programming.

(4) The mathematical process standards describe ways in which students are expected to engage in the content. The placement of the process standards at the beginning of the knowledge and skills listed for each grade and course is intentional. The process standards weave the other knowledge and skills together so that students may be successful problem solvers and use mathematics efficiently and effectively in daily life. The process standards are integrated at every grade level and course. When possible, students will apply mathematics to problems arising in everyday life, society, and the workplace. Students will use a problem-solving model that incorporates analyzing given information, formulating a plan or strategy, determining a solution, justifying the solution, and evaluating the problem-solving process and the reasonableness of the solution. Students will select appropriate tools such as real objects, manipulatives, paper and pencil, and technology and techniques such as mental math, estimation, and number sense to solve problems. Students will effectively communicate mathematical ideas, reasoning, and their implications using multiple representations such as symbols, diagrams, graphs, and language. Students will use mathematical relationships to generate solutions and make connections and predictions. Students will analyze mathematical relationships to connect and communicate mathematical ideas. Students will display, explain, or justify mathematical ideas and arguments using precise mathematical language in written or oral communication.

(5) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(6) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate knowledge of how to dress appropriately, speak politely, and conduct oneself in a manner appropriate for the profession;

(B) show the ability to cooperate, contribute, and collaborate as a member of a group in an effort to achieve a positive collective outcome;

(C) present written and oral communication in a clear, concise, and effective manner;

(D) demonstrate time-management skills in prioritizing tasks, following schedules, and performing goal-relevant activities in a way that produces efficient results; and

(E) demonstrate punctuality, dependability, reliability, and responsibility in performing assigned tasks as directed.

(2) The student uses mathematical processes to acquire and demonstrate mathematical understanding. The student is expected to:

(A) apply mathematics to problems arising in everyday life, society, and the workplace;

(B) use a problem-solving model that incorporates analyzing given information, formulating a plan or strategy, determining a solution, justifying the solution, and evaluating the problem-solving process and the reasonableness of the solution;

(C) select tools, including real objects, manipulatives, paper and pencil, and technology as appropriate, and techniques, including mental math, estimation, and number sense as appropriate, to solve problems;

(D) communicate mathematical ideas, reasoning, and their implications using multiple representations, including symbols, diagrams, graphs, and language;

(E) create and use representations to organize, record, and communicate mathematical ideas;

(F) analyze mathematical relationships to connect and communicate mathematical ideas; and

(G) display, explain, and justify mathematical ideas and arguments using precise mathematical language in written or oral communication.

(3) The student uses mathematically based hydraulics concepts to measure and find pump output, understand pressure versus cylinder force, and understand flow rate versus cylinder speed. The student is expected to:

(A) explain how flow rate can be measured in gallons per minute and liters per minute;

(B) calculate and record data using actual flow rates from a flow meter chart;

(C) calculate, measure, and illustrate the force output and speed of an extending and retracting cylinder; and

(D) determine and depict the stroke time of a cylinder in gallons per minute.

(4) The student uses mathematical concepts of structure design to define and describe statics, acquire data, apply concepts of moments and bending stress, and apply concepts of truss design and analysis. The student is expected to:

(A) calculate a resultant force;

(B) apply the concept of equilibrium to force calculations;

(C) calculate a force using a free-body diagram;

(D) develop an application of strain gauges that determines mathematically and experimentally the force on a structural element;

(E) calculate the magnitude of force applied to a rotational system;

(F) apply the moment equilibrium equation to force calculations;

(G) calculate, measure, and illustrate a bending moment on a beam;

(H) determine and depict the bending stress in a beam;

(I) calculate forces in truss using a six-step problem-solving method;

(J) apply modulus of elasticity to the deflection of beams;

(K) calculate a beam deflection for a given load;

(L) determine and depict the critical load for buckling using Euler's formula; and

(M) design and apply factors of safety to column and beam design.

(5) The student understands the role of trigonometry in spatial applications. The student is expected to:

(A) apply trigonometric ratios, including sine, cosine, and tangent, to spatial problems; and

(B) determine the distance and height of remote objects using trigonometry.

(6) The student understands the concepts of design processes with multi-view computer-aided drafting and design drawings for facilities layouts, precision part design, process design, injection mold design, and computer-aided manufacturing, as applied to processes using 3D printing, laser cutting, and computer numerical control. The student is expected to:

(A) determine a dimension of an object given a scaled drawing having no dimensions;

(B) compare and contrast the function of production time and production rate;

(C) calculate and apply the proper cycle time and analyze machines required to meet a specified production rate;

(D) demonstrate the calculation and application of output shaft speed and torque in a gear train;

(E) create a method to determine the direction of a gear train's output shaft;

(F) design a spur gear train given speed and torque requirements;

(G) calculate and apply the proper spacing between the centers of gears in a gear train to a specified tolerance;

(H) apply positional tolerances to assembled parts;

(I) predict the production cost of a product given process information and a bill of materials;

(J) apply the correct spindle speed for a computer-aided manufacturing device by calculation;

(K) apply the correct feed rate for a computer-aided manufacturing device by using calculation;

(L) calculate the pressure drop in an injection mold system;

(M) design a gate size in an injection mold system using the gate width and depth formulas;

(N) determine the size of a mold; and

(O) create size runners for a multi-cavity mold.

(7) The student calculates electronic quantities and uses electrical measuring instruments to experimentally test their calculations. The student is expected to:

(A) apply common electronic formulas to solve problems;

(B) use engineering notation to properly describe calculated and measured values;

(C) compare and contrast the mathematical differences between a direct current and alternating current;

(D) show the effect and give an application of an inductor in an alternating current circuit;

(E) show the effect and give an application of a capacitor in an alternating current circuit;

(F) create a resistive capacitive timing circuit in a time-delay circuit;

(G) calculate the output voltage and current load of a transformer;

(H) calculate the effective alternating current voltage root mean square given the peak alternating current voltage and the peak alternating current voltage given the root mean square value; and

(I) calculate the cost of operating an electric motor.

(8) The student applies mathematical principles of pneumatic pressure and flow to explain pressure versus cylinder force, apply and manipulate pneumatic speed control circuits, and describe maintenance of pneumatic equipment, centrifugal pump operation and characteristics, data acquisition systems, pump power, and pump system design. The student is expected to:

(A) calculate the force output of a cylinder in retraction and extension;

(B) explain how gage pressure and absolute pressure are different;

(C) explain the individual gas laws and use the ideal gas law to solve problems;

(D) convert air volumes at pressures to free air volumes;

(E) compare dew point and relative humidity to explain their importance;

(F) explain the importance of the two units of pump flow rate measurement;

(G) convert between mass and volumetric flow rate;

(H) differentiate between unit analysis such as converting units of pressure between English and SI units and dimensional analysis such as Force and Pressure;

(I) convert between units of head and pressure;

(J) explain the importance of total dynamic head in terms of suction and discharge head;

(K) demonstrate the measurement of the total head of a centrifugal pump;

(L) calculate Reynolds number and determine the type of fluid flow in a pipe, including laminar flow, transitional flow, and turbulent flow;

(M) calculate friction head loss in a given pipe length using head loss tables or charts;

(N) calculate total suction lift, total suction head, total discharge head, and the total dynamic head of a system for a given flow rate;

(O) calculate hydraulic power;

(P) calculate centrifugal pump brake horsepower given pump efficiency and hydraulic power;

(Q) calculate the effect of impeller diameter and speed on the flow rate of a centrifugal pump and pump head;

(R) predict the effect of impeller diameter on a pump head capacity curve; and

(S) calculate net positive suction head.

(9) The student applies mathematical principles of material engineering, including tensile strength analysis, data acquisition sys-

tems, compression testing and analysis, shear and hardness testing and analysis, and design evaluation. The student is expected to:

(A) calculate stress, strain, and elongation using the modulus of elasticity for a material or model with a given set of data;

(B) analyze and explain the importance of sensitivity in relation to material engineering;

(C) analyze the operation of a data-acquisition application or program;

(D) mathematically analyze a part for stress and strain under a compression load;

(E) calculate shear stress for a material with a given set of data;

(F) use the Brinell hardness number to determine the ultimate tensile strength of a material;

(G) apply factors of safety to material engineering designs; and

(H) create material testing conditions for a model using equipment such as a polariscope.

(10) The student applies mathematical principles for mechanical drives, including levers, linkages, cams, turnbuckles, pulley systems, gear drives, key fasteners, v-belt drives, and chain drives. The student is expected to:

(A) calculate the weight of an object for a given mass;

(B) analyze and calculate torque for a given application using the proper units of measurement;

(C) calculate the magnitude of force applied to a rotational system;

(D) calculate the mechanical advantage of first-, second-, and third-class levers;

(E) compare the advantages and disadvantages of the three classes of levers for different applications;

(F) calculate and analyze the coefficient of friction in its proper units of measurement;

(G) analyze and calculate mechanical advantage for simple machines using proper units of measurement;

(H) calculate the mechanical advantage of gear drive systems;

(I) compare and contrast at least two methods of loading a mechanical drive system;

(J) calculate rotary mechanical power applied to an application;

(K) analyze the mechanical efficiency of a given application;

(L) demonstrate various examples of pitch and analyze its proper application;

(M) calculate the shaft speed and torque of a belt drive and chain drive system; and

(N) calculate sprocket ratio and analyze its importance to various applications.

(11) The student applies mathematical principles of quality assurance, including using precision measurement tools, statistical process control, control chart operation, analysis of quality assurance

control charts, geometric dimensioning and tolerancing, and location, orientation, and form tolerances. The student is expected to:

- (A) evaluate the readings of dial calipers and micrometers to make precise measurements;
- (B) use at least three measures of central tendency to analyze the quality of a product;
- (C) use a manually constructed histogram to analyze a given set of data;
- (D) construct and use a mean-value-and-range chart to determine if a process remains constant over a specified range of time;
- (E) examine the maximum and minimum limits of a dimension given its tolerance; and
- (F) use position tolerance to calculate the location of a hole.

§127.755. Engineering Science (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grades 10-12. Prerequisite: Algebra I and Biology, Chemistry, Integrated Physics and Chemistry (IPC), or Physics. Recommended prerequisite: Geometry. Students must meet the 40% laboratory and fieldwork requirement. This course satisfies a high school science graduation requirement. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, including laboratory and testing services, and research and development services.

(3) Engineering Science is an engineering course designed to expose students to some of the major concepts and technologies that they will encounter in a postsecondary program of study in any engineering domain. Students will have an opportunity to investigate engineering and high-tech careers. In Engineering Science, students will employ science, technology, engineering, and mathematical concepts in the solution of real-world challenge situations. Students will develop problem-solving skills and apply their knowledge of research and design to create solutions to various challenges. Students will also learn how to document their work and communicate their solutions to their peers and members of the professional community.

(4) Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not scientifically testable.

(5) Scientific inquiry is the planned and deliberate investigation of the natural world. Scientific methods of investigation are experimental, descriptive, or comparative. The method chosen should be appropriate to the question being asked.

(6) Scientific decision making is a way of answering questions about the natural world. Students should be able to distinguish

between scientific decision-making methods (scientific methods) and ethical and social decisions that involve science (the application of scientific information).

(7) A system is a collection of cycles, structures, and processes that interact. All systems have basic properties that can be described in space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically tested. Students should analyze a system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(8) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(9) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate knowledge of how to dress appropriately, speak politely, and conduct oneself in a manner appropriate for the profession;

(B) show the ability to cooperate, contribute, and collaborate as a member of a group in an effort to achieve a positive collective outcome;

(C) present written and oral communication in a clear, concise, and effective manner;

(D) demonstrate time-management skills in prioritizing tasks, following schedules, and performing goal-relevant activities in a way that produces efficient results; and

(E) demonstrate punctuality, dependability, reliability, and responsibility in performing assigned tasks as directed.

(2) The student, for at least 40% of instructional time, conducts laboratory and field investigations using safe, environmentally appropriate, and ethical practices. The student is expected to:

(A) demonstrate safe practices during laboratory and field investigations; and

(B) demonstrate an understanding of the use and conservation of resources and the proper disposal or recycling of materials.

(3) The student uses scientific methods and equipment during laboratory and field investigations. The student is expected to:

(A) know the definition of science and understand that it has limitations, as specified in subsection (b)(4) of this section;

(B) know that hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power which have been tested over a wide variety of conditions are incorporated into theories;

(C) know scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers. Unlike hypotheses, scientific theories are well-established and highly-reliable explanations, but they may be subject to change as new areas of science and new technologies are developed;

(D) distinguish between scientific hypotheses and scientific theories;

(E) plan and implement descriptive, comparative, and experimental investigations, including asking questions, formulating testable hypotheses, and selecting equipment and technology;

(F) collect and organize qualitative and quantitative data and make measurements with accuracy and precision using tools such as spreadsheet software, data-collecting probes, computers, standard laboratory glassware, microscopes, various prepared slides, stereoscopes, electronic balances, micropipettors, hand lenses, surgical and imaging equipment, thermometers, hot plates, lab notebooks or journals, timing devices, Petri dishes, lab incubators, dissection equipment, and models, diagrams, or samples of biological specimens or structures;

(G) analyze, evaluate, make inferences, and predict trends from data; and

(H) communicate valid conclusions supported by the data through methods such as lab reports, labeled drawings, graphic organizers, journals, summaries, oral reports, and technology-based reports.

(4) The student uses critical thinking, scientific reasoning, and problem solving to make informed decisions within and outside the classroom. The student is expected to:

(A) in all fields of science, analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, including examining all sides of scientific evidence of those scientific explanations, so as to encourage critical thinking;

(B) communicate and apply scientific information extracted from various sources such as current events, news reports, published journal articles, and marketing materials;

(C) draw inferences based on data related to promotional materials for products and services;

(D) evaluate the impact of scientific research on society and the environment; and

(E) evaluate models according to their limitations in representing objects or events.

(5) The student investigates engineering-related fields and career opportunities. The student is expected to:

(A) differentiate between engineering and engineering technology;

(B) compare the roles or job descriptions for career opportunities in the fields of pure science, engineering, and engineering technology;

(C) identify and differentiate between the different engineering disciplines; and

(D) demonstrate appropriate oral, written, and visual forms of technical communication.

(6) The student demonstrates an understanding of design problems and works individually and as a member of a team to solve design problems. The student is expected to:

(A) solve design problems individually and in a team;

(B) create solutions to existing problems using a design process;

(C) use a design brief to identify problem specifications and establish project constraints;

(D) use communication to achieve a desired goal within a team; and

(E) work as a member of a team to conduct research to develop a knowledge base, stimulate creative ideas, and make informed decisions.

(7) The student understands mechanisms, including simple and compound machines, and performs calculations related to mechanical advantage, drive ratios, work, and power. The student is expected to:

(A) explain the purpose and operation of components, including gears, sprockets, pulley systems, and simple machines;

(B) explain how components, including gears, sprockets, pulley systems, and simple machines, make up mechanisms;

(C) distinguish between the six simple machines and their attributes and components;

(D) measure forces and distances related to a mechanism;

(E) calculate work and power in mechanical systems;

(F) determine experimentally the efficiency of mechanical systems; and

(G) calculate mechanical advantage and drive ratios of mechanisms.

(8) The student understands energy sources, energy conversion, and circuits and performs calculations related to work and power. The student is expected to:

(A) identify and categorize energy sources as nonrenewable, renewable, or inexhaustible;

(B) define and calculate work and power in electrical systems;

(C) calculate power in a system that converts energy from electrical to mechanical; and

(D) define voltage, current, and resistance and calculate each quantity in series, parallel, and combination electrical circuits using Ohm's law.

(9) The student understands system energy requirements and how energy sources can be combined to convert energy into useful forms. The student understands the relationships among material conductivity, resistance, and geometry in order to calculate energy transfer and determine power loss and efficiency. The student is expected to:

(A) explain the purpose of energy management;

(B) evaluate system energy requirements in order to select the proper energy source;

(C) explain how multiple energy sources can be combined to convert energy into useful forms;

(D) describe how hydrogen fuel cells create electricity and heat and how solar cells create electricity;

(E) measure and analyze how thermal energy is transferred via convection, conduction, and radiation;

(F) analyze how thermal energy transfer is affected by conduction, thermal resistance values, convection, and radiation; and

(G) calculate resistance, efficiency, and power transfer in power transmission and distribution applications for various material properties.

(10) The student understands the interaction of forces acting on a body and performs calculations related to structural design. The student is expected to:

(A) illustrate, calculate, and experimentally measure all forces acting upon a given body;

(B) locate the centroid of structural members mathematically or experimentally;

(C) calculate moment of inertia of structural members;

(D) define and calculate static equilibrium;

(E) differentiate between scalar and vector quantities;

(F) identify properties of a vector, including magnitude and direction;

(G) calculate the X and Y components given a vector;

(H) calculate moment forces given a specified axis;

(I) calculate unknown forces using equations of equilibrium; and

(J) calculate external and internal forces in a statically determinate truss using translational and rotational equilibrium equations.

(11) The student understands material properties and the importance of choosing appropriate materials for design. The student is expected to:

(A) conduct investigative non-destructive material property tests on selected common household products;

(B) calculate and measure the weight, volume, mass, density, and surface area of selected common household products; and

(C) identify the manufacturing processes used to create selected common household products.

(12) The student uses material testing to determine a product's function and performance. The student is expected to:

(A) use a design process and mathematical formulas to solve and document design problems;

(B) obtain measurements of material samples such as length, width, height, and mass;

(C) use material testing to determine a product's reliability, safety, and predictability in function;

(D) identify and calculate test sample material properties using a stress-strain curve; and

(E) identify and compare measurements and calculations of sample material properties such as elastic range, proportional limit, modulus of elasticity, elastic limit, resilience, yield point, plastic deformation, ultimate strength, failure, and ductility using stress-strain data points.

(13) The student understands that control systems are designed to provide consistent process control and reliability and uses computer software to create flowcharts and control system operating programs. The student is expected to:

(A) create detailed flowcharts using a computer software application;

(B) create control system operating programs using computer software;

(C) create system control programs that use flowchart logic;

(D) select appropriate input and output devices based on the need of a technological system; and

(E) judge between open- and closed-loop systems in order to select the most appropriate system for a given technological problem.

(14) The student demonstrates an understanding of fluid power systems and calculates values in a variety of systems. The student is expected to:

(A) identify and explain basic components and functions of fluid power devices;

(B) differentiate between pneumatic and hydraulic systems and between hydrodynamic and hydrostatic systems;

(C) use Pascal's Law to calculate values in a fluid power system;

(D) distinguish between gauge pressure and absolute pressure and between temperature and absolute temperature;

(E) calculate values in a pneumatic system using the ideal gas laws; and

(F) calculate flow rate, flow velocity, and mechanical advantage in a hydraulic system.

(15) The student demonstrates an understanding of statistics and applies the concepts to real-world engineering design problems. The student is expected to:

(A) calculate the theoretical probability that an event will occur;

(B) calculate the experimental frequency distribution of an event occurring;

(C) apply the Bernoulli process to events that only have two distinct possible outcomes;

(D) apply AND, OR, and NOT logic to solve complex probability scenarios;

(E) apply Bayes's theorem to calculate the probability of multiple events occurring;

(F) calculate the central tendency of a data array, including mean, median, and mode;

(G) calculate data variation, including range, standard deviation, and variance; and

(H) create a histogram to illustrate frequency distribution.

(16) The student demonstrates an understanding of kinematics in one and two dimensions and applies the concepts to real-world engineering design problems. The student is expected to:

(A) calculate distance, displacement, speed, velocity, and acceleration from data;

(B) calculate experimentally the acceleration due to gravity given data from a free-fall device;

(C) calculate the X and Y components of an object in projectile motion; and

(D) determine the angle needed to launch a projectile a specific range given the projectile's initial velocity.

§127.756. *Biotechnology I (One Credit), Adopted 2015.*

(a) General requirements. This course is recommended for students in Grades 11 and 12. Prerequisite: Biology. Recommended prerequisites: Principles of Biosciences and Chemistry. Students must meet the 40% laboratory and fieldwork requirement. This course satisfies a high school science graduation requirement. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, including laboratory and testing services, and research and development services.

(3) In Biotechnology I, students will apply advanced academic knowledge and skills to the emerging fields of biotechnology such as agricultural, medical, regulatory, and forensics. Students will have the opportunity to use sophisticated laboratory equipment, perform statistical analysis, and practice quality-control techniques. Students will conduct laboratory and field investigations, use scientific methods during investigations, and make informed decisions using critical thinking and scientific problem solving. Students in Biotechnology I will study a variety of topics that include structures and functions of cells, nucleic acids, proteins, and genetics.

(4) Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not scientifically testable.

(5) Scientific inquiry is the planned and deliberate investigation of the natural world. Scientific methods of investigation can be experimental, descriptive, or comparative. The method chosen should be appropriate to the question being asked.

(6) Scientific decision making is a way of answering questions about the natural world. Students should be able to distinguish between scientific decision-making methods (science methods) and ethical and social decisions that involve science (the application of scientific information).

(7) A system is a collection of cycles, structures, and processes that interact. All systems have basic properties that can be described in terms of space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically tested. Students should analyze a system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(8) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(9) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate knowledge of how to dress appropriately, speak politely, and conduct oneself in a manner appropriate for the profession;

(B) show the ability to cooperate, contribute, and collaborate as a member of a group in an effort to achieve a positive collective outcome;

(C) present written and oral communication in a clear, concise, and effective manner;

(D) demonstrate time-management skills in prioritizing tasks, following schedules, and performing goal-relevant activities in a way that produces efficient results; and

(E) demonstrate punctuality, dependability, reliability, and responsibility in performing assigned tasks as directed.

(2) The student, for at least 40% of instructional time, conducts laboratory and field investigations using safe, environmentally appropriate, and ethical practices. These investigations must involve actively obtaining and analyzing data with physical equipment, but may also involve experimentation in a simulated environment as well as field observations that extend beyond the classroom. The student is expected to:

(A) demonstrate safe practices during laboratory and field investigations, including chemical, electrical, and fire safety, and safe handling of live and preserved organisms;

(B) demonstrate an understanding of the use and conservation of resources and the proper disposal or recycling of materials;

(C) demonstrate appropriate safety procedures, guidelines, and chemical hygiene plan;

(D) maintain required safety training, including location and understanding of interpretation of safety data sheets;

(E) comply with federal and state safety regulations as specified by Occupational Safety and Health Administration (OSHA) and other regulatory agencies as appropriate;

(F) identify and obey safety symbols and signs;

(G) maintain clean and well organized work areas;

(H) dispose of equipment, glassware, and biologics according to laboratory policies;

(I) recognize common laboratory hazards;

(J) observe procedures for the safe use of instruments, gas cylinders, and chemicals; and

(K) maintain safety and personal protection equipment.

(3) The student uses scientific methods and equipment during laboratory and field investigations. The student is expected to:

(A) know the definition of science and understand that it has limitations, as specified in subsection (b)(4) of this section;

(B) know that hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power which have been tested over a wide variety of conditions are incorporated into theories;

(C) know that scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers. Unlike hypotheses, scientific theories are well-established and highly-reliable explanations, but they may be subject to change as new areas of science and new technologies are developed;

(D) distinguish between scientific hypotheses and scientific theories;

(E) plan and implement investigative procedures, including asking questions, formulating testable hypotheses, and selecting, handling, and maintaining appropriate equipment and technology;

(F) collect data individually or collaboratively, make measurements with precision and accuracy, record values using appropriate units, and calculate statistically relevant quantities to describe data, including mean, median, and range;

(G) demonstrate the use of course apparatus, equipment, techniques, and procedures;

(H) organize, analyze, evaluate, build models, make inferences, and predict trends from data;

(I) perform calculations using dimensional analysis, significant digits, and scientific notation; and

(J) communicate valid conclusions using essential vocabulary and multiple modes of expression such as lab reports, labeled drawings, graphic organizers, journals, summaries, oral reports, and technology-based reports.

(4) The student uses critical thinking, scientific reasoning, and problem solving to make informed decisions within and outside the classroom. The student is expected to:

(A) in all fields of science, analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, including examining all sides of scientific evidence of those scientific explanations, so as to encourage critical thinking;

(B) communicate and apply scientific information extracted from various sources such as current events, news reports, published journal articles, and marketing materials;

(C) draw inferences based on data related to promotional materials for products and services;

(D) evaluate the impact of research and technology on scientific thought, society, and the environment;

(E) evaluate models according to their limitations in representing biological objects or events;

(F) describe the connection between biotechnology and future careers; and

(G) research and describe the history of biotechnology and contributions of scientists.

(5) The student explores the emerging field of biotechnology. The student is expected to:

(A) define biotechnology and provide examples of biotechnology products such as recombinant proteins, fermented foods, biopharmaceuticals, and genetically modified foods;

(B) apply scientific processes and concepts outlined in the Texas essential knowledge and skills (TEKS) for Biology relevant to biotechnology, including all types of cells; cellular structures and functions; and viruses;

(C) explore applications of bioinformatics such as deoxyribonucleic acid (DNA) barcoding, phylogenetic relationships, and the use of online databases;

(D) research career opportunities in fields such as molecular, forensic, medical, regulatory, and agricultural biotechnology;

(E) research the history of biotechnology and contributions of scientists;

(F) define bioethics and research applications of bioethics;

(G) research applications in agricultural biotechnology such as tissue culturing, genetically modified foods, plant propagation, and hydroponics; and

(H) research applications in medical biotechnology such as vaccines, stem cells, microarrays, and pharmaceutical production.

(6) The student summarizes biotechnology laboratory procedures and their applications in the biotechnology industry. The student is expected to:

(A) identify the major sectors of the biotechnology industry;

(B) categorize the biotechnology laboratory procedures included in each sector; and

(C) compare the different applications used in biotechnology laboratory procedures of each sector.

(7) The student understands the role of genetics in the biotechnology industry. The student is expected to:

(A) explain terms related to molecular biology including nucleic acids, nitrogen bases, amino acids, transcription, translation, polymerase, and protein synthesis;

(B) describe the structure and function of deoxyribonucleic acid (DNA) and ribonucleic acid (RNA) in cells and viruses;

(C) compare and contrast the nitrogen bases of DNA and RNA;

(D) explain how nucleotides join together to form a DNA double helix;

(E) describe the DNA replication process in eukaryotic and prokaryotic cells;

(F) illustrate the process of protein synthesis; and

(G) describe the structure and function of proteins, including 3D folding, enzymes, and antibodies.

(8) The student analyzes the importance of recombinant DNA technology and genetic engineering. The student is expected to:

(A) describe the fundamental steps in recombinant DNA technology;

(B) explain how recombinant DNA technology is used to clone genes and create recombinant proteins;

(C) explain the role of tissue cultures to genetic modification procedures;

(D) describe plant- and animal-tissue culture procedures;

(E) compare and contrast proper growing conditions for plant and animal tissue cultures;

(F) explain the role of restriction enzymes;

(G) distinguish among vectors commonly used in biotechnology for DNA insertion, including plasmids, retroviruses, and bacteriophages; and

(H) explain the steps and components of the polymerase chain reaction.

(9) The student examines federal, state, local, and industry regulations as related to biotechnology. The student is expected to:

(A) discuss the relationship between the local, state, and federal agencies responsible for regulation of the biotechnology industry; and

(B) analyze policies and procedures used in the biotechnology industry such as quality assurance, standard operating procedures (SOPs), *Good Manufacturing Practices* (GMPs), and International Organization for Standardization (ISO) quality systems.

(10) The student performs standard biotechnology laboratory procedures. The student is expected to:

(A) identify and operate laboratory equipment, including a microscope, thermocycler, hood, pH meter, hot plate stirrer, balance, mixers, autoclave, power supply, micropipette, centrifuge, and electrophoresis unit;

(B) practice measuring volumes and weights to industry standards;

(C) analyze data and perform calculations and statistical analysis as it relates to biotechnology laboratory experiments;

(D) demonstrate proficiency pipetting techniques;

(E) identify microorganisms using staining methods such as the Gram stain, methylene-blue stain, and acid-fast staining;

(F) document laboratory results; and

(G) prepare a restriction digest and analyze results using gel electrophoresis.

(11) The student prepares solutions and reagents for the biotechnology laboratory. The student is expected to:

(A) demonstrate techniques for establishing and maintaining a sterile work area;

(B) prepare, dispense, and monitor physical properties of stock reagents, buffers, media, and solutions;

(C) calculate and prepare a dilution series; and

(D) determine optimum conditions of reagents for experimentation.

(12) The student performs advanced biotechnology laboratory procedures. The student is expected to:

(A) explain the importance of media components to the outcome of cultures;

(B) isolate, maintain, and store microbial cultures safely;

(C) prepare seed inoculum;

(D) perform plating techniques such as the Kirby-Bauer method;

(E) analyze proteins using techniques such as enzyme-linked immunosorbent assay (ELISA), spectrophotometry, and sodium dodecyl sulfate polyacrylamide gel electrophoresis (SDS-PAGE);

(F) isolate a specific protein from a biological sample using chromatography;

(G) isolate nucleic acids and interpret gel electrophoresis results;

(H) perform a bacterial transformation and analyze gene expression; and

(I) amplify a DNA sequence using the polymerase chain reactions.

(13) The student conducts quality-control analysis while performing biotechnology laboratory procedures. The student is expected to:

(A) perform validation testing on laboratory reagents and equipment; and

(B) analyze data and perform calculations and statistical analysis on results of quality-control samples such as trending of data.

§127.757. *Biotechnology II (One Credit), Adopted 2015.*

(a) General requirements. This course is recommended for students in Grades 11 and 12. Prerequisites: Biotechnology I and Chemistry. Students must meet the 40% laboratory and fieldwork requirement. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, including laboratory and testing services, and research and development services.

(3) Biotechnology II has the components of any rigorous scientific or bioengineering program of study from the problem identification, investigation design, data collection, data analysis, and formulation and presentation of the conclusions. This course applies the standard skills mastered in Biotechnology I and includes assay design. After taking this course, students should be prepared for entry-level lab technician jobs.

(4) Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not scientifically testable.

(5) Scientific inquiry is the planned and deliberate investigation of the natural world. Scientific methods of investigation are experimental, descriptive, or comparative. The method chosen should be appropriate to the question being asked.

(6) Scientific decision making is a way of answering questions about the natural world. Students should be able to distinguish between scientific decision-making methods (scientific methods) and ethical and social decisions that involve science (the application of scientific information).

(7) A system is a collection of cycles, structures, and processes that interact. All systems have basic properties that can be described in space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically tested. Students should analyze a system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(8) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(9) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate knowledge of how to dress appropriately, speak politely, and conduct oneself in a manner appropriate for the profession;

(B) show the ability to cooperate, contribute, and collaborate as a member of a group in an effort to achieve a positive collective outcome;

(C) present written and oral communication in a clear, concise, and effective manner;

(D) demonstrate time-management skills in prioritizing tasks, following schedules, and performing goal-relevant activities in a way that produces efficient results; and

(E) demonstrate punctuality, dependability, reliability, and responsibility in performing assigned tasks as directed.

(2) The student, for at least 40% of instructional time, conducts laboratory and field investigations using safe, environmentally appropriate, and ethical practices. These investigations must involve actively obtaining and analyzing data with physical equipment, but may also involve experimentation in a simulated environment as well as field observations that extend beyond the classroom. The student is expected to:

(A) demonstrate safe practices during laboratory and field investigations; and

(B) demonstrate an understanding of the use and conservation of resources and the proper disposal or recycling of materials.

(3) The student uses scientific methods and equipment during laboratory and field investigations. The student is expected to:

(A) know the definition of science and understand that it has limitations, as specified in subsection (b)(4) of this section;

(B) know that scientific hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power which have been tested over a wide variety of conditions are incorporated into theories;

(C) know that scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers. Unlike hypotheses, scientific theories are well-established and highly-reliable explanations, but may be subject to change as new areas of science and new technologies are developed;

(D) distinguish between scientific hypotheses and scientific theories;

(E) plan and implement investigative procedures, including making observations, asking well-defined questions, formulating testable hypotheses, identifying variables, selecting appropriate equipment and technology, and evaluating numerical answers for reasonableness;

(F) collect and organize qualitative and quantitative data and make measurements with accuracy and precision using tools such as calculators, spreadsheet software, data-collecting probes, computers, standard laboratory glassware, microscopes, various prepared slides, stereoscopes, metric rulers, electronic balances, gel electrophoresis apparatuses, micropipettors, hand lenses, Celsius thermometers, hot plates, lab notebooks or journals, timing devices, cameras, and meter sticks;

(G) analyze, evaluate, make inferences, and predict trends from data;

(H) identify and quantify causes and effects of uncertainties in measured data;

(I) organize and evaluate data and make inferences from data, including the use of tables, charts, and graphs; and

(J) communicate valid conclusions supported by the data through various methods such as lab reports, labeled drawings, graphic organizers, journals, summaries, oral reports, and technology-based reports.

(4) The student uses critical thinking, scientific reasoning, and problem solving to make informed decisions within and outside the classroom. The student is expected to:

(A) in all fields of science, analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, including examining all sides of scientific evidence of those scientific explanations, so as to encourage critical thinking;

(B) communicate and apply scientific information extracted from various sources such as current events, news reports, published journal articles, and marketing materials;

(C) draw inferences based on data related to promotional materials for products and services;

(D) explain the impacts of the scientific contributions of a variety of historical and contemporary scientists on scientific thought and society;

(E) evaluate models according to their limitations in representing biological objects or events;

(F) research and describe the connections between science and future careers; and

(G) express and interpret relationships symbolically to make predictions and solve problems mathematically, including problems requiring proportional reasoning and graphical vector addition.

(5) The student formulates hypotheses to guide investigation and data collection. The student is expected to:

(A) perform background research with respect to an investigative problem; and

(B) examine hypotheses generated to guide a research process by evaluating the merits and feasibility of the hypotheses.

(6) The student analyzes published research. The student is expected to:

(A) identify the scientific methodology used by a researcher;

(B) examine a prescribed research design and identify dependent and independent variables;

(C) evaluate a prescribed research design to determine the purpose for each of the procedures performed; and

(D) determine if the data and conclusion support the hypothesis.

(7) The student develops and implements appropriate investigative designs. The student is expected to:

(A) interact and collaborate with scientific researchers or other members of the scientific community to complete a research project;

(B) identify and manipulate relevant variables within research situations;

(C) use a control in an experimental process; and

(D) design procedures to test hypotheses.

(8) The student collects, organizes, and evaluates qualitative and quantitative data obtained through experimentation. The student is expected to:

(A) differentiate between qualitative and quantitative data;

(B) acquire, manipulate, and analyze data using appropriate equipment and technology, following the rules of significant digits;

(C) identify sources of random error and systematic error and differentiate between both types of error;

(D) report error of a set of measured data in various formats, including standard deviation and percent error;

(E) construct data tables to organize information collected in an experiment;

(F) record observations as they occur within an investigation; and

(G) evaluate data using statistical methods to recognize patterns, trends, and proportional relationships.

(9) The student knows how to synthesize valid conclusions from qualitative and quantitative data. The student is expected to:

(A) synthesize and justify conclusions supported by research data;

(B) consider and communicate alternative explanations for observations and results; and

(C) identify limitations within the research process and provide recommendations for additional research.

(10) The student communicates conclusions clearly and concisely to an audience of professionals. The student is expected to:

(A) communicate experimental results clearly and effectively, including oral presentation of original findings of a research project to an audience of peers and professionals; and

(B) suggest alternative explanations from observations or trends evident within the data or from prompts provided by a review panel.

(11) The student explores assay design in the field of biotechnology. The student is expected to:

(A) define assay requirements and optimizations;

(B) perform statistical analysis on assay design and experimental data such as linearity, system sustainability, limit of detection, and R2 values;

(C) determine an unknown protein concentration using techniques such as a standard curve and a spectrophotometer; and

(D) use a colorimetric assay to evaluate enzyme kinetics.

(12) The student explores protein expression systems in the field of biotechnology. The student is expected to:

(A) perform a recombinant protein production such as *green fluorescent protein* (GFP);

(B) isolate a protein from a biological sample using hydrophobic interaction column chromatography; and

(C) analyze protein purification methods using spectrophotometry, sodium dodecyl sulfate polyacrylamide gel electrophoresis (SDS-PAGE) and Western blotting.

(13) The student conducts quality-control analysis while performing biotechnology laboratory procedures. The student is expected to:

(A) perform validation testing on laboratory reagents and equipment;

(B) analyze data and perform calculations and statistical analysis on results of quality-control samples such as trending of data; and

(C) apply and create industry protocols such as standard operating procedures (SOPs) and validation forms.

(14) The student prepares solutions and reagents for the biotechnology laboratory. The student is expected to:

(A) demonstrate techniques for establishing and maintaining a sterile work area;

(B) prepare, dispense, and monitor physical properties of stock reagents, buffers, media, and solutions;

(C) calculate and prepare a dilution series;

(D) determine acceptability and optimum conditions of reagents for experimentation; and

(E) prepare multi-component solutions of given molarity or concentration and volume.

§127.758. *Scientific Research and Design (One Credit), Adopted 2015.*

(a) General requirements. This course is recommended for students in Grades 11 and 12. Prerequisite: Biology, Chemistry, Integrated Physics and Chemistry (IPC), or Physics. Students must meet the 40% laboratory and fieldwork requirement. This course satisfies a high school science graduation requirement. Students shall be awarded one credit for successful completion of this course. Students may take this course with different course content for a maximum of three credits.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, including laboratory and testing services, and research and development services.

(3) Scientific Research and Design is a broad-based course designed to allow districts and schools considerable flexibility to develop local curriculum to supplement any program of study or coherent sequence. The course has the components of any rigorous scientific or engineering program of study from the problem identification, investigation design, data collection, data analysis, formulation, and presentation of the conclusions. All of these components are integrated with the career and technical education emphasis of helping students gain entry-level employment in high-skill, high-wage jobs and/or continue their education.

(4) Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not scientifically testable.

(5) Scientific inquiry is the planned and deliberate investigation of the natural world. Scientific methods of investigation are experimental, descriptive, or comparative. The method chosen should be appropriate to the question being asked.

(6) Scientific decision making is a way of answering questions about the natural world. Students should be able to distinguish between scientific decision-making methods (scientific methods) and ethical and social decisions that involve science (the application of scientific information).

(7) A system is a collection of cycles, structures, and processes that interact. All systems have basic properties that can be described in space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically tested. Students should analyze a system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(8) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(9) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate knowledge of how to dress appropriately, speak politely, and conduct oneself in a manner appropriate for the profession;

(B) show the ability to cooperate, contribute, and collaborate as a member of a group in an effort to achieve a positive collective outcome;

(C) present written and oral communication in a clear, concise, and effective manner;

(D) demonstrate time-management skills in prioritizing tasks, following schedules, and performing goal-relevant activities in a way that produces efficient results; and

(E) demonstrate punctuality, dependability, reliability, and responsibility in performing assigned tasks as directed.

(2) The student, for at least 40% of instructional time, conducts laboratory and field investigations using safe, environmentally appropriate, and ethical practices. The student is expected to:

(A) demonstrate safe practices during laboratory and field investigations; and

(B) demonstrate an understanding of the use and conservation of resources and the proper disposal or recycling of materials.

(3) The student uses scientific methods and equipment during laboratory and field investigations. The student is expected to:

(A) know the definition of science and understand that it has limitations, as specified in subsection (b)(4) of this section;

(B) know that scientific hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power which have been tested over a wide variety of conditions are incorporated into theories;

(C) know that scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers. Unlike hypotheses, scientific theories are well-established and highly reliable explanations, but may be subject to change as new areas of science and new technologies are developed;

(D) distinguish between scientific hypotheses and scientific theories;

(E) plan and implement descriptive, comparative, and experimental investigative procedures, including making observations, asking well-defined questions, formulating testable hypotheses, identifying variables, selecting appropriate equipment and technology, and evaluating numerical answers for reasonableness;

(F) collect and organize qualitative and quantitative data and make measurements with accuracy and precision using tools such as calculators, spreadsheet software, data-collecting probes, computers, standard laboratory glassware, microscopes, various prepared slides, stereoscopes, metric rulers, electronic balances, gel electrophoresis apparatuses, micropipettors, hand lenses, Celsius thermometers, hot plates, lab notebooks or journals, timing devices, cameras, and meter sticks;

(G) analyze, evaluate, make inferences, and predict trends from data;

(H) identify and quantify causes and effects of uncertainties in measured data;

(I) organize and evaluate data and make inferences from data, including the use of tables, charts, and graphs; and

(J) communicate valid conclusions supported by the data through methods such as lab reports, labeled drawings, graphic organizers, journals, summaries, oral reports, and technology-based reports.

(4) The student uses critical thinking, scientific reasoning, and problem solving to make informed decisions within and outside the classroom. The student is expected to:

(A) in all fields of science, analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, including examining all sides of scientific evidence of those scientific explanations, so as to encourage critical thinking;

(B) communicate and apply scientific information extracted from various sources such as current events, news reports, published journal articles, and marketing materials;

(C) draw inferences based on data related to promotional materials for products and services;

(D) explain the impacts of the scientific contributions of a variety of historical and contemporary scientists on scientific thought and society;

(E) evaluate models according to their limitations in representing biological objects or events;

(F) research and describe the connections between science and future careers; and

(G) express and interpret relationships symbolically to make predictions and solve problems mathematically, including problems requiring proportional reasoning and graphical vector addition.

(5) The student formulates hypotheses to guide experimentation and data collection. The student is expected to:

(A) perform background research with respect to an investigative problem; and

(B) examine hypotheses generated to guide a research process by evaluating the merits and feasibility of the hypotheses.

(6) The student analyzes published research. The student is expected to:

(A) identify the scientific methodology used by a researcher;

(B) examine a prescribed research design and identify dependent and independent variables;

(C) evaluate a prescribed research design to determine the purpose for each of the procedures performed; and

(D) compare the relationship of the hypothesis to the conclusion.

(7) The student develops and implements investigative designs. The student is expected to:

(A) interact and collaborate with scientific researchers or other members of the scientific community to complete a research project;

(B) identify and manipulate relevant variables within research situations;

(C) use a control in an experimental process; and

(D) design procedures to test hypotheses.

(8) The student collects, organizes, and evaluates qualitative and quantitative data obtained through experimentation. The student is expected to:

(A) differentiate between qualitative and quantitative data;

(B) record observations as they occur within an investigation;

(C) acquire, manipulate, and analyze data using appropriate equipment and technology, following the rules of significant digits;

(D) identify sources of random error and systematic error and differentiate between both types of error;

(E) report error of a set of measured data in various formats, including standard deviation and percent error;

(F) construct data tables to organize information collected in an experiment; and

(G) evaluate data using statistical methods to recognize patterns, trends, and proportional relationships.

(9) The student knows how to synthesize valid conclusions from qualitative and quantitative data. The student is expected to:

(A) synthesize and justify conclusions supported by research data;

(B) consider and communicate alternative explanations for observations and results; and

(C) identify limitations within the research process and provide recommendations for additional research.

(10) The student communicates conclusions clearly and concisely to an audience of professionals. The student is expected to:

(A) construct charts, tables, and graphs using technology in order to facilitate data analysis and to communicate experimental results clearly and effectively, including oral presentation of original findings of a research project, to an audience of peers and professionals; and

(B) suggest alternative explanations from observations or trends evident within the data or from prompts provided by a review panel.

§127.759. *Practicum in Science, Technology, Engineering, and Mathematics (Two Credits), Adopted 2015.*

(a) General requirements. This course is recommended for students in Grade 12. Prerequisites: Algebra I and Geometry. Recommended prerequisites: two Science, Technology, Engineering, and Mathematics (STEM) Career Cluster credits. The practicum course is a paid or unpaid capstone experience for students participating in a coherent sequence of career and technical education courses in the STEM Career Cluster. Students shall be awarded two credits for successful completion of this course. A student may repeat this course once for credit provided that the student is experiencing different aspects of the industry and demonstrating proficiency in additional and more advanced knowledge and skills.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant

technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The STEM Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services such as physical science, social science, engineering, including laboratory and testing services, and research and development services.

(3) Practicum in STEM is designed to give students supervised practical application of previously studied knowledge and skills. Practicum experiences can occur in a variety of locations appropriate to the nature and level of experience.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate knowledge of how to dress appropriately, speak politely, and conduct oneself in a manner appropriate for the profession;

(B) show the ability to cooperate, contribute, collaborate, and accept constructive criticism as a member of a group in an effort to achieve a positive collective outcome;

(C) present written and oral communication in a clear, concise, and effective manner;

(D) demonstrate time-management skills in prioritizing tasks, following schedules, and performing goal-relevant activities in a way that produces efficient results;

(E) demonstrate punctuality, dependability, reliability, and responsibility and adhere to policies and procedures in performing assigned tasks as directed;

(F) apply ethical reasoning to a variety of situations in order to make ethical decisions;

(G) complete tasks with the highest standards to ensure quality products and services; and

(H) comply with practicum setting safety rules and regulations to maintain safe and healthy working conditions and environments.

(2) The student applies concepts of critical thinking and problem solving. The student is expected to:

(A) analyze elements of a problem to develop creative and innovative solutions;

(B) analyze information to determine value to the problem-solving task;

(C) compare and contrast alternatives using a variety of problem-solving and critical-thinking skills; and

(D) conduct technical research to gather information necessary for decision making.

(3) The student demonstrates leadership and teamwork skills in collaborating with others to accomplish goals and objectives. The student is expected to:

(A) analyze leadership in relation to trust, positive attitude, integrity, and willingness to accept key responsibilities in a work situation;

(B) demonstrate teamwork processes that promote team building, consensus, continuous improvement, respect for the opinions of others, cooperation, adaptability, and conflict resolution;

(C) demonstrate responsibility for shared group and individual work tasks;

(D) use positive interpersonal skills to establish and maintain effective working relationships in order to accomplish objectives and tasks;

(E) negotiate effectively to arrive at decisions; and

(F) demonstrate respect for individuals, including those from different cultures, genders, and backgrounds and diversity.

(4) The student demonstrates oral and written communication skills in creating, expressing, and interpreting information and ideas, including technical terminology and information. The student is expected to:

(A) demonstrate the use of content, technical concepts, and vocabulary when analyzing information and following directions;

(B) employ verbal skills when obtaining and conveying information;

(C) use informational texts, scientific websites, and technical materials to review and apply information sources for occupational tasks;

(D) evaluate the reliability of information from informational texts, scientific websites, and technical materials and resources;

(E) interpret verbal and nonverbal cues and behaviors to enhance communication;

(F) apply active listening skills to obtain and clarify information; and

(G) use academic skills to facilitate effective written and oral communication.

(5) The student demonstrates technical knowledge and skills required to pursue a career in a science, technology, engineering, and mathematics career field. The student is expected to:

(A) develop advanced technical knowledge and skills related to the student's occupational objective; and

(B) evaluate strengths and weaknesses in technical skill proficiency.

(6) The student documents technical knowledge and skills. The student is expected to:

(A) update a professional portfolio to include information such as:

(i) attainment of technical skill competencies;

(ii) licensures or certifications;

(iii) recognitions, awards, and scholarships;

(iv) extended learning experiences such as community service and active participation in career and technical student organizations and professional organizations;

(v) abstract of key points of the practicum;

(vi) resume;

(vii) samples of work; and

(viii) evaluation from the practicum supervisor; and

(B) present the portfolio to interested stakeholders.

§127.760. Extended Practicum in Science, Technology, Engineering, and Mathematics (One Credit), Adopted 2015.

(a) General requirements. This course is recommended for students in Grade 12. The practicum course is a paid or unpaid capstone experience for students participating in a coherent sequence of career and technical education courses in the Science, Technology, Engineering, and Mathematics (STEM) Career Cluster. Prerequisites: Algebra I and Geometry. Recommended prerequisites: two credits from the courses in the STEM Career Cluster. Corequisite: Practicum in Science, Technology, Engineering, and Mathematics. This course must be taken concurrently with Practicum in Science, Technology, Engineering, and Mathematics and may not be taken as a stand-alone course. Students shall be awarded one credit for successful completion of this course. A student may repeat this course once for credit provided that the student is experiencing different aspects of the industry and demonstrating proficiency in additional and more advanced knowledge and skills.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The STEM Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, including laboratory and testing services, and research and development services.

(3) Extended Practicum in STEM is designed to give students supervised practical application of previously studied knowledge and skills. Practicum experiences can occur in a variety of locations appropriate to the nature and level of experience.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) participate in a paid or unpaid, laboratory- or work-based application of previously studied knowledge and skills related to STEM;

(B) participate in training, education, or preparation for licensure, certification, or other relevant credentials to prepare for employment;

(C) demonstrate professional standards and personal qualities needed to be employable such as self-discipline, positive

attitude, integrity, leadership, appreciation for diversity, customer service, work ethic, and adaptability with increased fluency;

(D) employ teamwork and conflict-management skills with increased fluency to achieve collective goals; and

(E) employ planning and time-management skills and tools such as prioritizing tasks, following schedules, and performing goal-relevant activities with increased fluency to enhance results and complete work tasks.

(2) The student applies professional communications strategies. The student is expected to:

(A) demonstrate verbal and non-verbal communication consistently in a clear, concise, and effective manner;

(B) apply active listening skills to obtain and clarify information;

(C) create and deliver formal and informal presentations effectively;

(D) analyze, interpret, and effectively communicate information, data, and observations; and

(E) observe and interpret verbal and nonverbal cues and behaviors to enhance communication.

(3) The student implements advanced problem-solving methods. The student is expected to:

(A) employ critical-thinking skills with increased fluency both independently and in groups to solve problems and make decisions;

(B) analyze elements of problems to develop creative and innovative solutions;

(C) apply decision-making techniques with increased fluency to the selection of technological solutions; and

(D) conduct technical research to gather information necessary for decision making.

(4) The student understands and applies proper safety and security techniques in the workplace. The student is expected to understand and consistently follow workplace safety rules and regulations.

(5) The student understands the professional, ethical, and legal responsibilities in STEM-related fields. The student is expected to:

(A) demonstrate a positive, productive work ethic by performing assigned tasks as directed;

(B) apply ethical reasoning to a variety of situations in order to make ethical decisions; and

(C) comply with all applicable rules, laws, and regulations in a consistent manner.

(6) The student participates in a supervised STEM experience. The student is expected to:

(A) conduct, document, and evaluate learning activities in a supervised STEM experience;

(B) develop advanced technical knowledge and skills related to the student's occupational objective;

(C) evaluate strengths and weaknesses in technical skill proficiency; and

(D) collect representative work samples.

§127.761. Fundamentals of Computer Science (One Credit).

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course is recommended for students in Grades 9-12.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, including laboratory and testing services, and research and development services.

(3) Fundamentals of Computer Science is intended as a first course for those students just beginning the study of computer science. Students will learn about the computing tools that are used every day. Students will foster their creativity and innovation through opportunities to design, implement, and present solutions to real-world problems. Students will collaborate and use computer science concepts to access, analyze, and evaluate information needed to solve problems. Students will learn the problem-solving and reasoning skills that are the foundation of computer science. By using computer science knowledge and skills that support the work of individuals and groups in solving problems, students will select the technology appropriate for the task, synthesize knowledge, create solutions, and evaluate the results. Students will learn digital citizenship by researching current laws and regulations and by practicing integrity and respect. Students will gain an understanding of the principles of computer science through the study of technology operations and concepts. The six strands include creativity and innovation; communication and collaboration; research and information fluency; critical thinking; problem solving, and decision making; digital citizenship; and technology operations and concepts.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student develops products and generates new understanding by extending existing knowledge. The student is expected to:

(A) investigate and explore various career opportunities within the computer science field and report findings through various media;

(B) create and publish interactive stories, games, and animations;

(C) create and publish interactive animations;

(D) create algorithms for the solution of various problems;

(E) create web pages using a mark-up language;

(F) use the Internet to create and publish solutions; and

(G) design creative and effective user interfaces.

(2) Communication and collaboration. The student communicates and collaborates with peers to contribute to his or her own learning and the learning of others. The student is expected to:

(A) seek and respond to advice from peers and professionals in evaluating problem solutions;

(B) debug and solve problems using reference materials and effective strategies; and

(C) publish information in a variety of ways such as print, monitor display, web pages, and video.

(3) Research and information fluency. The student locates, analyzes, processes, and organizes data. The student is expected to:

(A) construct appropriate electronic search strategies; and

(B) use a variety of resources, including other subject areas, together with various productivity tools to gather authentic data as a basis for individual and group programming projects.

(4) Critical thinking, problem solving, and decision making. The student uses appropriate strategies to analyze problems and design algorithms. The student is expected to:

(A) demonstrate the ability to insert applets into web pages;

(B) find, download, and insert scripting code into web pages to enhance interactivity;

(C) understand binary representation of data in computer systems, perform conversions between decimal and binary number systems, and count in binary number systems;

(D) read and define a problem's description, purpose, and goals;

(E) demonstrate coding proficiency in a contemporary programming language by developing solutions that create stories, games, and animations;

(F) choose, identify, and use the appropriate data type to properly represent data in a problem solution;

(G) demonstrate an understanding of and use variables within a programmed story, game, or animation;

(H) demonstrate proficiency in the use of arithmetic operators to create mathematical expressions, including addition, subtraction, multiplication, real division, integer division, and modulus division;

(I) demonstrate an understanding of and use sequence within a programmed story, game, or animation;

(J) demonstrate an understanding of and use conditional statements within a programmed story, game, or animation;

(K) demonstrate an understanding of and use iteration within a programmed story, game, or animation;

(L) create an interactive story, game, or animation;

(M) use random numbers within a programmed story, game, or animation; and

(N) test program solutions by investigating valid and invalid data.

(5) Digital citizenship. The student explores and understands safety, legal, cultural, and societal issues relating to the use of technology and information. The student is expected to:

(A) discuss copyright laws/issues and model ethical acquisition of digital information by citing sources using established methods;

(B) demonstrate proper digital etiquette and knowledge of acceptable use policies when using networks, especially resources on the Internet and on intranets;

(C) investigate measures such as passwords or virus detection/prevention to protect computer systems and databases from unauthorized use and tampering;

(D) understand the safety risks associated with the use of social networking sites;

(E) discuss the impact of computing and computing related advancements on society; and

(F) determine the reliability of information available through electronic media.

(6) Technology operations and concepts. The student understands technology concepts, systems, and operations as they apply to computer science. The student is expected to:

(A) demonstrate knowledge of the basic computer components, including a central processing unit (CPU), storage, and input/output devices;

(B) use operating system tools, including appropriate file management;

(C) demonstrate knowledge and appropriate use of different operating systems;

(D) demonstrate knowledge and understanding of basic network connectivity;

(E) describe, compare, and contrast the differences between an application and an operating system; and

(F) compare, contrast, and appropriately use various input, processing, output, and primary/secondary storage devices.

§127.762. Computer Science I (One Credit).

(a) General requirements. Students shall be awarded one credit for successful completion of this course. Prerequisite: Algebra I. This course is recommended for students in Grades 9-12.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, including laboratory and testing services, and research and development services.

(3) Computer Science I will foster students' creativity and innovation by presenting opportunities to design, implement, and present meaningful programs through a variety of media. Students will collaborate with one another, their instructor, and various electronic communities to solve the problems presented throughout the course. Through data analysis, students will identify task requirements, plan search strategies, and use computer science concepts to access, analyze, and evaluate information needed to solve problems. By using computer science knowledge and skills that support the work of individuals and groups in solving problems, students will

select the technology appropriate for the task, synthesize knowledge, create solutions, and evaluate the results. Students will learn digital citizenship by researching current laws and regulations and by practicing integrity and respect. Students will gain an understanding of the principles of computer science through the study of technology operations, systems, and concepts. The six strands include creativity and innovation; communication and collaboration; research and information fluency; critical thinking; problem solving, and decision making; digital citizenship; and technology operations and concepts.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student develops products and generates new understandings by extending existing knowledge. The student is expected to:

(A) participate with electronic communities as a learner, initiator, contributor, and teacher/mentor;

(B) extend the learning environment beyond the school walls with digital products created to increase teaching and learning in the other subject areas; and

(C) participate in relevant, meaningful activities in the larger community and society to create electronic projects.

(2) Communication and collaboration. The student communicates and collaborates with peers to contribute to his or her own learning and the learning of others. The student is expected to:

(A) create and properly display meaningful output;

(B) create interactive console display interfaces, with appropriate user prompts, to acquire data from a user;

(C) use Graphical User Interfaces (GUIs) to create interactive interfaces to acquire data from a user and display program results;

(D) write programs with proper programming style to enhance the readability and functionality of the code by using meaningful descriptive identifiers, internal comments, white space, spacing, indentation, and a standardized program style;

(E) improve numeric display by optimizing data visualization;

(F) display simple vector graphics using lines, circles, and rectangles;

(G) display simple bitmap images; and

(H) seek and respond to advice from peers and professionals in evaluating quality and accuracy.

(3) Research and information fluency. The student locates, analyzes, processes, and organizes data. The student is expected to:

(A) use a variety of resources, including foundation and enrichment curricula, to gather authentic data as a basis for individual and group programming projects; and

(B) use various productivity tools to gather authentic data as a basis for individual and group programming projects.

(4) Critical thinking, problem solving, and decision making. The student uses appropriate strategies to analyze problems and design algorithms. The student is expected to:

(A) use program design problem-solving strategies to create program solutions;

(B) define and specify the purpose and goals of solving a problem;

(C) identify the subtasks needed to solve a problem;

(D) identify the data types and objects needed to solve a problem;

(E) identify reusable components from existing code;

(F) design a solution to a problem;

(G) code a solution from a program design;

(H) identify and debug errors;

(I) test program solutions with appropriate valid and invalid test data for correctness;

(J) debug and solve problems using error messages, reference materials, language documentation, and effective strategies;

(K) explore common algorithms, including finding greatest common divisor, finding the biggest number out of three, finding primes, making change, and finding the average;

(L) analyze and modify existing code to improve the underlying algorithm;

(M) create program solutions that exhibit robust behavior by understanding, avoiding, and preventing runtime errors, including division by zero and type mismatch;

(N) select the most appropriate algorithm for a defined problem;

(O) demonstrate proficiency in the use of the arithmetic operators to create mathematical expressions, including addition, subtraction, multiplication, real division, integer division, and modulus division;

(P) create program solutions to problems using available mathematics libraries, including absolute value, round, power, square, and square root;

(Q) develop program solutions that use assignment;

(R) develop sequential algorithms to solve non-branching and non-iterative problems;

(S) develop algorithms to decision-making problems using branching control statements;

(T) develop iterative algorithms and code programs to solve practical problems;

(U) demonstrate proficiency in the use of the relational operators;

(V) demonstrate proficiency in the use of the logical operators; and

(W) generate and use random numbers.

(5) Digital citizenship. The student explores and understands safety, legal, cultural, and societal issues relating to the use of technology and information. The student is expected to:

(A) discuss intellectual property, privacy, sharing of information, copyright laws, and software licensing agreements;

(B) model ethical acquisition and use of digital information;

(C) demonstrate proper digital etiquette, responsible use of software, and knowledge of acceptable use policies;

(D) investigate measures, including passwords and virus detection/prevention, to protect computer systems and databases from unauthorized use and tampering; and

(E) investigate how technology has changed and the social and ethical ramifications of computer usage.

(6) Technology operations, systems, and concepts. The student understands technology concepts, systems, and operations as they apply to computer science. The student is expected to:

(A) compare and contrast types of operating systems, software applications, and programming languages;

(B) demonstrate knowledge of major hardware components, including primary and secondary memory, a central processing unit (CPU), and peripherals;

(C) differentiate among current programming languages, discuss the use of those languages in other fields of study, and demonstrate knowledge of specific programming terminology and concepts;

(D) differentiate between a high-level compiled language and an interpreted language;

(E) understand concepts of object-oriented design;

(F) use local and global scope access variable declarations;

(G) encapsulate data and associated subroutines into an abstract data type;

(H) create subroutines that do not return values with and without the use of arguments and parameters;

(I) create subroutines that return typed values with and without the use of arguments and parameters;

(J) understand and identify the data-binding process between arguments and parameters;

(K) compare objects using reference values and a comparison routine;

(L) understand the binary representation of numeric and nonnumeric data in computer systems;

(M) understand the finite limits of numeric data;

(N) perform numerical conversions between the decimal and binary number systems and count in the binary number system;

(O) choose, identify, and use the appropriate data types for integer, real, and Boolean data when writing program solutions;

(P) demonstrate an understanding of the concept of a variable;

(Q) demonstrate an understanding of and use reference variables for objects;

(R) demonstrate an understanding of how to represent and manipulate text data, including concatenation and other string functions;

(S) demonstrate an understanding of the concept of scope;

(T) identify and use the structured data type of one-dimensional arrays to traverse, search, and modify data;

(U) choose, identify, and use the appropriate data type and structure to properly represent the data in a program problem solution; and

(V) compare and contrast strongly typed and un-typed programming languages.

§127.763. Computer Science II (One Credit).

(a) General requirements. Students shall be awarded one credit for successful completion of this course. Prerequisite: Algebra I and either Computer Science I or Fundamentals of Computer Science. This course is recommended for students in Grades 11 and 12.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, including laboratory and testing services, and research and development services.

(3) Computer Science II will foster students' creativity and innovation by presenting opportunities to design, implement, and present meaningful programs through a variety of media. Students will collaborate with one another, their instructor, and various electronic communities to solve the problems presented throughout the course. Through data analysis, students will identify task requirements, plan search strategies, and use computer science concepts to access, analyze, and evaluate information needed to solve problems. By using computer science knowledge and skills that support the work of individuals and groups in solving problems, students will select the technology appropriate for the task, synthesize knowledge, create solutions, and evaluate the results. Students will learn digital citizenship by researching current laws and regulations and by practicing integrity and respect. Students will gain an understanding of computer science through the study of technology operations, systems, and concepts. The six strands include creativity and innovation; communication and collaboration; research and information fluency; critical thinking; problem solving, and decision making; digital citizenship; and technology operations and concepts.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student develops products and generates new understandings by extending existing knowledge. The student is expected to:

(A) use program design problem-solving strategies to create program solutions;

(B) demonstrate the ability to read and modify large programs, including the design description and process development;

(C) follow the systematic problem-solving process of identifying the specifications of purpose and goals, the data types and objects needed, and the subtasks to be performed;

(D) compare and contrast design methodologies and implementation techniques such as top-down, bottom-up, and black box;

(E) analyze, modify, and evaluate existing code by performing a case study on a large program, including inheritance and black box programming;

(F) identify the data types and objects needed to solve a problem;

(G) choose, identify, and use the appropriate abstract data type, advanced data structure, and supporting algorithms to properly represent the data in a program problem solution;

(H) use object-oriented programming development methodology, data abstraction, encapsulation with information hiding, and procedural abstraction in program development and testing; and

(I) create, edit, and manipulate bitmap images that are used to enhance user interfaces and program functionality.

(2) Communication and collaboration. The student communicates and collaborates with peers to contribute to his or her own learning and the learning of others. The student is expected to:

(A) use the principles of software engineering to work in software design teams, break a problem statement into specific solution requirements, create a program development plan, code part of a solution from a program development plan while a partner codes the remaining part, team test the solution for correctness, and develop presentations to report the solution findings;

(B) create interactive console display interfaces with appropriate user prompts;

(C) create interactive human interfaces to acquire data from a user and display program results using an advanced Graphical User Interface (GUI);

(D) write programs and communicate with proper programming style to enhance the readability and functionality of the code by using meaningful descriptive identifiers, internal comments, white space, indentation, and a standardized program style;

(E) improve data display by optimizing data visualization;

(F) display simple vector graphics to interpret and display program results; and

(G) display simple bitmap images.

(3) Research and information fluency. The student locates, analyzes, processes, and organizes data. The student is expected to:

(A) use local area networks (LANs) and wide area networks (WANs), including the Internet and intranets, in research, file management, and collaboration;

(B) understand programming file structure and file access for required resources;

(C) acquire and process information from text files, including files of known and unknown sizes;

(D) manipulate data structures using string processing;

(E) manipulate data values by casting between data types;

(F) identify and use the structured data type of one-dimensional arrays to traverse, search, modify, insert, and delete data;

(G) identify and use the structured data type of two-dimensional arrays to traverse, search, modify, insert, and delete data; and

(H) identify and use a list object data structure to traverse, search, insert, and delete data.

(4) Critical thinking, problem solving, and decision making. The student uses appropriate strategies to analyze problems and design algorithms. The student is expected to:

(A) develop sequential algorithms using branching control statements, including nested structures, to create solutions to decision-making problems;

(B) develop choice algorithms using selection control statements based on ordinal values;

(C) demonstrate proficiency in the use of short-circuit evaluation;

(D) demonstrate proficiency in the use of Boolean algebra, including De Morgan's Law;

(E) develop iterative algorithms using nested loops;

(F) identify, trace, and appropriately use recursion in programming solutions, including algebraic computations;

(G) design, construct, evaluate, and compare search algorithms, including linear searching and binary searching;

(H) identify, describe, design, create, evaluate, and compare standard sorting algorithms, including selection sort, bubble sort, insertion sort, and merge sort;

(I) measure time/space efficiency of various sorting algorithms;

(J) compare and contrast search and sort algorithms, including linear, quadratic, and recursive strategies, for time/space efficiency;

(K) analyze algorithms using "big-O" notation for best, average, and worst-case data patterns;

(L) develop algorithms to solve various problems, including factoring, summing a series, finding the roots of a quadratic equation, and generating Fibonacci numbers;

(M) test program solutions by investigating boundary conditions; testing classes, methods, and libraries in isolation; and performing stepwise refinement;

(N) identify and debug compile, syntax, runtime, and logic errors;

(O) compare and contrast algorithm efficiency by using informal runtime comparisons, exact calculation of statement execution counts, and theoretical efficiency values using "big-O" notation, including worst-case, best-case, and average-case time/space analysis;

(P) demonstrate the ability to count, convert, and perform mathematical operations in the binary and hexadecimal number systems;

(Q) demonstrate knowledge of the maximum integer boundary, minimum integer boundary, imprecision of real number representations, and round-off errors;

(R) create program solutions to problems using the mathematics library class;

(S) use random algorithms to create simulations that model the real world;

(T) identify, understand, and create class specifications and relationships among classes, including composition and inheritance relationships;

(U) understand and explain object relationships among defined classes, abstract classes, and interfaces;

(V) create object-oriented definitions using class declarations, variable declarations, constant declarations, method declarations, parameter declarations, and interface declarations;

(W) create robust classes that encapsulate data and the methods that operate on that data and incorporate overloading to enrich the object's behavior;

(X) design and implement a set of interactive classes;

(Y) design, create, and evaluate multiclass programs that use abstract classes and interfaces;

(Z) understand and implement a student-created class hierarchy;

(AA) extend, modify, and improve existing code using inheritance;

(BB) create adaptive behaviors, including overloading, using polymorphism;

(CC) understand and use reference variables for object and string data types;

(DD) understand and implement access scope modifiers;

(EE) understand and demonstrate how to compare objects;

(FF) duplicate objects using the appropriate deep and/or shallow copy;

(GG) define and implement abstract classes and interfaces in program problem solutions;

(HH) apply functional decomposition to a program solution;

(II) create simple and robust objects from class definitions through instantiation;

(JJ) apply class membership of variables, constants, and methods;

(KK) examine and mutate the properties of an object using accessors and modifiers;

(LL) understand and implement a composite class; and

(MM) design and implement an interface.

(5) Digital citizenship. The student explores and understands safety, legal, cultural, and societal issues relating to the use of technology and information. The student is expected to:

(A) model ethical acquisition and use of digital information;

(B) demonstrate proper digital etiquette, responsible use of software, and knowledge of acceptable use policies; and

(C) investigate digital rights management.

(6) Technology operations and concepts. The student understands technology concepts, systems, and operations as they apply to computer science. The student is expected to:

(A) compare and contrast types of operating systems, software applications, hardware platforms, and programming languages;

(B) demonstrate knowledge of major hardware components, including primary and secondary memory, a central processing unit (CPU), and peripherals;

(C) demonstrate knowledge of major networking components, including hosts, servers, switches, and routers;

(D) demonstrate knowledge of computer communication systems, including single-user, peer-to-peer, workgroup, client-server, and networked;

(E) demonstrate knowledge of computer addressing systems, including Internet Protocol (IP) address and Media Access Control (MAC) address; and

(F) differentiate among the categories of programming languages, including machine, assembly, high-level compiled, high-level interpreted, and scripted.

§127.764. Computer Science III (One Credit).

(a) General requirements. Students shall be awarded one credit for successful completion of this course. Prerequisite: Computer Science II, Advanced Placement (AP) Computer Science A, or International Baccalaureate (IB) Computer Science. This course is recommended for students in Grades 11 and 12.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, including laboratory and testing services, and research and development services.

(3) Computer Science III will foster students' creativity and innovation by presenting opportunities to design, implement, and present meaningful programs through a variety of media. Students will collaborate with one another, their instructor, and various electronic communities to solve the problems presented throughout the course. Through data analysis, students will identify task requirements, plan search strategies, and use computer science concepts to access, analyze, and evaluate information needed to solve problems. By using computer science knowledge and skills that support the work of individuals and groups in solving problems, students will select the technology appropriate for the task, synthesize knowledge, create solutions, and evaluate the results. Students will learn digital citizenship by researching current laws and regulations and by practicing integrity and respect. Students will gain an understanding of advanced computer science data structures through the study of technology operations, systems, and concepts. The six strands include creativity and innovation; communication and collaboration; research and information fluency; critical thinking; problem solving, and decision making; digital citizenship; and technology operations and concepts.

(4) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(5) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(c) Knowledge and skills.

(1) Creativity and innovation. The student develops products and generates new understandings by extending existing knowledge. The student is expected to:

(A) apply data abstraction and encapsulation to manage complexity;

(B) implement a student-created class hierarchy;

(C) read and write class specifications using visual organizers, including Unified Modeling Language;

(D) use black box programming methodology;

(E) design, create, and use interfaces to apply protocols;

(F) identify, describe, design, create, evaluate, and compare standard sorting algorithms that perform sorting operations on data structures, including quick sort and heap sort;

(G) select, identify, and use the appropriate abstract data type, advanced data structure, and supporting algorithms to properly represent the data in a program problem solution; and

(H) manage complexity by using a systems approach.

(2) Communication and collaboration. The student communicates and collaborates with peers to contribute to his or her own learning and the learning of others. The student is expected to:

(A) use local area networks (LANs) and wide area networks (WANs), including the Internet and intranets, in research, file management, and collaboration;

(B) create interactive human interfaces to acquire data from a user and display program results using an advanced Graphical User Interface (GUI);

(C) write programs and communicate with proper programming style to enhance the readability and functionality of the code by using meaningful descriptive identifiers, internal comments, white space, indentation, and a standardized program style; and

(D) work in software design teams.

(3) Research and information fluency. The student locates, analyzes, processes, and organizes data. The student is expected to:

(A) identify and use the structured data type of arrays of objects to traverse, search, modify, insert, and delete data;

(B) identify and use two-dimensional ragged arrays to traverse, search, modify, insert, and delete data;

(C) identify and use a list object data structure, including vector, to traverse, search, insert, and delete object data;

(D) understand and trace a linked-list data structure;

(E) create program solutions using a linked-list data structure, including unordered single, ordered single, double, and circular linked;

(F) understand composite data structures, including a linked list of linked lists;

(G) understand and create program solutions using stacks, queues, trees, heaps, priority queues, graph theory, and enumerated data types;

(H) understand and create program solutions using sets, including HashSet and TreeSet;

(I) understand and create program solutions using maps, including HashMap and TreeMap; and

(J) write and modify text file data.

(4) Critical thinking, problem solving, and decision making. The student uses appropriate strategies to analyze problems and design algorithms. The student is expected to:

(A) develop choice algorithms using selection control statements, including break, label, and continue;

(B) demonstrate proficiency in the use of the bitwise operators;

(C) develop iterative algorithms using do-while loops;

(D) demonstrate proficiency in the use of the ternary operator;

(E) create program solutions that use iterators;

(F) identify, trace, and appropriately use recursion;

(G) understand and create program solutions using hashing;

(H) perform pattern recognition using regular expressions;

(I) explore common algorithms, including matrix addition and multiplication, fractals, Towers of Hanoi, and magic square;

(J) create program solutions that exhibit robust behavior by understanding and avoiding runtime errors and handling anticipated errors;

(K) understand object-oriented design concepts of inner classes, outer classes, and anonymous classes;

(L) use object reference scope identifiers, including null, this, and super;

(M) provide object functionality to primitive data types;

(N) write program assumptions in the form of assertions;

(O) write a Boolean expression to test a program assertion; and

(P) construct assertions to make explicit program invariants.

(5) Digital citizenship. The student explores and understands safety, legal, cultural, and societal issues relating to the use of technology and information. The student is expected to:

(A) model ethical acquisition and use of digital information; and

(B) demonstrate proper digital etiquette, responsible use of software, and knowledge of acceptable use policies.

(6) Technology operations and concepts. The student understands technology concepts, systems, and operations as they apply to computer science. The student is expected to:

(A) compare and contrast high-level programming languages;

(B) create a small workgroup network;

(C) create and apply a basic network addressing scheme; and

(D) create discovery programs in a low-level language, high-level language, and scripting language.

§127.765. Digital Forensics (One Credit), Beginning with School Year 2019-2020.

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course is recommended for students in Grades 9-12.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, including laboratory and testing services, and research and development services.

(3) Digital forensics is an evolving discipline concerned with analyzing anomalous activity on computers, networks, programs, and data. As a discipline, it has grown with the emergence of a globally-connected digital society. As computing has become more sophisticated, so too have the abilities of malicious agents to access systems and private information. By evaluating prior incidents, digital forensics professionals have the ability to investigate and craft appropriate responses to disruptions to corporations, governments, and individuals. Whereas cybersecurity takes a proactive approach to information assurance to minimize harm, digital forensics takes a reactive approach to incident response.

(4) Digital Forensics introduces students to the knowledge and skills of digital forensics. The course provides a survey of the field of digital forensics and incident response.

(5) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(6) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Employability skills. The student identifies necessary skills for career development and employment opportunities. The student is expected to:

(A) investigate the need for digital forensics;

(B) research careers in digital forensics along with the education and job skills required for obtaining a job in both the public and private sector;

(C) identify job and internship opportunities as well as accompanying duties and tasks;

(D) identify and discuss certifications for digital forensics careers;

(E) explain ethical and legal responsibilities in relation to the field of digital forensics;

(F) identify and describe businesses and government agencies that use digital forensics;

(G) identify and describe the kinds of crimes investigated by digital forensics specialists; and

(H) solve problems and think critically.

(2) Employability skills. The student communicates and collaborates effectively. The student is expected to:

(A) apply effective teamwork strategies;

(B) collaborate with a community of peers and professionals;

(C) create, review, and edit a report summarizing technical findings; and

(D) present technical information to a non-technical audience.

(3) Ethics and laws. The student recognizes and analyzes ethical and current legal standards, rights, and restrictions related to digital forensics. The student is expected to:

(A) develop a plan to advocate for ethical and legal behaviors both online and offline among peers, family, community, and employers;

(B) research local, state, national, and international law such as the Electronic Communications Privacy Act of 1986, Title III (Pen Register Act); USA PATRIOT Act of 2001; and Digital Millennium Copyright Act;

(C) research historic cases or events regarding digital forensics or cyber;

(D) examine ethical and legal behavior when presented with confidential or sensitive information in various scenarios related to cyber activities;

(E) analyze case studies of computer incidents;

(F) use the findings of a computer incident investigation to reconstruct the incident;

(G) identify and discuss intellectual property laws, issues, and use;

(H) contrast legal and illegal aspects of information gathering;

(I) contrast ethical and unethical aspects of information gathering;

(J) analyze emerging legal and societal trends affecting digital forensics; and

(K) discuss how technological changes affect applicable laws.

(4) Digital citizenship. The student understands and demonstrates the social responsibility of end users regarding digital technology, safety, digital hygiene, and cyberbullying. The student is expected to:

(A) identify and use digital information responsibly;

(B) use digital tools responsibly;

(C) identify and use valid and reliable sources of information; and

(D) gain informed consent prior to investigating incidents.

(5) Digital forensics skills. The student locates, processes, analyzes, and organizes data. The student is expected to:

(A) identify sources of data;

(B) analyze and report data collected;

(C) maintain data integrity;

(D) examine metadata of a file; and

(E) examine how multiple data sources can be used for digital forensics, including investigating malicious software (malware) and email threats.

(6) Digital forensics skills. The student understands software concepts and operations as they apply to digital forensics. The student is expected to:

(A) compare software applications as they apply to digital forensics;

(B) describe the purpose of various application types such as email, web, file sharing, security applications, and data concealment tools;

(C) identify the different purposes of data formats such as pdf, wav, jpeg, and exe;

(D) describe how application logs and metadata are used for investigations;

(E) describe digital forensics tools;

(F) select the proper software tool based on appropriateness, effectiveness, and efficiency for a given digital forensics scenario; and

(G) describe components of applications such as configurations settings, data, supporting files, and user interface.

(7) Digital forensics skills. The student understands operating systems concepts and functions as they apply to digital forensics. The student is expected to:

(A) compare various operating systems;

(B) describe file attributes, including access and creation times;

(C) describe how operating system logs are used for investigations;

(D) compare and contrast the file systems of various operating systems;

(E) compare various primary and secondary storage devices; and

(F) differentiate between volatile and non-volatile memory.

(8) Digital forensics skills. The student understands networking concepts and operations as they apply to digital forensics. The student is expected to:

(A) examine networks, including Internet Protocol (IP) addressing and subnets;

(B) describe the Open Systems Interconnection (OSI) model;

(C) describe the Transmission Control Protocol/Internet Protocol (TCP/IP) model;

(D) use network forensic analysis tools to examine network traffic data from sources such as firewalls, routers, intrusion detection systems (IDS), and remote access logs; and

(E) identify malicious or suspicious network activities such as mandatory access control (MAC) spoofing and rogue wireless access points.

(9) Digital forensics skills. The student explains the principles of access controls. The student is expected to:

(A) define the principle of least privilege;

(B) describe the impact of granting access and permissions;

(C) identify different access components such as passwords, tokens, key cards, and biometric verification systems;

(D) explain the value of an access log to identify suspicious activity;

(E) describe the risks of granting third parties access to personal and proprietary data on social media and systems;

(F) describe the risks involved with accepting Terms of Service (ToS) or End User License Agreements (EULA) without a basic understanding of the terms or agreements; and

(G) identify various access control methods such as MAC, role-based access control (RBAC), and discretionary access control (DAC).

(10) Incident response. The student follows a methodological approach to prepare for and respond to an incident. The student is expected to:

(A) define the components of the incident response cycle, including preparation; detection and analysis; containment, eradication, and recovery; and post-incident activity;

(B) describe incident response preparation;

(C) discuss incident response detection and analysis;

(D) discuss containment and eradication of and recovery from an incident;

(E) describe post-incident activities such as reflecting on lessons learned, using collected incident data, and retaining evidence of an incident;

(F) develop an incident response plan; and

(G) describe ways a user may compromise the validity of existing evidence.

(11) Incident response. The student objectively analyzes collected data from an incident. The student is expected to:

(A) identify the role of chain of custody in digital forensics;

(B) describe safe data handling procedures;

(C) explain the fundamental concepts of confidentiality, integrity, availability, authentication, and authorization;

(D) identify and report information conflicts or suspicious activity;

(E) identify events of interest and suspicious activity by examining network traffic; and

(F) identify events of interest and suspicious activity by examining event logs.

(12) Incident response. The student analyzes the various ways systems can be compromised. The student is expected to:

(A) analyze the different signatures of cyberattacks; and

(B) identify points of weakness and attack vectors such as online spoofing, phishing, and social engineering.

§127.766. Discrete Mathematics for Computer Science (One Credit), Beginning with School Year 2012-2013.

(a) General requirements. Students shall be awarded one credit for successful completion of this course. Prerequisite: Algebra II. This course is recommended for students in Grades 11 and 12.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, including laboratory and testing services, and research and development services.

(3) Discrete Mathematics for Computer Science provides the tools used in most areas of computer science. Exposure to the mathematical concepts and discrete structures presented in this course is essential in order to provide an adequate foundation for further study. Discrete Mathematics for Computer Science is generally listed as a core requirement for Computer Science majors. Course topics are divided into six areas: sets, functions, and relations; basic logic; proof techniques; counting basics; graphs and trees; and discrete probability. Mathematical topics are interwoven with computer science applications to enhance the students' understanding of the introduced mathematics. Students will develop the ability to see computational problems from a mathematical perspective. Introduced to a formal system (propositional and predicate logic) upon which mathematical reasoning is based, students will acquire the necessary knowledge to read and construct mathematical arguments (proofs), understand mathematical statements (theorems), and use mathematical problem-solving tools and strategies. Students will be introduced to discrete data structures such as sets, discrete functions, and relations and graphs and trees. Students will also be introduced to discrete probability and expectations. The six strands include creativity and innovation; communication and collaboration; research and information fluency; critical thinking; problem solving, and decision making; digital citizenship; and technology operations and concepts.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student develops products and generates new understanding by extending existing knowledge. The student is expected to:

(A) model algorithms and real-world situations using formal tools of symbolic logic;

(B) model computer science problems by using graphs and trees; and

(C) calculate the probabilities of events and expectations of random variables for such problems as games of chance.

(2) Communication and collaboration. The student communicates and collaborates with peers to contribute to his or her own learning and the learning of others. The student is expected to:

(A) convert spoken language statements to appropriate statements in propositional logic;

(B) explain basic terminology of sets, functions, and relations;

(C) state the definition of the Master theorem;

(D) use the context of a particular application to interpret the meaning derived when computing the permutations and combinations of a set;

(E) interpret associated operations and terminology in context; and

(F) define and provide examples of logical equivalence, normal forms, validity, and modus ponens/modus tollens.

(3) Research and information fluency. The student locates, analyzes, processes, and organizes data. The student is expected to:

(A) construct truth tables for negation, conjunction, disjunction, implication, biconditional, and bit operators; and

(B) use truth tables to demonstrate propositional relations.

(4) Critical thinking, problem solving, and decision making. The student uses appropriate strategies to analyze problems and design algorithms. The student is expected to:

(A) analyze practical examples using appropriate models of sets, functions, and relations;

(B) compare and contrast tautology, contradiction, and contingency as related to propositional equivalences;

(C) compare and contrast examples and use of counterexamples, contrapositions, and contradictions;

(D) describe the appropriate use and limitations of predicate logic;

(E) apply formal methods of symbolic propositional and predicate logic;

(F) use formal logic proofs and logical reasoning to solve problems;

(G) outline the basic structure of proofs, including direct, indirect, contradiction, induction, existence, and constructive proofs;

(H) compare and contrast the types of problems best satisfied by direct, indirect, contradiction, induction, existence, and constructive proofs;

(I) relate mathematical induction to recursion and recursively defined structures;

(J) compare and contrast weak, strong, and structural induction, including when each is most appropriately used and examples of each;

(K) compare and contrast dependent and independent events;

(L) use recurrence equations to analyze algorithms and other practical problems;

(M) use counting techniques to analyze algorithms and other practical problems;

(N) apply probability tools to solve problems; and

(O) define, compare, and contrast simple graphs, multigraphs, and directed and undirected graphs using definitions, properties, and examples, including special cases.

(5) Digital citizenship. The student explores and understands safety, legal, cultural, and societal issues relating to the use of technology and information. The student is expected to:

(A) model ethical acquisition and use of digital information;

(B) demonstrate proper digital etiquette, responsible use of software, and knowledge of acceptable use policies; and

(C) investigate how the concepts of discrete mathematics are related to relevant problems and significant questions.

(6) Technology operations and concepts. The student understands technology concepts, systems, and operations as they apply to computer science. The student is expected to:

(A) perform operations associated with sets, functions, and relations;

(B) apply basic counting principles, including cardinality and the pigeonhole principle;

(C) apply appropriate precedence when using logical operators;

(D) use appropriate strategies, including De Morgan's Laws, to identify propositional equivalences;

(E) identify and appropriately use predicates, existential and universal quantifiers, and valid arguments;

(F) identify possible applications of proofs, including evaluating algorithmic complexity;

(G) state and appropriately use the product and sum rules;

(H) compute permutations and combinations of a set;

(I) solve a variety of basic recurrence equations;

(J) apply the binomial theorem to independent events;

(K) apply Bayes' theorem to dependent events;

(L) demonstrate transversal methods for trees and graphs; and

(M) relate graphs and trees to data structures, algorithms, and counting.

§127.767. Game Programming and Design (One Credit).

(a) General requirements. Students shall be awarded one credit for successful completion of this course. Prerequisite: Algebra I. This course is recommended for students in Grades 9-12.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, including laboratory and testing services, and research and development services.

(3) Game Programming and Design will foster student creativity and innovation by presenting students with opportunities to design, implement, and present meaningful programs through a variety of media. Students will collaborate with one another, their instructor, and various electronic communities to solve gaming problems. Through data analysis, students will include the identification of task requirements, plan search strategies, and use programming concepts to access, analyze, and evaluate information needed to design games. By acquiring programming knowledge and skills that support the work of individuals and groups in solving problems, students will select the technology appropriate for the task, synthesize knowledge, create solutions, and evaluate the results. Students will learn digital citizenship by researching current laws and regulations and by practicing integrity and respect. Students will create a computer game that is presented to an evaluation panel. The six strands include creativity and innovation; communication and collaboration; research and information fluency; critical thinking; problem solving, and decision making; digital citizenship; and technology operations and concepts.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student develops products and generates new understanding by extending existing knowledge. The student is expected to:

(A) understand the basic game design elements, including conceptual ideas, storyline, visualization, storyboard, game effects, sound elements, game play, game controls, and player tutorial;

(B) create a design concept document;

(C) create a storyboard;

(D) demonstrate an understanding of the fundamentals of game art, including the look and feel, graphics coordinate system, basics of color, and color palettes;

(E) use bitmap graphics images, including designing, creating, reading, and manipulating images;

(F) create backgrounds, including solid, image, and tiled backgrounds;

(G) write programs creating images using geometric shapes;

(H) create games using sprites by evaluating the role of sprites, creating sprites, and managing sprites;

(I) create programs using sprite sheets;

(J) demonstrate an understanding of image rendering, including transparency, refresh rate, hardware acceleration, and animation;

(K) find, create, and edit game audio sound effects and music; and

(L) implement game sound mechanics, including playing, pausing, and looping.

(2) Communication and collaboration. The student communicates and collaborates with peers to contribute to his or her own learning and the learning of others. The student is expected to:

(A) design and implement procedures to set timelines for, track the progress of, and evaluate a game product;

(B) seek and respond to input from peers and professionals in evaluating a game project;

(C) demonstrate knowledge and appropriate use of operating systems, program development tools, and networking resources;

(D) use network resources to acquire, organize, maintain, and evaluate information;

(E) collaborate to research the business of games, including the roles of developer, marketing, publisher, and retail sales; and

(F) demonstrate an understanding of and evaluate online technology, including online interaction and massive multiplayer games.

(3) Research and information fluency. The student locates, analyzes, processes, and organizes data. The student is expected to:

(A) play board games to research and collect game play data;

(B) evaluate, analyze, and document game styles and playability; and

(C) research the dramatic elements in games, including kinds of fun, player types, and nonlinear storytelling.

(4) Critical thinking, problem solving, and decision making. The student uses appropriate strategies to analyze problems and design algorithms. The student is expected to:

(A) demonstrate an understanding of the game design process, including generating ideas, brainstorming, and paper prototyping;

(B) write programs using variables of different data types;

(C) evaluate game rules and instructions;

(D) demonstrate an understanding of the user experience by comparing rules and game-play patterns;

(E) write game rules and instructions;

(F) develop game software;

(G) write computer game code, resolve game defects, and revise existing game code; and

(H) test a finished game product by implementing sound testing techniques.

(5) Digital citizenship. The student explores and understands safety, legal, cultural, and societal issues relating to the use of technology and information. The student is expected to:

(A) explore intellectual property, privacy, sharing of information, copyright laws, and software licensing agreements;

(B) model ethical acquisition and use of digital information;

(C) demonstrate proper digital etiquette when using networks, responsible use of software, and knowledge of acceptable use policies;

(D) model respect of intellectual property, including manipulating graphics, morphing graphics, editing graphics, and editing sound;

(E) discuss and evaluate the social issues surrounding gaming; and

(F) evaluate the cultural aspects of game design fundamentals, including rationale for games and types of games.

(6) Technology operations and concepts. The student understands technology concepts, systems, and operations as they apply to game programming. The student is expected to:

(A) identify basic game components, including the game engine, game play subsystems, data structures, models, and interfaces;

(B) generate random numbers in a program;

(C) create a program implementing conditional statements;

(D) develop an appropriate data model;

(E) demonstrate an understanding of and apply object-oriented game programming;

(F) demonstrate an understanding of game programming essentials, including event-driven programming, communicating with messages, and device management;

(G) demonstrate an understanding of the role of game events, the animation loop, and game timing;

(H) demonstrate an understanding of the role of game engines;

(I) demonstrate an understanding of video display flicker and double buffering;

(J) apply basic game screen design and layout, including visual controls, user interfaces, menus, and options;

(K) use game control design to understand, access, and control input devices, including keyboard, mouse, and joystick;

(L) demonstrate an understanding of and apply game animation, including the principles of animation and frame-based animation;

(M) demonstrate an understanding of decision making and types of decisions;

(N) demonstrate an understanding of game events, including listeners, triggers, and timed events;

(O) demonstrate an understanding of and implement collision detection, including bounding boxes and sprite collisions;

(P) implement a tile-based game, including loading tile maps, drawing tile maps, rendering a tile map, and layering sprites;

(Q) demonstrate an understanding of artificial intelligence and develop and implement artificial intelligence;

(R) demonstrate an understanding of game balance and tuning; and

(S) demonstrate an understanding of player progression, including leveling, linear progression, and maintaining high score data.

§127.768. Mobile Application Development (One Credit).

(a) General requirements. Students shall be awarded one credit for successful completion of this course. Prerequisite: Algebra I. This course is recommended for students in Grades 9-12.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, including laboratory and testing services, and research and development services.

(3) Mobile Application Development will foster students' creativity and innovation by presenting opportunities to design, implement, and deliver meaningful projects using mobile computing devices. Students will collaborate with one another, their instructor, and various electronic communities to solve problems presented throughout the course. Through data analysis, students will identify task requirements, plan search strategies, and use software development concepts to access, analyze, and evaluate information needed to program mobile devices. By using software design knowledge and skills that support the work of individuals and groups in solving problems, students will select the technology appropriate for the task, synthesize knowledge, create solutions, and evaluate the results. Students will learn digital citizenship by researching current laws and regulations and by practicing integrity and respect. Students will gain an understanding of the principles of mobile application development through the study of development platforms, programming languages, and software design standards. The six strands include creativity and innovation; communication and collaboration; research and information fluency; critical thinking; problem solving, and decision making; digital citizenship; and technology operations and concepts.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student develops products and generates new understanding by extending existing knowledge. The student is expected to:

(A) create effective user interfaces appropriate for a specified mobile device that is best suited for an identified purpose;

(B) create effective user interfaces for browser-based, native, and hybrid mobile applications;

(C) create mobile application components appropriate for identified needs;

(D) create browser-based applications for mobile devices;

(E) create native applications that can reside on specified mobile devices; and

(F) create mobile applications that combine native and hybrid components.

(2) Communication and collaboration. The student communicates and collaborates with peers to contribute to his or her own learning and the learning of others. The student is expected to:

(A) demonstrate an understanding of and discuss how teams function;

(B) use teamwork to solve problems;

(C) describe the development workflow of mobile applications;

(D) use time-management techniques to develop and maintain work schedules, meet deadlines, and establish mobile application project criteria;

(E) describe a problem solution; and

(F) document and share problem solutions through various media.

(3) Research and information fluency. The student locates, analyzes, processes, and organizes data. The student is expected to:

(A) analyze, identify, and describe mobile application project stakeholders and their perspectives;

(B) collect and analyze available data to identify mobile application project requirements;

(C) analyze, identify, and describe input, output, and processing requirements; and

(D) analyze, identify, and define hardware and software specifications.

(4) Critical thinking, problem solving, and decision making. The student uses appropriate strategies to analyze problems and design algorithms. The student is expected to:

(A) compare and contrast design decisions based on the hardware considerations of a mobile device;

(B) compare and contrast available mobile technologies, including platforms and their operating systems;

(C) compare and contrast available development approaches, including application to specific technologies and platforms;

(D) determine the most appropriate solution for the development of a given mobile application, including browser-based, native, and hybrid approaches;

(E) compare and contrast available programming languages and how their use might be applied to specific technologies and platforms;

(F) identify and justify the selection of an appropriate programming language, including available resources and required interfaces;

(G) select an appropriate program development environment;

(H) identify and use available libraries;

(I) evaluate and justify the selection of appropriate options and components;

(J) compare and contrast available networks and their implications for mobile application development; and

(K) compare and contrast design strategies related to mobile network and device security.

(5) Digital citizenship. The student explores and understands safety, legal, cultural, and societal issues relating to the use of technology and information. The student is expected to:

(A) discuss copyright laws and issues;

(B) model ethical acquisition and use of digital information;

(C) cite sources using established methods;

(D) demonstrate proper digital etiquette and knowledge of acceptable use policies;

(E) investigate mobile device security measures such as passwords, virus detection, and virus prevention;

(F) describe potential risks and benefits associated with the use of a mobile application;

(G) identify current and emerging technologies related to mobile applications; and

(H) evaluate technologies and assess their applicability to current mobile applications.

(6) Technology operations and concepts. The student understands technology concepts, systems, and operations as they apply to computer science. The student is expected to:

(A) demonstrate an understanding of the difference between desktop and mobile applications;

(B) demonstrate an understanding of hardware and software structures and requirements in the design of mobile applications;

(C) recognize multiple platforms and demonstrate an understanding of their associated requirements;

(D) recognize various program development environments;

(E) demonstrate an understanding of event-based programming and its appropriate use;

(F) describe how memory management affects mobile application design;

(G) demonstrate an understanding of how low bandwidth and the mobility of a device affect the design of mobile applications;

(H) identify applications that are best suited for mobile devices;

(I) demonstrate an understanding of the use of libraries when designing mobile applications;

(J) use a simulation tool to emulate a mobile device's functionality; and

(K) use actual mobile devices to test mobile applications.

§127.769. Foundations of Cybersecurity (One Credit).

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course is recommended for students in Grades 9-12.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, including laboratory and testing services, and research and development services.

(3) Cybersecurity is an evolving discipline concerned with safeguarding computers, networks, programs, and data from unauthorized access. As a field, it has gained prominence with the emergence of a globally-connected society. As computing has become more so-

phisticated, so too have the abilities of malicious agents looking to penetrate networks and seize private information. By evaluating prior incidents, cybersecurity professionals have the ability to craft appropriate responses to minimize disruptions to corporations, governments, and individuals.

(4) In the Foundations of Cybersecurity course, students will develop the knowledge and skills needed to explore fundamental concepts related to the ethics, laws, and operations of cybersecurity. Students will examine trends and operations of cyberattacks, threats, and vulnerabilities. Students will review and explore security policies designed to mitigate risks. The skills obtained in this course prepare students for additional study in cybersecurity. A variety of courses are available to students interested in this field. Foundations of Cybersecurity may serve as an introductory course in this field of study.

(5) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(6) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Employability skills. The student demonstrates necessary skills for career development and successful completion of course outcomes. The student is expected to:

(A) identify and demonstrate employable work behaviors such as regular attendance, punctuality, maintenance of a professional work environment, and effective written and verbal communication;

(B) identify and demonstrate positive personal qualities such as authenticity, resilience, initiative, and a willingness to learn new knowledge and skills;

(C) solve problems and think critically;

(D) demonstrate leadership skills and function effectively as a team member; and

(E) demonstrate an understanding of ethical and legal responsibilities in relation to the field of cybersecurity.

(2) Employability skills. The student identifies various employment opportunities and requirements in the cybersecurity field. The student is expected to:

(A) identify job and internship opportunities as well as accompanying duties and tasks;

(B) research careers in cybersecurity and information assurance along with the education and job skills required for obtaining a job in both the public and private sectors;

(C) identify and discuss certifications for cybersecurity-related careers; and

(D) research and develop resumes, digital portfolios, or professional profiles in the cybersecurity field.

(3) Ethics and laws. The student understands ethical and current legal standards, rights and restrictions governing technology, technology systems, digital media, and the use of social media. The student is expected to:

(A) demonstrate and advocate for ethical and legal behaviors both online and offline among peers, family, community, and employers;

(B) research local, state, national, and international cyber law such as the PATRIOT Act of 2001, General Data Protection Regulation, and Digital Millennium Copyright Act;

(C) research historic cases or events regarding cyber;

(D) demonstrate an understanding of ethical and legal behavior when presented with various scenarios related to cyber activities;

(E) define and identify techniques such as hacking, phishing, social engineering, online piracy, spoofing, and data vandalism; and

(F) identify and use appropriate methods for citing sources.

(4) Ethics and laws. The student identifies the consequences of ethical versus malicious hacking. The student is expected to:

(A) identify motivations for hacking;

(B) identify and describe the impact of cyberattacks on the global community, society, and individuals;

(C) distinguish between a cyber attacker and a cyber defender;

(D) differentiate types of hackers such as black hats, white hats, and gray hats;

(E) determine possible outcomes and legal ramifications of ethical versus malicious hacking practices; and

(F) debate the varying perspectives of ethical versus malicious hacking.

(5) Ethics and laws. The student identifies and defines cyberterrorism and counterterrorism. The student is expected to:

(A) define cyberterrorism, state-sponsored cyberterrorism, and hacktivism;

(B) compare and contrast physical terrorism and cyberterrorism, including domestic and foreign actors;

(C) define and explain intelligence gathering and counterterrorism;

(D) identify the role of cyber defenders in protecting national interests and corporations;

(E) identify the role of cyber defense in society and the global economy; and

(F) explain the importance of protecting public infrastructures such as electrical power grids, water systems, pipelines, transportation, and nuclear plants.

(6) Digital citizenship. The student understands and demonstrates the social responsibility of end users regarding significant issues related to digital technology, digital hygiene, and cyberbullying. The student is expected to:

(A) identify and understand the nature and value of privacy;

(B) analyze the positive and negative implications of a digital footprint and the maintenance and monitoring of an online presence;

(C) discuss the role and impact of technology on privacy;

(D) identify the signs, emotional effects, and legal consequences of cyberbullying and cyberstalking; and

(E) identify and discuss effective ways to prevent, deter, and report cyberbullying.

(7) Cybersecurity skills. The student understands basic cybersecurity concepts and definitions. The student is expected to:

(A) define information security and cyber defense;

(B) identify basic risk management and risk assessment principles related to cybersecurity threats and vulnerabilities;

(C) explain the fundamental concepts of confidentiality, integrity, availability, authentication, and authorization;

(D) describe the inverse relationship between privacy and security;

(E) identify and analyze cybersecurity breaches and incident responses;

(F) identify and analyze security concerns in areas such as physical, network, cloud, and web;

(G) define and discuss challenges faced by cybersecurity professionals;

(H) identify common risks, alerts, and warning signs of compromised computer and network systems;

(I) understand and explore the vulnerability of network-connected devices; and

(J) use appropriate cybersecurity terminology.

(8) Cybersecurity skills. The student understands and explains various types of malicious software (malware). The student is expected to:

(A) define malware, including spyware, ransomware, viruses, and rootkits;

(B) identify the transmission and function of malware such as Trojans, worms, and viruses;

(C) discuss the impact malware has had on the cybersecurity landscape;

(D) explain the role of reverse engineering for detecting malware and viruses;

(E) compare free and commercial antivirus software alternatives; and

(F) compare free and commercial anti-malware software alternatives.

(9) Cybersecurity skills. The student understands and demonstrates knowledge of techniques and strategies to prevent a system from being compromised. The student is expected to:

(A) define system hardening;

(B) demonstrate basic use of system administration privileges;

(C) explain the importance of patching operating systems;

(D) explain the importance of software updates;

(E) describe standard practices to configure system services;

(F) explain the importance of backup files; and

(G) research and understand standard practices for securing computers, networks, and operating systems.

(10) Cybersecurity skills. The student understands basic network operations. The student is expected to:

(A) identify basic network addressing and devices, including switches and routers;

(B) analyze incoming and outgoing rules for traffic passing through a firewall;

(C) identify well known ports by number and service provided, including port 22 (ssh), port 80 (http), and port 443 (https);

(D) identify commonly exploited ports and services, including ports 20 and 21 (ftp) and port 23 (telnet); and

(E) identify common tools for monitoring ports and network traffic.

(11) Cybersecurity skills. The student identifies standard practices of system administration. The student is expected to:

(A) define what constitutes a secure password;

(B) create a secure password policy, including length, complexity, account lockout, and rotation;

(C) identify methods of password cracking such as brute force and dictionary attacks; and

(D) examine and configure security options to allow and restrict access based on user roles.

(12) Cybersecurity skills. The student demonstrates necessary steps to maintain user access on the computer system. The student is expected to:

(A) identify the different types of user accounts and groups on an operating system;

(B) explain the fundamental concepts and standard practices related to access control, including authentication, authorization, and accounting;

(C) compare methods for single- and dual-factor authentication such as passwords, biometrics, personal identification numbers (PINs), and security tokens;

(D) define and explain the purpose of an air-gapped computer; and

(E) explain how hashes and checksums may be used to validate the integrity of transferred data.

(13) Cybersecurity skills. The student explores the field of digital forensics. The student is expected to:

(A) explain the importance of digital forensics to law enforcement, government agencies, and corporations;

(B) identify the role of chain of custody in digital forensics;

(C) explain the four steps of the forensics process, including collection, examination, analysis, and reporting;

(D) identify when a digital forensics investigation is necessary;

(E) identify information that can be recovered from digital forensics investigations such as metadata and event logs; and

(F) analyze the purpose of event logs and identify suspicious activity.

(14) Cybersecurity skills. The student explores the operations of cryptography. The student is expected to:

(A) explain the purpose of cryptography and encrypting data;

(B) research historical uses of cryptography; and

(C) review simple cryptography methods such as shift cipher and substitution cipher.

(15) Risk assessment. The student understands information security vulnerabilities, threats, and computer attacks. The student is expected to:

(A) define and describe vulnerability, payload, exploit, port scanning, and packet sniffing as they relate to hacking;

(B) define and describe cyberattacks, including man-in-the-middle, distributed denial of service, and spoofing;

(C) explain how computer vulnerabilities leave systems open to cyberattacks;

(D) identify threats to systems such as back-door attacks and insider threats;

(E) differentiate types of social engineering attacks such as phishing, shoulder surfing, hoaxes, and dumpster diving;

(F) explain how users are the most common vehicle for compromising a system at the application level; and

(G) identify various types of application-specific attacks.

(16) Risk assessment. The student understands, identifies, and explains the strategies and techniques of both ethical and malicious hackers. The student is expected to:

(A) identify internal and external threats to computer systems;

(B) identify the capabilities of vulnerability assessment tools, including open source tools; and

(C) explain the concept of penetration testing, tools, and techniques.

(17) Risk assessment. The student evaluates the risks of wireless networks. The student is expected to:

(A) compare risks associated with connecting devices to public and private wireless networks;

(B) explain device vulnerabilities and security solutions on a wireless network;

(C) compare wireless encryption protocols;

(D) debate the broadcasting or hiding of a wireless service set identifier (SSID); and

(E) research and discuss wireless threats such as MAC spoofing and war driving.

(18) Risk assessment. The student analyzes threats to computer applications. The student is expected to:

(A) define application security;

(B) identify methods of application security such as secure development practices;

(C) discuss methods of online spoofing such as web links in email, instant messaging, social media, and other online communication with malicious links;

(D) explain the purpose and function of vulnerability scanners;

(E) explain how coding errors may create system vulnerabilities; and

(F) analyze the risks of distributing insecure programs.

(19) Risk assessment. The student understands the implications of sharing information and access with others. The student is expected to:

(A) describe the impact of granting applications unnecessary permissions;

(B) describe the risks of granting third parties access to personal and proprietary data on social media and systems; and

(C) describe the risks involved with accepting Terms of Service (ToS) or End User License Agreements (EULA) without a basic understanding of the terms or agreements.

§127.770. Cybersecurity Capstone (One Credit).

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course is recommended for students in Grades 11 and 12. Recommended prerequisite: Foundations of Cybersecurity.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging foundations.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, including laboratory and testing services, and research and development services.

(3) Cybersecurity is an evolving discipline concerned with safeguarding computers, networks, programs, and data from unauthorized access. As a field, it has gained prominence with the emergence of a globally-connected society. As computing has become more sophisticated, so too have the abilities of malicious agents looking to penetrate networks and seize private information. By evaluating prior incidents, cybersecurity professionals have the ability to craft appropriate responses to minimize disruptions to corporations, governments, and individuals.

(4) In the Cybersecurity Capstone course, students will develop the knowledge and skills needed to explore advanced concepts related to the ethics, laws, and operations of cybersecurity. Students will examine trends and operations of cyberattacks, threats, and vulnerabilities. Students will develop security policies to mitigate risks. The skills obtained in this course prepare students for additional study toward industry certification. A variety of courses are available to students interested in the cybersecurity field. Cybersecurity Capstone may serve as a culminating course in this field of study.

(5) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(6) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Employability skills. The student demonstrates necessary skills for career development and successful completion of course outcomes. The student is expected to:

(A) identify and demonstrate employable work behaviors such as regular attendance, punctuality, maintenance of a professional work environment, and effective written and verbal communication;

(B) identify and demonstrate positive personal qualities such as authenticity, resilience, initiative, and a willingness to learn new knowledge and skills;

(C) solve problems and think critically;

(D) demonstrate leadership skills and function effectively as a team member; and

(E) demonstrate an understanding of ethical and legal responsibilities in relation to the field of cybersecurity.

(2) Employability skills. The student identifies various employment opportunities in the cybersecurity field. The student is expected to:

(A) develop a personal career plan along with the education, job skills, and experience necessary to achieve career goals;

(B) develop a resume or a portfolio appropriate to a chosen career plan; and

(C) illustrate interview skills for successful job placement.

(3) Ethics and laws. The student evaluates ethical and current legal standards, rights and restrictions governing technology, technology systems, digital media and information technology, and the use of social media in the context of today's society. The student is expected to:

(A) analyze and apply to a scenario local, state, national, and international cyber law such as David's Law and Digital Millennium Copyright Act;

(B) evaluate historic cases or events regarding cyber;
and

(C) explore compliance requirements such as Section 508 of the Rehabilitation Act of 1973, Family Educational Rights and Privacy Act of 1974 (FERPA), Health Insurance Portability and Accountability Act of 1996 (HIPAA), and Gramm-Leach-Bliley Act (GLBA).

(4) Digital citizenship. The student understands and demonstrates the social responsibility of end users regarding significant issues relating to digital technology, safety, digital hygiene, and cyberbullying. The student is expected to:

(A) debate the relationship between privacy and security; and

(B) identify ethical or unethical behavior when presented with various scenarios related to cyber activities.

(5) Cybersecurity skills. The student explains the importance and process of penetration testing. The student is expected to:

(A) define the phases of penetration testing, including plan, discover, attack, and report;

(B) develop a plan to gain authorization for penetration testing;

(C) identify commonly used vulnerability scanning tools such as port scanning, packet sniffing, and password crackers;

(D) develop a list of exploits based on results of scanning tool reports; and

(E) prioritize a list of mitigations based on results of scanning tool reports.

(6) Cybersecurity skills. The student understands common cryptographic methods. The student is expected to:

(A) evaluate symmetric and asymmetric algorithms such as substitution cipher, Advanced Encryption Standard (AES), Diffie-Hellman, and Rivest-Shamir-Adleman (RSA);

(B) explain the purpose of hashing algorithms, including blockchain;

(C) explain the function of password salting;

(D) explain and create a digital signature; and

(E) explain steganography.

(7) Cybersecurity skills. The student understands the concept of cyber defense. The student is expected to:

(A) explain the purpose of establishing system baselines;

(B) evaluate the role of physical security;

(C) evaluate the functions of network security devices such as firewalls, intrusion detection systems (IDS), intrusion prevention systems (IPS), and intrusion detection prevention systems (IDPS);

(D) analyze log files for anomalies; and

(E) develop a plan demonstrating the concept of defense in depth.

(8) Cybersecurity skills. The student demonstrates an understanding of secure network design. The student is expected to:

(A) explain the benefits of network segmentation, including sandboxes, air gaps, and virtual local area networks (VLAN);

(B) investigate the role of software-managed networks, including virtualization;

(C) discuss the role of honeypots and honeynets in networks; and

(D) create an incoming and outgoing network policy for a firewall.

(9) Cybersecurity skills. The student integrates principles of digital forensics. The student is expected to:

(A) identify cyberattacks by their signatures;

(B) explain proper data acquisition;

(C) examine evidence from devices for suspicious activities; and

(D) research current cybercrime cases involving digital forensics.

(10) Cybersecurity skills. The student explores emerging technology. The student is expected to:

(A) describe the integration of artificial intelligence and machine learning in cybersecurity;

(B) investigate impacts made by predictive analytics on cybersecurity; and

(C) research other emerging trends such as augmented reality and quantum computing.

(11) Cybersecurity skills. The student uses various operating system environments. The student is expected to:

(A) issue commands via the command line interface (CLI) such as ls, cd, pwd, cp, mv, chmod, ps, sudo, and passwd;

(B) describe the file system structure for multiple operating systems;

(C) manipulate and edit files within the CLI; and

(D) determine network status using the CLI with commands such as ping, ifconfig/ipconfig, traceroute/tracert, and netstat.

(12) Cybersecurity skills. The student clearly and effectively communicates technical information. The student is expected to:

(A) collaborate with others to create a technical report;

(B) create, review, and edit a report summarizing technical findings; and

(C) present technical information to a non-technical audience.

(13) Risk assessment. The student analyzes various types of threats, attacks, and vulnerabilities. The student is expected to:

(A) differentiate types of attacks, including operating systems, software, hardware, network, physical, social engineering, and cryptographic;

(B) explain blended threats such as combinations of software, hardware, network, physical, social engineering, and cryptographic;

(C) discuss risk response techniques, including accept, transfer, avoid, and mitigate;

(D) develop a plan of preventative measures to address cyberattacks;

(E) describe common web vulnerabilities such as cross-site scripting, buffer overflow, injection, spoofing, and denial of service;

(F) describe common data destruction and media sanitation practices such as wiping, shredding, and degaussing; and

(G) develop an incident response plan for a given scenario or recent attack.

(14) Risk assessment. The student understands risk management processes and concepts. The student is expected to:

(A) describe various access control methods such as mandatory access control (MAC), role-based access control (RBAC), and discretionary access control (DAC);

(B) develop and defend a plan for multi-factor access control using components such as biometric verification systems, key cards, tokens, and passwords; and

(C) review a disaster recovery plan (DRP) that includes backups, redundancies, system dependencies, and alternate sites.

(15) Risk assessment. The student investigates the role and effectiveness of environmental controls. The student is expected to:

(A) explain commonly used physical security controls, including lock types, fences, barricades, security doors, and mantraps; and

(B) describe the role of embedded systems such as fire suppression; heating, ventilation, and air conditioning (HVAC) systems; security alarms; and video monitoring.

§127.771. Advanced Placement (AP) Computer Science A (Two Credits).

(a) General requirements. Students shall be awarded two credits for successful completion of this course. Recommended prerequisites: Algebra I or a student should be comfortable with functions and the concepts found in the uses of functional notation such as $f(x) = x + 2$ and $f(x) = g(h(x))$.

(b) Content requirements. Content requirements for Advanced Placement (AP) Computer Science A are prescribed in the College Board Publication Advanced Placement Course Description: Computer Science A, published by The College Board.

§127.772. Advanced Placement (AP) Computer Science Principles (One Credit).

(a) General requirements. Students shall be awarded one credit for successful completion of this course. Recommended prerequisite: Algebra I.

(b) Content requirements. Content requirements for Advanced Placement (AP) Computer Science Principles are prescribed in the College Board Publication Advanced Placement® Curriculum Framework: AP Computer Science Principles, published by The College Board.

§127.773. International Baccalaureate (IB) Computer Science Standard Level (Two Credits).

(a) General requirements. Students shall be awarded two credits for successful completion of this course. Recommended prerequisites: Computer Science I, Algebra II.

(b) Content requirements. Content requirements for IB Computer Science Standard Level are prescribed by the International Baccalaureate Organization. Subject guides may be obtained from International Baccalaureate of North America.

§127.774. International Baccalaureate (IB) Computer Science Higher Level (Two Credits).

(a) General requirements. Students shall be awarded two credits for successful completion of this course. Recommended prerequisites: Computer Science I, Algebra II.

(b) Content requirements. Content requirements for IB Computer Science Higher Level are prescribed by the International Baccalaureate Organization. Subject guides may be obtained from International Baccalaureate of North America.

§127.775. International Baccalaureate (IB) Information Technology in a Global Society Standard Level (Two Credits).

(a) General requirements. Students shall be awarded two credits for successful completion of this course. Recommended prerequisites: Computer Science I, Algebra II.

(b) Content requirements. Content requirements for IB Information Technology in a Global Society Standard Level are prescribed by the International Baccalaureate Organization. Subject guides may be obtained from International Baccalaureate of North America.

§127.776. International Baccalaureate (IB) Information Technology in a Global Society Higher Level (Two Credits).

(a) General requirements. Students shall be awarded two credits for successful completion of this course. Recommended prerequisites: Computer Science I, Algebra II.

(b) Content requirements. Content requirements for IB Information Technology in a Global Society Higher Level are prescribed by the International Baccalaureate Organization. Subject guides may be obtained from International Baccalaureate of North America.

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



CHAPTER 130. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER AND TECHNICAL EDUCATION

The State Board of Education (SBOE) proposes the repeal of §§130.161-130.166, 130.201-130.211, 130.221-130.234, 130.251-130.263, 130.331-130.343, and 130.401-130.435, concerning Texas Essential Knowledge and Skills (TEKS) for career and technical education (CTE). The proposed repeals would remove CTE TEKS in subchapters that are being revised and move them to 19 TAC Chapter 127 in order to keep all the TEKS for revised subchapters together in administrative rule and avoid confusion.

BACKGROUND INFORMATION AND JUSTIFICATION: Currently, CTE TEKS for career development courses for middle and high school are codified in Chapter 127, Subchapters A and B. The TEKS for courses associated with 17 CTE career clusters are codified by subchapter in Chapter 130, Subchapters A-Q. In December 2020, the SBOE began initial steps to prepare for the review and revision of CTE courses in programs of study in the education and training; health science; and science, technology, engineering, and mathematics career clusters. Two additional courses eligible to satisfy a graduation requirement in science are also part of the review. At the November 2021 SBOE meeting, the board approved for second reading and final adoption the new TEKS for these courses.

Due to the current structure of Chapter 130, there are not enough sections to add the new CTE courses under consideration in their assigned subchapters. To accommodate the addition of new and future courses, the CTE TEKS in Chapter 130 are being moved to existing Chapter 127, which will be renamed "Texas Essential Knowledge and Skills for Career Development and Career and Technical Education." Consequently, the TEKS for existing CTE courses from the subchapters under revision will be repealed from Chapter 130 and moved into their new subchapters in Chapter 127 in order to keep all the TEKS for revised subchapters together in administrative rule and avoid confusion.

The proposed repeal would remove the TEKS in Chapter 130, Subchapters E, G, H, I, L, and O, and related implementation language that will be superseded by new TEKS.

The SBOE approved the proposed repeals for first reading and filing authorization at its November 19, 2021 meeting.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and support services, has determined that there are no additional costs to state or local government 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 repeal existing regulations in order to transfer existing CTE TEKS from Chapter 130 to Chapter 127.

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 expand or limit 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: Ms. Martinez 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 improved access to and organization of the CTE TEKS and the avoidance of confusion regarding the revised TEKS. 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 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 December 17, 2021, and ends at 5:00 p.m. on January 21, 2022. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_\(TAC\)/Proposed_State_Board_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in January 2022 in accordance with the SBOE board operating policies and procedures. 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 December 17, 2021.

SUBCHAPTER E. EDUCATION AND TRAINING

19 TAC §§130.161 - 130.166

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(n), which allows the SBOE to by rule develop and implement a plan designed to incorporate foundation curriculum requirements into the career and technical education (CTE) curriculum required in TEC, §28.002; TEC, §28.002(o), which requires the SBOE to determine that at least 50% of the approved CTE courses are cost effective for a school district to implement; TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002; TEC, §28.025(b-2), which requires the SBOE to by rule allow a student to comply with the curriculum requirements for the third and fourth mathematics credits under TEC, §28.025(b-1)(2), or the third and fourth science credits under TEC, §28.025(b-1)(3), by successfully completing a CTE course designated by the SBOE as containing substantially similar and rigorous content; and TEC, §28.025(b-17), which requires the SBOE by rule to ensure that a student may comply with curriculum requirements under TEC, §28.025(b-1)(6), by successfully completing an advanced CTE course, including a course that may lead to an industry-recognized credential or certificate or an associate degree.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (n), and (o); and 28.025(a), (b-2), and (b-17).

§130.161. *Implementation of Texas Essential Knowledge and Skills for Education and Training, Adopted 2015.*

§130.162. *Principles of Education and Training (One Credit), Adopted 2015.*

§130.163. *Human Growth and Development (One Credit), Adopted 2015.*

§130.164. *Instructional Practices (Two Credits), Adopted 2015.*

§130.165. *Practicum in Education and Training (Two Credits), Adopted 2015.*

§130.166. *Extended Practicum in Education and Training (One Credit), Adopted 2015.*

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

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SUBCHAPTER G. GOVERNMENT AND PUBLIC ADMINISTRATION

19 TAC §§130.201 - 130.211

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(n), which allows the SBOE to by rule develop and implement a plan designed to incorporate foundation curriculum requirements into the career and technical education (CTE) curriculum required in TEC, §28.002; TEC, §28.002(o), which requires the SBOE to determine that at least 50% of the approved CTE courses are cost effective for a school district to implement; TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002; TEC, §28.025(b-2), which requires the SBOE to by rule allow a student to comply with the curriculum requirements for the third and fourth mathematics credits under TEC, §28.025(b-1)(2), or the third and fourth science credits under TEC, §28.025(b-1)(3), by successfully completing a CTE course designated by the SBOE as containing substantially similar and rigorous content; and TEC, §28.025(b-17), which requires the SBOE by rule to ensure that a student may comply with curriculum requirements under TEC, §28.025(b-1)(6), by successfully completing an advanced CTE course, including a course that may lead to an industry-recognized credential or certificate or an associate degree.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (n), and (o); and 28.025(a), (b-2), and (b-17).

§130.201. *Implementation of Texas Essential Knowledge and Skills for Government and Public Administration, Adopted 2015.*

§130.202. *Principles of Government and Public Administration (One Credit), Adopted 2015.*

§130.203. *Political Science I (One Credit), Adopted 2015.*

§130.204. *Political Science II (One Credit), Adopted 2015.*

§130.205. *Foreign Service and Diplomacy (One Credit), Adopted 2015.*

§130.206. *Planning and Governance (One Credit), Adopted 2015.*

§130.207. *National Security (One Credit), Adopted 2015.*

§130.208. *Public Management and Administration (One Credit), Adopted 2015.*

§130.209. *Revenue, Taxation, and Regulation (One Credit), Adopted 2015.*

§130.210. *Practicum in Local, State, and Federal Government (Two Credits), Adopted 2015.*

§130.211. *Extended Practicum in Local, State, and Federal Government (One Credit), Adopted 2015.*

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

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SUBCHAPTER H. HEALTH SCIENCE

19 TAC §§130.221 - 130.234

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(n), which allows the SBOE to by rule develop and implement a plan designed to incorporate foundation curriculum requirements into the career and technical education (CTE) curriculum required in TEC, §28.002; TEC, §28.002(o), which requires the SBOE to determine that at least 50% of the approved CTE courses are cost effective for a school district to implement; TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002; TEC, §28.025(b-2), which requires the SBOE to by rule allow a student to comply with the curriculum requirements for the third and fourth mathematics credits under TEC, §28.025(b-1)(2), or the third and fourth science credits under TEC, §28.025(b-1)(3), by successfully completing a CTE course designated by the SBOE as containing substantially similar and rigorous content; and TEC, §28.025(b-17), which requires the SBOE by rule to ensure that a student may comply with curriculum requirements under TEC, §28.025(b-1)(6), by successfully completing an advanced CTE course, including a course that may lead to an industry-recognized credential or certificate or an associate degree.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (n), and (o); and 28.025(a), (b-2), and (b-17).

§130.221. *Implementation of Texas Essential Knowledge and Skills for Health Science, Adopted 2015.*

§130.222. *Principles of Health Science (One Credit), Adopted 2015.*

§130.223. *Medical Terminology (One Credit), Adopted 2015.*

§130.224. *Anatomy and Physiology (One Credit), Adopted 2015.*

§130.225. *Medical Microbiology (One Credit), Adopted 2015.*

§130.226. *World Health Research (One Credit), Adopted 2015.*

§130.227. *Pathophysiology (One Credit), Adopted 2015.*

§130.228. *Health Informatics (One Credit), Adopted 2015.*

§130.229. *Mathematics for Medical Professionals (One Credit), Adopted 2015.*

§130.230. *Pharmacology (One Credit), Adopted 2015.*

§130.231. *Health Science Theory (One Credit), Adopted 2015.*

§130.232. *Health Science Clinical (One Credit), Adopted 2015.*

§130.233. *Practicum in Health Science (Two Credits), Adopted 2015.*

§130.234. *Extended Practicum in Health Science (One Credit), Adopted 2015.*

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

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SUBCHAPTER I. HOSPITALITY AND TOURISM

19 TAC §§130.251 - 130.263

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(n), which allows the SBOE to by rule develop and implement a plan designed to incorporate foundation curriculum requirements into the career and technical education (CTE) curriculum required in TEC, §28.002; TEC, §28.002(o), which requires the SBOE to determine that at least 50% of the approved CTE courses are cost effective for a school district to implement; TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002; TEC, §28.025(b-2), which requires the SBOE to by rule allow a student to comply with the curriculum requirements for the third and fourth mathematics credits under TEC, §28.025(b-1)(2), or the third and fourth science credits under TEC, §28.025(b-1)(3), by successfully completing a CTE course designated by the SBOE as containing substantially similar and rigorous content; and TEC, §28.025(b-17), which requires the SBOE by rule to ensure that a student may comply with curriculum requirements under TEC, §28.025(b-1)(6), by successfully completing an

advanced CTE course, including a course that may lead to an industry-recognized credential or certificate or an associate degree.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (n), and (o); and 28.025(a), (b-2), and (b-17).

§130.251. *Implementation of Texas Essential Knowledge and Skills for Hospitality and Tourism, Adopted 2015.*

§130.252. *Principles of Hospitality and Tourism (One Credit), Adopted 2015.*

§130.253. *Introduction to Culinary Arts (One Credit), Adopted 2015.*

§130.254. *Culinary Arts (Two Credits), Adopted 2015.*

§130.255. *Advanced Culinary Arts (Two Credits), Adopted 2015.*

§130.256. *Food Science (One Credit), Adopted 2015.*

§130.257. *Practicum in Culinary Arts (Two Credits), Adopted 2015.*

§130.258. *Travel and Tourism Management (One Credit), Adopted 2015.*

§130.259. *Hotel Management (One Credit), Adopted 2015.*

§130.260. *Hospitality Services (Two Credits), Adopted 2015.*

§130.261. *Practicum in Hospitality Services (Two Credits), Adopted 2015.*

§130.262. *Extended Practicum in Culinary Arts (One Credit), Adopted 2015.*

§130.263. *Extended Practicum in Hospitality Services (One Credit), Adopted 2015.*

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SUBCHAPTER L. LAW, PUBLIC SAFETY, CORRECTIONS, AND SECURITY

19 TAC §§130.331 - 130.343

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(n), which allows the SBOE to by rule develop and implement a plan designed to incorporate foundation curriculum requirements into the career and technical education (CTE) curriculum required in TEC, §28.002; TEC, §28.002(o), which requires the SBOE to determine that at least 50% of the approved CTE courses are cost effective for a school district to implement; TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are

consistent with the required curriculum under TEC, §28.002; TEC, §28.025(b-2), which requires the SBOE to by rule allow a student to comply with the curriculum requirements for the third and fourth mathematics credits under TEC, §28.025(b-1)(2), or the third and fourth science credits under TEC, §28.025(b-1)(3), by successfully completing a CTE course designated by the SBOE as containing substantially similar and rigorous content; and TEC, §28.025(b-17), which requires the SBOE by rule to ensure that a student may comply with curriculum requirements under TEC, §28.025(b-1)(6), by successfully completing an advanced CTE course, including a course that may lead to an industry-recognized credential or certificate or an associate degree.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (n), and (o); and 28.025(a), (b-2), and (b-17).

§130.331. *Implementation of Texas Essential Knowledge and Skills for Law, Public Safety, Corrections, and Security, Adopted 2015.*

§130.332. *Principles of Law, Public Safety, Corrections, and Security (One Credit), Adopted 2015.*

§130.333. *Correctional Services (One Credit), Adopted 2015.*

§130.334. *Firefighter I (Two Credits), Adopted 2015.*

§130.335. *Firefighter II (Three Credits), Adopted 2015.*

§130.336. *Law Enforcement I (One Credit), Adopted 2015.*

§130.337. *Law Enforcement II (One Credit), Adopted 2015.*

§130.338. *Criminal Investigation (One Credit), Adopted 2015.*

§130.339. *Forensic Science (One Credit), Adopted 2015.*

§130.340. *Court Systems and Practices (One Credit), Adopted 2015.*

§130.341. *Federal Law Enforcement and Protective Services (One Credit), Adopted 2015.*

§130.342. *Practicum in Law, Public Safety, Corrections, and Security (Two Credits), Adopted 2015.*

§130.343. *Extended Practicum in Law, Public Safety, Corrections, and Security (One Credit), Adopted 2015.*

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

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SUBCHAPTER O. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS

19 TAC §§130.401 - 130.435

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment

instruments; TEC, §28.002(n), which allows the SBOE to by rule develop and implement a plan designed to incorporate foundation curriculum requirements into the career and technical education (CTE) curriculum required in TEC, §28.002; TEC, §28.002(o), which requires the SBOE to determine that at least 50% of the approved CTE courses are cost effective for a school district to implement; TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002; TEC, §28.025(b-2), which requires the SBOE to by rule allow a student to comply with the curriculum requirements for the third and fourth mathematics credits under TEC, §28.025(b-1)(2), or the third and fourth science credits under TEC, §28.025(b-1)(3), by successfully completing a CTE course designated by the SBOE as containing substantially similar and rigorous content; and TEC, §28.025(b-17), which requires the SBOE by rule to ensure that a student may comply with curriculum requirements under TEC, §28.025(b-1)(6), by successfully completing an advanced CTE course, including a course that may lead to an industry-recognized credential or certificate or an associate degree.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (n), and (o); and 28.025(a), (b-2), and (b-17).

§130.401. *Implementation of Texas Essential Knowledge and Skills for Science, Technology, Engineering, and Mathematics, Adopted 2015.*

§130.402. *Principles of Applied Engineering (One Credit), Adopted 2015.*

§130.403. *Principles of Biosciences (One Credit), Adopted 2015.*

§130.404. *Principles of Technology (One Credit), Adopted 2015.*

§130.405. *AC/DC Electronics (One Credit), Adopted 2015.*

§130.406. *Solid State Electronics (One Credit), Adopted 2015.*

§130.407. *Digital Electronics (One Credit), Adopted 2015.*

§130.408. *Robotics I (One Credit), Adopted 2015.*

§130.409. *Robotics II (One Credit), Adopted 2015.*

§130.410. *Engineering Design and Presentation I (One Credit), Adopted 2015.*

§130.411. *Engineering Design and Presentation II (Two Credits), Adopted 2015.*

§130.412. *Engineering Design and Problem Solving (One Credit), Adopted 2015.*

§130.413. *Engineering Mathematics (One Credit), Adopted 2015.*

§130.414. *Engineering Science (One Credit), Adopted 2015.*

§130.415. *Biotechnology I (One Credit), Adopted 2015.*

§130.416. *Biotechnology II (One Credit), Adopted 2015.*

§130.417. *Scientific Research and Design (One Credit), Adopted 2015.*

§130.418. *Practicum in Science, Technology, Engineering, and Mathematics (Two Credits), Adopted 2015.*

§130.419. *Extended Practicum in Science, Technology, Engineering, and Mathematics (One Credit), Adopted 2015.*

§130.420. *Fundamentals of Computer Science (One Credit).*

§140.421. *Computer Science I (One Credit).*

§130.422. *Computer Science II (One Credit).*

§130.423. *Computer Science III (One Credit).*

§130.424. *Digital Forensics (One Credit), Beginning with School Year 2019-2020.*

§130.425. *Discrete Mathematics for Computer Science (One Credit), Beginning with School Year 2012-2013.*

§130.426. *Game Programming and Design (One Credit).*

§130.427. *Mobile Application Development (One Credit).*

§130.428. *Foundations of Cybersecurity (One Credit).*

§130.429. *Cybersecurity Capstone (One Credit).*

§130.430. *Advanced Placement (AP) Computer Science A (Two Credits).*

§130.431. *Advanced Placement (AP) Computer Science Principles (One Credit).*

§130.432. *International Baccalaureate (IB) Computer Science Standard Level (Two Credits).*

§130.433. *International Baccalaureate (IB) Computer Science Higher Level (Two Credits).*

§130.434. *International Baccalaureate (IB) Information Technology in a Global Society Standard Level (Two Credits).*

§130.435. *International Baccalaureate (IB) Information Technology in a Global Society Higher Level (Two Credits).*

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CHAPTER 150. COMMISSIONER'S RULES CONCERNING EDUCATOR APPRAISAL SUBCHAPTER AA. TEACHER APPRAISAL 19 TAC §150.1012, §150.1013

The Texas Education Agency (TEA) proposes amendments to §150.1012 and §150.1013 and the repeal of §150.1015, concerning teacher appraisal. The proposed revisions would implement changes made to Texas Education Code (TEC), §21.3521 and §48.112, by House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021; update the requirements for a school district's local designation system; update the requirements for charter partners operating under TEC, §11.174 and §48.252; and repeal an expired rule.

BACKGROUND INFORMATION AND JUSTIFICATION: TEC, §21.3521, establishes a local optional teacher designation system and the opportunity for National Board teachers to be designated, and TEC, §48.112, establishes a teacher incentive allotment. Section 150.1012 implements the statutes by establishing the requirements for school districts and charter schools to implement local teacher designation systems. Section 150.1013 implements the statutes by establishing requirements for National Board teachers to be designated. Section 150.1015 is an expired subsection that established flexibility for districts to implement a local teacher designation system due to school closures in 2019.

Following is a description of the proposed amendment to §150.1012.

The definition for *active Texas certification* would be removed from subsection (a) to align with HB 1525, 87th Texas Legislature, Regular Session, 2021, which removed the certification requirement for teachers to earn a designation.

A new definition would be added to define *beginning of course* as the first nine weeks of a year-long course or the first six weeks of a semester course. This change would provide clarity to districts and guidance on when their pre-assessment should be given.

The definition for *data capture year* would be amended to specify that the term is the school year the teacher observation and student growth data is collected. This change would provide clarity to districts about the timing of the data capture year.

A new definition would be added to define *end of course* as the last twelve weeks of a year-long course or the last six weeks of a semester course. This change would provide clarity to districts and guidance on when their post-assessment should be given.

The definition for *provisional approval* would be amended to add requirements for provisionally approved districts and change the requirements to allow districts to submit additional data. This change would enhance district support by providing guidance and next steps that will help them improve their local designation system.

A new definition would be added to define *teacher category* as one or more eligible teaching assignments measured by the same system. This change would provide clarity and guidance to districts on how to structure their local designation system.

A new definition would be added to define *Texas Student Data System (TSDS) Texas Education Data Standards (TEDS)* as the data collected during the Class Roster Winter Submission. This change would provide clarity to districts on which submission will be utilized for the purposes of Chapter 150, Subchapter AA.

The eligibility requirements in subsection (b)(1) would be amended to remove teacher certification to align with HB 1525 that removed the certification requirement for teachers to earn a designation.

Subsection (b)(1) would also be amended to allow teachers who are employed by charter partners operating under TEC, §11.174 and §48.252, or their partner district to generate allotment funding. This change would ensure that teachers working on charter partner campuses can be accurately identified for allotment funding whether they are employed by the charter partner or by the district. A requirement would be added that all charter partners operating under TEC, §11.174 and §48.252, must report teacher-level data to their partner school district. This change would ensure that all designated teachers will be accurately identified for designations and that all districts will be accurately identified for allotment funding.

A new eligibility requirement would be added in subsection (b)(1) to require that a teacher is employed by the recommending school district or charter partner during the year the teacher's effectiveness data is collected. This change would ensure the teacher effectiveness data is measured by the same district recommending the teacher for designation.

Finally, subsection (b)(1) would be amended to remove the provision that a teacher can be put forth for a new or higher designation in their last year of designation. This change would en-

sure that teachers cannot receive more than one designation at a time.

The proposed amendment to subsection (b)(2) would add the requirement that a teacher must provide a year of service for each district. This change would ensure that teachers generate funding for districts in which they have served a year of service and better align to the statutory language of generating funding for the employing district. In addition, new language would be added to allow TEA administrative discretion to determine the eligibility of a teacher in the event of a reporting error and require that district disputes of TSDS TEDS data be received by the second Friday in May. This change would ensure the timely issuance of designations. A provision would be added to allow TEA administrative discretion if disputes are received after the second Friday in May. This change would allow for flexibility if there are delays in receiving TSDS TEDS data.

The proposed amendment to subsection (c)(1)(B) would change the resubmission deadline to the end of June. This change would allow districts to receive their final notification by the state for the upcoming school year.

The proposed amendment to subsection (c)(1) would adopt new Figure: 19 TAC §150.1012(c)(1)(C), which describes the statutorily based framework and requirements for system approval. This change would clarify what is required for approval each year.

Also in subsection (c)(1), language relating to provisional approval would be modified to remove outdated provisions and moved to be included with subsequent language related to full approval. This change would provide clarity by showing that provisional approval is a subset of full approval.

Provisions in subsection (c)(1) related to the 2019-2020 school are no longer applicable and would be removed.

The proposed amendment to subsection (c)(2)(A)(i)(II) would update the requirements for district-created teacher observation rubrics to include progressive descriptors for each dimension and a clear proficiency standard. This change would improve teacher observation rubrics and ensure that they can be used to distinguish different levels of teacher effectiveness.

The proposed amendment to subsection (c)(2)(A)(ii) would require a specified student growth component and assessment for each eligible teaching assignment. This change would ensure that districts are clear about which growth component and assessment will be used for each eligible teaching assignment at the time of system application.

The proposed amendment to subsection (c)(2)(A)(ii)(I) would align student learning objectives to the Texas Student Learning Objectives (SLO) model. This change would streamline the rule by pointing to the Texas SLO model and documents on the Texas SLO website.

The proposed amendment to subsection (c)(2)(A)(ii)(II) would specify that a portfolio must utilize a skills proficiency rubric and scoring of artifacts. This change would strengthen and clarify the requirements of portfolios when used as a student growth measure.

Proposed new subclauses (IV)-(VI) would be added to subsection (c)(2)(A)(ii) to define the requirements for districts if they use school-district, teacher-created, or third-party assessments. These changes would provide clarity and consistency for districts using assessments as a student growth measure. New

language would be added to subclause (III) as well as each of the new subclauses to specify that assessments must measure beginning of course to end of course or from end of course from the previous course to end of current course.

The proposed amendment to subsection (c)(2)(C) would clarify that all data submitted in the data capture year must be collected in alignment with TEC, §21.351 or §21.352. The proposed amendment would also replace the term "teaching assignment" with "teacher category." These changes would clarify expectations for districts and allow increased flexibility for districts to capture data.

The proposed amendment to subsection (d) would modify the introductory description by adding the term "spending modifications" and replacing the word "amendments" with "changes." These changes would streamline and clarify the processes for districts to change their local designation system or modify their spending plan. Existing language regarding which changes require approval would be removed and replaced by new paragraphs (1)-(10). This change would provide clear guidance about the specific changes that require TEA approval.

Proposed new subsection (d)(10), related to the requirement that a district apply for approval to modify its spending plan the year prior to implementation, allows TEA administrative discretion if spending modifications are made outside of the timeline provided. This change would allow flexibility if there are unforeseen circumstances.

Additional language in subsection (d) related to proposed amendments to other components of the application would be removed since it is outdated.

The proposed amendment to subsection (e) would add the term "annual" in the introductory description of the subsection. This change would provide clarity that the program evaluation occurs each year.

The proposed amendment to subsection (e)(1) would replace the term "annual data submission" with the term "annual program evaluation" to align the terms within the subsection. The term "associated spending" would also be added to ensure that districts annually meet the spending requirements in TEC, §48.112.

The proposed amendment to subsection (e)(1)(C) would require that data collected in subsequent years be aligned with 19 TAC §150.1003(b)(5) and (l)(3). This change would ensure that districts are communicating results of teacher observations and teacher ratings with their teachers even if they are not being formally appraised.

The proposed amendments to subsections (e)(2) and (f)(2)(B) would replace the term "annual data submission" with the term "annual program evaluation" to align the terms within the subsection.

The proposed amendment to subsection (f)(2)(D) would remove the reference to Texas Tech University. This change would clarify that only TEA approves local designation systems.

Proposed new subsection (f)(3)(E) would add that a teacher's designation can be voided if they are added to the registry of persons not eligible for employment in public schools. This change would mirror the sanction issued by the State Board for Educator Certification and uphold the same expectation for conduct for uncertified designated teachers.

Outdated language would be removed from subsection (g)(1)(A), and new language would be added to specify that districts will

receive funding based on prior-year estimates with a settle-up based on current year data. This change would remove outdated processes that could not be implemented and clarify when districts will receive funding.

Proposed new subsection (g)(1)(D) would state that designated teacher campus and district of employment are determined by data collected in TSDS TEDS. This change would clarify how designated teacher campuses and districts of employment are determined.

Proposed new subsection (g)(1)(E) would require that districts annually verify and confirm teacher designations and allotments. This change would ensure the accuracy of teacher designations and allotments.

Existing language in subsection (g)(1) that allows TEA to redirect funds would be modified to specify that TEA may also recalculate funds in the event of a dispute. The new language would require that district disputes of TSDS TEDS data must be received by the second Friday in May but allows TEA administrative discretion if disputes are received after that time. This change would ensure the timely disbursement of the allotment while allowing flexibility if there are delays in receiving TSDS TEDS data.

Proposed new subsection (g)(1)(G) would align with HB 1525 that defined the average student point value for students at the Texas School for the Deaf and Texas School for the Blind and Visually Impaired.

New language would be added to subsection (g)(2) to require that all school districts receiving funding for charter partners operating under TEC, §11.174 and §48.252, pass along at least 90% of the allotment to the charter partner. This change would ensure that the allotment is spent in alignment with TEC, §48.112.

Following is a description of the proposed amendment to §150.1013.

To align with HB 1525, which removed the certification requirement for teachers to earn a designation, the proposed amendment would remove the definition for *active Texas certification* from subsection (a) and remove certification language from subsection (b)(1).

Proposed new subsection (b)(1)(A) would specify the requirement for a teacher to be employed by a school district or charter partner with a certain role ID in TSDS TEDS and require that all charter partners operating under TEC, §11.174 and §48.252, report teacher-level data to their partner school district. These changes would ensure that all designated teachers will be accurately identified for designations and that all districts will be accurately identified for allotment funding.

The proposed amendment to subsection (b)(1)(B) would require that National Board teachers update their directory information by January 31 each year. This change would provide a clear deadline for teachers and allow time for teachers to be accurately identified for designations.

Existing language that describes provisions for the 2019-2020 school year would be removed since it is outdated.

Language related to teacher certification would be removed from subsection (b)(5) to align with HB 1525, which removed the certification requirement for teachers to earn a designation. New language would be added to subsection (b)(5) that would allow teachers employed by charter partners operating under TEC, §11.174 and §48.252, or their partner district to generate allot-

ment funding. This change would ensure that teachers working on charter partner campuses can be accurately identified for allotment funding whether they are employed by the charter partner or by the district. The new language would also require that all charter partners operating under TEC, §11.174 and §48.252, report teacher-level data to their partner school district. This change would ensure that all designated teachers are accurately identified for designations and that all districts are accurately identified for allotment funding.

Subsection (c)(2) would be amended to state that all charter partners operating under TEC, §11.174 and §48.252, without a county-district number will be reimbursed through their district. This change would ensure that all National Board eligible fees can be reimbursed.

Following is a description of the proposed repeal of §150.1015.

Section 150.1015 specifies an expiration date for the section of July 31, 2021. The repeal of the section is necessary to remove obsolete provisions from rule.

FISCAL IMPACT: Kelvey Oeser, deputy commissioner for educator support, 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 and limit existing regulations by clarifying the process and requirements for school districts to request approval of a teacher designation system. The proposed rulemaking would also repeal an existing regulation to eliminate a rule that has expired.

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 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: Ms. Oeser 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 rule language is based on current law and providing school districts and open-enrollment charter schools with clear processes and requirements to implement a local optional teacher designation system. 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 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 December 17, 2021, and ends January 18, 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 December 17, 2021. 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/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §21.3521, as amended by House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021, which specifies that the commissioner: (1) shall ensure that local optional teacher designation systems meet the statutory requirements for the system; (2) shall prioritize high needs campuses; (3) shall enter into a memorandum of understanding with Texas Tech University regarding the assessment of local iterations of the local optional teacher designation system; (4) shall periodically conduct evaluations of the effectiveness of the local optional teacher designation system; (5) may adopt fees, which are exempted from the requirements of Texas Government Code, §2001.0045 and §2001.0221, to implement the local optional teacher designation system; and (6) may adopt rules to implement the local optional teacher designation system; and TEC, §48.112, as amended by HB 1525, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner: (1) to designate rural campuses and annually make available to the public a list of campuses with projected allotment amounts per teacher designation at each campus; and (2) assign an average point value to a student enrolled in the Texas School for the Deaf and the Texas School for the Blind and Visually Impaired.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §21.3521 and §48.112.

§150.1012. *Local Optional Teacher Designation System.*

(a) General provisions.

(1) Definitions. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(A) Beginning of course--The first nine weeks of a year-long course or the first six weeks of a semester course.

[(A) Active Texas certification--A valid certification labeled as provisional, professional, or standard under §230.31(a) of this title (relating to Types of Certificates) or a visiting international teacher certification under §230.41 of this title (relating to Visiting International Teacher Certificates).]

(B) Charter school--A Texas public school that meets one of the following criteria:

(i) is operated by a charter holder under an open-enrollment charter granted either by the State Board of Education or commissioner of education pursuant to Texas Education Code (TEC), §12.101, identified with its own county district number;

(ii) has a charter granted under TEC, Chapter 12, Subchapter C, and is eligible for benefits under TEC, §11.174 and §48.252; or

(iii) has a charter granted under TEC, §29.259, and Human Resources Code, §221.002.

(C) Classroom teacher--An educator, as defined by TEC, §5.001, who is employed by a school district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical instructional setting. This term does not include an educational aide or a full-time administrator.

(D) Data capture year--The school year in which the teacher observation and student growth measure data is collected based on the proposed local teacher designation system.

(E) Designated teacher--An exemplary, master, or recognized teacher.

(F) Eligible teaching assignment--An assignment based on campus, subject taught, or grade taught.

(G) End of course--The last twelve weeks of a year-long course or the last six weeks of a semester course.

(H) [(G)] National Board certification--Certification issued by the National Board for Professional Teaching Standards.

(I) [(H)] Provisional approval--Conditional approval of a school district local optional teacher designation system that would require resubmission of system review, [and/or] data validation, additional required documentation, video submission, and/or other technical assistance for further data submission [approval].

(J) [(H)] Reliability--The degree to which an instrument used to measure teacher performance and student growth produces stable and consistent results.

(K) [(J)] Rural--A campus within a school district with fewer than 5,000 enrolled students that is categorized as a rural, non-metropolitan: stable, or non-metropolitan: fast growing district type by the Texas Education Agency (TEA); a campus within a school district with fewer than 5,000 enrolled students categorized as rural by the National Center for Education Statistics; or a campus defined in TEC, §48.112(a)(1).

(L) [(K)] School district--The definition of a school district includes charter schools as defined in subparagraph (B) of this paragraph.

(M) [(L)] Student growth--Student academic progress achieved in response to the pedagogical practices of teachers, as measured at the individual teacher level by one or more measures of student growth aligned to the standards of the course.

(N) Teacher category--One or more eligible teaching assignments evaluated with the same teacher observation rubric, student growth measure, and optional components and weighting as defined in a district's local designation system.

(O) [(M)] Teacher observation--One or more observations of a teacher instructing students for a minimum of 45 minutes or multiple observations that aggregate to at least 45 minutes.

(P) Texas Student Data System (TSDS) Texas Education Data Standards (TEDS)--Data collected annually during the Class Roster Winter Submission.

(Q) [(N)] Validity--The degree to which an instrument used to measure teacher performance and student growth measures what it is intended to measure.

(2) Fees for teacher incentive allotment teacher designation and system renewal. A school district requesting approval of a teacher designation system or renewal of such a system shall pay the applicable fees from the following list:

(A) a \$500 fee for each teacher submitted for designation to TEA; or

(B) a system renewal fee to be determined by the commissioner and established in rule.

(b) Teacher eligibility.

(1) Teachers eligible to earn or receive designations under an approved local optional teacher designation system must meet the following requirements:

[(A) the teacher holds an active Texas certification under Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates), a Reading Specialist Certificate under Chapter 239, Subchapter D, of this title (relating to Reading Specialist Certificate), or a Legacy Master Teacher Certificate;]

(A) [(B)] the teacher is employed by the recommending school district or charter partner pursuant to TEC, §11.174 and §48.252, in a role ID coded as 087 (Teacher) and corresponding class roles of 01, 02, or 03, if applicable, in TSDS TEDS [the Texas Student Data System Texas Education Data Standards (TEDS)] for 90 days at 100% of the day (equivalent to four and one-half months or a full semester) or 180 days at 50-99% of the day and compensated for that employment. A charter partner operating under TEC, §11.174 and §48.252, is required to provide teacher-level data to its partner school district for reporting by the district in TSDS TEDS; [and]

(B) the teacher was employed by the recommending school district or charter partner pursuant to TEC, §11.174 and §48.252, during the year the teacher's effectiveness was collected in alignment with the recommended designation; and

(C) the teacher is not currently designated under a local optional teacher designation system, unless the teacher is being recommended for a higher designation [or is in the last year of a teacher designation].

(2) School districts are eligible to receive funding for each designated teacher if the teacher meets the requirements in paragraph (1)(A) [and (B)] of this subsection for each district. TEA may exercise administrative discretion to determine the eligibility of a teacher if a district disputes TSDS TEDS data. Disputes must be received by TEA by the second Friday in May each year; however, TEA may exercise administrative discretion to allow disputes to be considered outside of this timeline.

(c) Application procedures and approval process.

(1) The following provisions apply to applications submitted under this section.

(A) If TEA determines that an application is incomplete, TEA may provide the applicant with notice of the deficiency and an opportunity to submit missing required information. If the missing required information is not submitted within seven business days after the original submission deadline, the application will be denied.

(B) If TEA determines that a system application does not meet the standards established under TEC, §21.3521, and this section, TEA shall permit the applicant to resubmit the application by June 30 [within three months of the submission deadline]. If no resubmission is [timely] made by the deadline, the application will be denied.

(C) Applicants that are determined to meet the standards established under TEC, §21.3521 and §48.112, and the requirements of the statutorily based framework provided in the figure in this subparagraph shall be approved.

Figure: 19 TAC §150.1012(c)(1)(C)

[(C) An applicant that demonstrates the need for ongoing support will be required to submit additional information that may result in provisional approval for one year. A school district with this approval status cannot add eligible teaching assignments to its local optional teacher designation system and will be required to complete a new application or resubmit data for validation for the additional four years of approval.]

[(D) An applicant that has a local optional teacher designation system that has been paying teachers in the 2019-2020 school year may be issued provisional approval for two years if the system does not contain either a teacher observation component as specified in paragraph (2)(A)(i) of this subsection or a student growth component as specified in paragraph (2)(A)(ii) of this subsection. A school district with this approval status cannot add eligible teaching assignments to its local optional teacher designation system.]

(D) [(E)] Applications that are determined to meet the standards established under TEC, §21.3521 and §48.112, and this section shall be approved for an initial term of five years. Applications that are determined to need ongoing support may result in provisional approval.

(2) The application shall include the following for each eligible teaching assignment:

(A) components of a local system for issuing designations, including:

(i) a teacher observation component that contains:

(I) a plan for calibration, using the rubric approved under subclause (II) of this clause, that includes congruence among appraisers, a review of teacher observation data and the correlation between teacher observation and student growth data, and implementation of next steps; and

(II) an approved teacher observation rubric including the Texas Teacher Evaluation and Support System, Marzano's Teacher Evaluation Model and rubric created by the National Institute for Excellence in Teaching [Teacher] and The Danielson Group, or another rubric that is based on observable, job-related behaviors that are described with progressive descriptors for each dimension, including alignment to §149.1001 of this title (relating to Teacher Standards) and a clear proficiency indicator. A school district may be required to provide teacher observation videos if the ratings cannot be verified from the data submitted; and

(ii) a specified student growth component by assessment that:

(I) if using a student learning objective, is aligned to the Texas Student Learning Objectives (SLO) process described on the TEA website for SLOs at <https://texasslo.org> [is aligned to the standards of the course, measures the level of preparedness for each student at the beginning of the school, and measures the mastery level for each student at the end of the school year based on a body of evidence];

(II) if using a portfolio method, demonstrates that student work is aligned to the standards of the course, demonstrates mastery of standards, utilizes a skills proficiency rubric, and includes criteria for scoring various artifacts;

(III) if using school district- or teacher-created assessments, is aligned to the standards of the course and conforms to a district rubric for district- or teacher-created assessments. A school district must approve district- or teacher-created assessments for the purpose of determining student growth by using a district process and rubric for approval of such assessments. Assessments must measure beginning of course to end of course or from end of course from the previous course to end of current course; [or]

(IV) if using a school district- or teacher-created assessment in conjunction with a third-party assessment, is aligned to the standards of the course and conforms to a district rubric for district- or teacher-created assessments. A school district must approve district- or teacher-created assessments for the purpose of determining student growth by using a district process and rubric for approval of such assessments. Assessments must measure beginning of course to end of course or from end of course from the previous course to end of current course;

(V) [(IV)] if using third-party [vendor-created] assessments with third-party accompanying growth targets, is aligned to the standards for the course and contains questions that cover a range of student skill levels. Assessments must measure beginning of course to end of course or from end of course from the previous course to end of current course; or

(VI) if using third-party assessments with district-created growth targets, is aligned to the standards of the course and contains questions that cover a range of student skill levels. Assessments must measure beginning of course to end of course or from end of course from the previous course to end of current course.

(B) test administration processes for all student growth that will lead to validity and reliability of results, including:

(i) test security protocols;

(ii) testing windows;

(iii) testing accommodations; and

(iv) annual training for test administrators; and

(C) data for all teachers in eligible teaching assignments, including student growth, and observation data for all teachers in eligible teaching assignments for the data capture year in alignment with TEC, §21.351 or §21.352. Multi-year data shall include student growth and observation data from the same year and teacher category [teaching assignment]. Single-year data shall include student growth and observation data from the same teacher category [teaching assignment]. TEA may exercise administrative discretion regarding the requirements of this subparagraph in situations in which data is difficult to provide due to circumstances beyond a district's control and the district would otherwise be unable to provide sufficient data for application consideration.

(d) System expansion, spending modifications, and changes [amendments]. School districts must apply for approval through the system application process the year prior to implementation if:

(1) adding new eligible teaching assignments or campuses (if started with less than all campuses in the district);

[(1) School districts must apply for approval for additional eligible teaching assignments with previously unapproved student

growth or teacher observation components, new student growth components, or new teacher observation components.]

(2) adding a new teacher observation rubric;

~~[(2) Proposed amendments to other components of the application will be due at the time of annual submission. Additional information and application processes may be requested.]~~

(3) changing a previously approved teacher observation rubric;

(4) adding new student growth measures;

(5) changing the student growth measure used by an eligible teaching assignment;

(6) adding or changing the third-party assessment used in a student growth measure;

(7) adding or changing the type of assessment used in a student growth measure;

(8) removing a student growth measure used by an eligible teaching assignment;

(9) removing an eligible teaching assignment; or

(10) modifying a district's spending plan. TEA may exercise administrative discretion to allow spending modifications outside of the approval timeline outlined in this subsection.

(e) Monitoring and annual program evaluation of approved local designation systems.

(1) For the annual program evaluation [data submission], approved school districts shall submit the following information regarding a local teacher designation system and associated spending :

(A) the distribution of allotment funds from the previous school year in accordance with the funding provisions of subsection (g) of this section;

(B) a response and implementation plan to annual surveys developed by TEA administered to teachers, campus principals, and human resources personnel gauging the perception of a school district's local designation system; and

(C) teacher observations and student growth measure data for all teachers in eligible teaching assignments if school districts are submitting new teacher designations collected in alignment with §150.1003(b)(5) and (l)(3) of this title (relating to Appraisals, Data Sources, and Conferences). TEA reserves the right to request data for the purposes of performance evaluation and investigation based on data review outcomes. TEA may exercise administrative discretion in circumstances where data is difficult to provide and a district would otherwise be unable to provide sufficient data for application consideration.

(2) Outcomes of the annual program evaluation [data submission] may lead to a review, pursuant to TEC, §48.272(e), and subject to the period of review limitation in TEC, §48.272(f), of the local optional designation system that may be conducted at any time at the discretion of the TEA staff.

(f) Continuing approval and renewal.

(1) Approved local optional teacher designation systems are subject to review at least once every five years. However, a review may be conducted at any time at the discretion of TEA.

(2) Approval of local optional designation systems are voidable by TEA for one or more of the following reasons:

(A) failure to fulfill all local optional designation system requirements as defined in this section;

(B) failure to comply with annual program evaluation [data submission] requirements;

(C) failure to comply with the provisions of TEC, §21.3521 and §48.112;

(D) failure to implement the local optional teacher designation system as approved by TEA [~~and Texas Tech University~~];

(E) failure to remove district employees from the designation determination process who have a conflict of interest and acted in bad faith to influence designations; or

(F) at the discretion of the commissioner.

(3) Approval of individual teacher designations are voidable by TEA for one or more of the following reasons:

(A) a teacher has not fulfilled all designation requirements;

(B) the school district at which the designation was earned has had its local optional designation system voided;

(C) the National Board for Professional Teaching Standards revokes a National Board certification that provided the basis for a teacher's designation;

(D) the suspension, revocation, cancellation, or surrender of a certificate issued by the State Board for Educator Certification to a designated teacher;

(E) the addition of the designated teacher to the registry of persons not eligible for employment in public schools under TEC, §22.092, and Chapter 153, Subchapter EE, of this title (relating to Commissioner's Rules Concerning Registry of Persons Not Eligible for Employment in Public Schools);

(F) ~~[(E)]~~ the district issued a designation in bad faith by not removing a district employee from the designation determination process who had a conflict of interest; or

(G) ~~[(F)]~~ at the discretion of the commissioner.

(g) Funding.

(1) State funding.

(A) School districts will receive teacher incentive allotment funds based on prior-year estimates. The final amount will be based on data from the current school year as provided in subparagraph (D) of this paragraph. Any difference from the estimated amount will be addressed as part of the Foundation School Program settle-up process according to the provisions in TEC, §48.272.

~~[(A) Teacher incentive allotment funds will be disbursed to school districts in the same school year for which the teacher designations are approved. The initial disbursement may occur either upon final approval of a local teacher designation system or in the school year following final approval if a district decides to delay designations.]~~

(B) A school district is eligible to earn the base allotment for each designated teacher assigned to a zero-enrollment campus, a campus with fewer than 20 students, a juvenile justice alternative education program, a disciplinary alternative education program, a residential facility, or central administration if the designated teacher meets the requirements in subsection (b)(2) of this section, plus the multiplier based on the school district's average student point value and rural status, if applicable.

(C) Funding for teachers who work at multiple campuses shall be calculated and split equally among the campuses where the employee is working in a role coded as 087 (Teacher) in TSDS [the Texas Student Data System] TEDS at each campus.

(D) Designated teacher campus and district of employment shall be determined annually by data collected in TSDS TEDS.

(E) School districts shall annually verify and confirm teacher designations and corresponding allotments.

(F) [(D)] TEA may exercise administrative discretion to redirect or recalculate funds to the district where the designated teacher works if a district disputes TSDS TEDS data. Disputes must be received by the second Friday in May each year; however, TEA may exercise administrative discretion to allow disputes to be considered outside of this timeline [misecoding error is discovered] .

(G) The average point value and rural status for the Texas School for the Deaf and the Texas School for the Blind and Visually Impaired will be calculated by utilizing the home districts of the schools' students.

(2) Status and use of state funds. A school district that receives teacher incentive allotment funding must comply with the requirements of TEC, §48.112, including the requirement that at least 90% of each allotment must be used for compensation of teachers employed at the campus at which the teacher for whom the district received the allotment is employed. School districts that receive funding for charter partnerships pursuant to TEC, §11.174 and §48.252, shall pass along at least 90% of the teacher incentive allotment funding to the charter partner. Charter partners and districts shall work together to ensure that the spending requirements of TEC, §48.112, are met.

§150.1013. National Board for Professional Teaching Standards.

(a) Definitions. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

[(1) Active Texas certification—A valid certification labeled as one year, provisional, professional, or standard under §230.31(a) of this title (relating to Types of Certificates) or a visiting international teacher certification under §230.41 of this title (relating to Visiting International Teacher Certificates).]

(1) [(2)] Charter school--A Texas public school that meets one of the following criteria:

(A) is operated by a charter holder under an open-enrollment charter granted either by the State Board of Education or commissioner of education pursuant to Texas Education Code (TEC), §12.101, identified with its own county district number;

(B) has a charter granted under TEC, Chapter 12, Subchapter C, and is eligible for benefits under TEC, §11.174 and §48.252; or

(C) has a charter granted under TEC, §29.259, and Human Resources Code, §221.002.

(2) [(3)] Classroom teacher--An educator who is employed by a school or district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical instructional setting. This term does not include an educational aide or a full-time administrator.

(3) [(4)] National Board certification--Certification issued by the National Board for Professional Teaching Standards.

(4) [(5)] School district--The definition of a school district includes charter schools as defined in paragraph (1) [(2)] of this subsection.

(b) Eligibility.

(1) Teachers with current National Board certification are eligible for a recognized designation starting in the 2020-2021 school year if the teacher:

(A) is employed by a school district or charter partner pursuant to TEC, §11.174 and §48.252, in a role ID coded as 087 (Teacher) and corresponding class roles of 01, 02, or 03, if applicable, in the Texas Student Data System (TSDS) Texas Education Data Standards (TEDS). A charter partner operating under TEC, §11.174 and §48.252, is required to provide teacher-level data to their partner school district for reporting by the district in TSDS TEDS; and

[(A) holds an active Texas certification under Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates); a Reading Specialist Certificate under Chapter 239, Subchapter D, of this title (relating to Reading Specialist Certificate); or a Legacy Master Teacher Certificate; and]

(B) registers his or her National Board certification in Texas in the National Board Certified Teacher directory by January 31 each year [the annual date set by the commissioner] .

[(2) Teachers with current National Board certification are eligible for a recognized designation starting in the 2019-2020 school year if:]

[(A) the teacher holds an active Texas certification under Chapter 233 of this title; a Reading Specialist Certificate under Chapter 239, Subchapter D, of this title; or a Legacy Master Teacher Certificate;]

[(B) the teacher registers his or her National Board certification in Texas in the National Board Certified Teacher directory by the annual date set by the commissioner; and]

[(C) the school district at which the teacher with National Board certification was employed in the 2019-2020 school year can demonstrate evidence of differentiated compensation for the teacher paid during the 2019-2020 school year.]

(2) [(3)] Teachers who are designated as recognized based on paragraph (1) [paragraphs (1) and (2)] of this subsection are eligible to earn and receive designations under §150.1012 of this title (relating to Local Optional Teacher Designation System) .

(3) [(4)] Beginning with the 2020-2021 school year, the first year of recognized designation will be the year in which the National Board certification was earned. For National Board certifications earned prior to the 2020-2021 school year, the first year of the recognized designation will be the 2020-2021 school year unless the 2020-2021 school year is the last year of National Board certification.

(4) [(5)] The last valid year of the recognized designation is the last school year in which the National Board certification is valid unless the teacher earned a designation in a local optional teacher designation system under §150.1012 of this title, in which case the later of last year of designation applies.

(5) [(6)] School districts are eligible to receive funding for a designated teacher if [the teacher meets the following requirements:]

[(A) the teacher holds an active Texas certification under Chapter 233 of this title; a Reading Specialist Certificate under Chapter 239, Subchapter D, of this title; or a Legacy Master Teacher Certificate; and]

[(B)] the teacher has been or will be employed by the school district receiving the funding or charter partner operating pursuant to TEC, §11.174 and §48.252, in a role ID coded as 087 (Teacher) and corresponding class roles of 01, 02, or 03, if applicable, in TSDS [the Texas Student Data System] TEDS for 90 days at 100% of the day (equivalent to four and one-half months or a full semester) or 180 days at 50-99% of the day and compensated for that employment. A charter partner operating under TEC, §11.174 and §48.252, is required to provide teacher-level data to its partner school district for reporting by the district in TSDS TEDS.

(c) Reimbursement.

(1) Beginning in the 2020-2021 school year, school districts may request reimbursement for the following eligible National Board fees paid under TEC, §21.3521, by the district or the teacher with National Board certification when National Board certification has been successfully earned:

- (A) renewal fees up to \$1,250;
- (B) certification fees up to \$1,900;
- (C) maintenance of certification fees up to \$495; and
- (D) fees for initial, renewed, or maintenance National Board certifications earned on or after the 2019-2020 school year.

(2) School districts requesting National Board certification reimbursement shall establish a process to ensure that teachers with National Board certification have received from the school district full reimbursement of eligible fees paid by the teacher before the school district can be reimbursed by Texas Education Agency (TEA). Charter partners operating pursuant to TEC, §11.174 and §48.252, without a county-district number will be reimbursed through their district. Charter partners and districts shall work together to ensure that the spending requirements of TEC, §48.112, are met.

(3) School districts are not required to apply to TEA for approval of National Board certification-based designations.

(d) The requirements of §150.1012(g)(1) and (2) of this title apply to funding referenced in this section.

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 December 6, 2021.

TRD-202104807
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: January 16, 2022
For further information, please call: (512) 475-1497



19 TAC §150.1015

STATUTORY AUTHORITY. The repeal is proposed under Texas Education Code (TEC), §21.3521, as amended by House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021, which specifies that the commissioner: (1) shall ensure that local optional teacher designation systems meet the statutory requirements for the system; (2) shall prioritize high needs campuses; (3) shall enter into a memorandum of understanding with Texas Tech University regarding the assessment of local

iterations of the local optional teacher designation system; (4) shall periodically conduct evaluations of the effectiveness of the local optional teacher designation system; (5) may adopt fees, which are exempted from the requirements of Texas Government Code, §2001.0045 and §2001.0221, to implement the local optional teacher designation system; and (6) may adopt rules to implement the local optional teacher designation system.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §21.3521.

§150.1015. *Local Optional Designation System Extenuating Circumstances.*

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 December 6, 2021.

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CHAPTER 157. HEARINGS AND APPEALS
SUBCHAPTER EE. INFORMAL REVIEW,
FORMAL REVIEW, AND REVIEW BY STATE
OFFICE OF ADMINISTRATIVE HEARINGS

The Texas Education Agency (TEA) proposes amendments to §§157.1121, 157.1122, 157.1123, 157.1151, 157.1153, 157.1167, and 157.1182; the repeal of §§157.1131-157.1137; and new §§157.1131 and 157.1133-157.1135, concerning hearings and appeals. The proposed revisions would implement Senate Bill (SB) 1365, 87th Texas Legislature, Regular Session, 2021.

BACKGROUND INFORMATION AND JUSTIFICATION: The proposed revisions to 19 TAC Chapter 157, Subchapter EE, would implement the provisions of SB 1365, 87th Texas Legislature, Regular Session, 2021.

SB 1365 renumbered, renamed, and amended former Texas Education Code (TEC), §39.057, Special Accreditation Investigations, to TEC, §39.003, Special Investigations. Former TEC, §39.057, was repealed. Throughout the TEC, the term "special accreditation investigations" was replaced with "special investigations."

SB 1365 renumbered, renamed, and amended former TEC, §39.058, Conduct of Special Accreditation Investigations, to TEC, §39.004, Conduct of Special Investigations. Former TEC, §39.058, was repealed.

SB 1365 added new TEC, §39.005, that provides a hearing regarding certain sanctions and interventions.

SB 1365 added new TEC, §39.006, that sets forth the procedures for the commissioner to make a determination of the intervention or sanction after receiving findings of fact and conclusions of law issued pursuant to TEC, §39.005(h).

SB 1365 added new TEC, §39.007, that sets forth procedures for a judicial appeal of a decision issued under TEC, §39.006.

The following changes would be made to Chapter 157, Subchapter EE, to reflect the amended and new statutes.

Throughout the rules, statutory citations would be updated and word choice would be changed to improve clarity.

The title for Subchapter EE would be amended to delete the reference to formal reviews, which are proposed for elimination, and replace it with the term "hearing following investigation," which is the new procedure that replaces the formal review.

Division 1. Informal Review

The proposed amendment to §157.1121, Applicability, would clarify in paragraph (1) that an informal review does not apply to a final investigative report issued under TEC, §39.003, when the final report includes a recommendation of a board of managers, alternative management of a campus, or the closure of a district or district campus.

Section 157.1121(2) would be repealed. Because the assignment of a monitor, conservator, or management team would be reviewed by SOAH under proposed new §157.1151(9) and (10), there is no longer any need for an informal review.

Proposed new §157.1121(5) would provide an informal review for the assignment of an accreditation status. This action currently receives a formal review. Since the formal review is proposed for elimination, the assignment of accreditation statuses will receive informal reviews.

Section 157.1122, Notice, would be amended by repealing subsection (a). The process for contesting the findings of a special investigation (formerly special accreditation investigation) would be contained in revised Division 2, related to hearing following investigation, and the provision in subsection (a) would no longer be necessary.

The language in renumbered §157.1122(1)-(5) would be clarified to reflect its applicability to final reports rather than preliminary reports. Other language would be clarified to conform with §157.1121.

Section 157.1123, Informal Review, would be revised in subsection (c) to allow for hearings to be conducted through virtual meeting platforms.

References to the term "final report" would be eliminated from §157.1123(d) and (f). The provisions in subsections (d) and (f) describe the outcomes following a review or failure to request a review. This section provides the process to challenge a preliminary report, the outcome of which would be a final report. Since this section would no longer apply to preliminary reports, the references to final report would be removed.

Division 2. Formal Review

Division 2 would be renamed "Hearing Following Investigation" to align with the replacement of the formal review with the hearing following investigation.

Sections 157.1131-157.1137 would be repealed. These sections set forth the procedure for a formal review, which is being eliminated. Proposed new §§157.1131 and 157.1133-157.1135 would set forth the procedure for a hearing following an investigation.

Proposed new §157.1131, Applicability, would make the division applicable to a decision to appoint a board of managers, appoint

alternative management to a campus, or to close a school district or campus.

Proposed new §157.1133, Hearing Procedures, would describe how a hearing under Division 2 would be conducted.

Proposed new §157.1133(1) would require the hearing to be conducted by SOAH or another qualified person if both parties agree.

Proposed new §157.1133(2) would make the Administrative Procedure Act applicable to the hearing except as otherwise provided by Subchapter EE.

Proposed new §157.1133(3) would require the hearing to be held in the administrative offices of the school district or open-enrollment charter school that requested the hearing, unless all parties agree on another location.

Proposed new §157.1133(4) would provide requirements to protect the privacy of a child witness.

Proposed new §157.1133(5) would provide the timeline for issuing a decision, which is 90 days after the hearing is requested. The new paragraph would also specify that the hearing examiner or person conducting the hearing may not issue a recommendation for relief.

Proposed new §157.1133(6) would prohibit the hearing from being conducted on weekends, state holidays, or federal holidays unless otherwise agreed to by all parties.

Proposed new §157.1134, Commissioner Determination, would set forth the process for the commissioner to make a determination following the hearing.

Proposed new §157.1134(a) would require the commissioner to provide the school district or open-enrollment charter school an opportunity to provide oral argument after the hearing under TEC, §39.005, is held. The language would require that both parties be provided equal time for oral argument.

Proposed new §157.1134(b) would require the commissioner to issue a written decision containing findings of fact; conclusions of law; and sanctions, interventions, or other actions authorized by law following the oral arguments provided for in subsection (a) of the section.

Proposed new §157.1134(c) would require the commissioner to consider the record of the hearing under TEC, §39.005; the findings of fact and conclusions of law issued; and the oral arguments made pursuant to subsection (a) of the section.

Proposed new §157.1134(d) would set forth the process for accepting, rejecting, or amending conclusions of law regarding the interpretation of a provision of the TEC.

Proposed new §157.1134(e) would set forth the process and standard for the commissioner to accept, reject, or amend a finding of fact. The commissioner would be able to amend or reject a finding of fact only when the finding is not supported by substantial, admissible evidence.

Proposed new §157.1134(f) would require the commissioner to provide in writing the legal basis and reason for amendment or rejection of any findings of fact or conclusions of law.

Proposed new §157.1135, Judicial Review, would set forth the process for obtaining judicial review of the commissioner decision issued pursuant to §157.1134.

Proposed new §157.1135(a) would make these provisions supersede conflicting provisions in the Administrative Procedure Act.

Proposed new §157.1135(b) would allow a school district or an open-enrollment charter school to appeal decisions made by the commissioner under the section to a district court with jurisdiction in the county where the central administrative offices of the school district or charter school are located or a district court in Travis County if all parties agree.

Proposed new §157.1135(c) would require the appeal to be filed within 30 days of the receipt of the written decision of the commissioner under §157.1134.

Proposed new §157.1135(d) would make it clear that the filing of an appeal does not stay enforcement of the commissioner's decision.

Proposed new §157.1135(e) would set forth the standard and scope of the review by the court hearing the appeal.

Proposed new §157.1135(f) would prohibit the reviewing court from taking additional evidence.

Proposed new §157.1135(g) would set forth the standards for a court to apply when reviewing a decision to amend or reject a finding of fact and describes what happens when such a decision is rejected.

Proposed new §157.1135(h) would prohibit a court from reversing or remanding a decision subject to a judicial appeal based on a procedural error, unless the procedural error was likely to have caused an erroneous determination by the commissioner.

Division 3. State Office of Administrative Hearings Substantial Evidence Review

Section 157.1151, Applicability, would be amended to update statutory references and add actions for which a school district or open-enrollment charter school can request a substantial evidence review from SOAH. Proposed new paragraphs (7)-(10) would allow the review for the appointment of a board of managers for reasons other than a special investigation or the appointment of a conservator or management team.

Section 157.1153, Applicability of Other Law, would be amended in subsection (a) to update a statutory reference.

Section 157.1167, Expedited Review, would be amended in subsections (f) and (g) to reflect that the timelines contained only apply to the revocation of a charter school contract.

Division 4. State Office of Administrative Hearings Arbitrary and Capricious or Clearly Erroneous Review

Section 157.1182, Applicability of Other Law, would be amended to update a statutory reference.

FISCAL IMPACT: Von Byer, general counsel, 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 commu-

nities; 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 repeal existing regulations to eliminate references to formal review. The proposed rulemaking would also create new regulations to describe the procedure for a hearing following an investigation. Finally, the proposed rulemaking would both expand and limit existing regulations. The proposed rulemaking would remove the formal review of certain decisions. Certain actions will be provided a hearing before SOAH and an opportunity to appeal the decision to district court. Other actions previously receiving a formal review will be given an informal review.

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 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. Byer 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 rule language is based on current law and providing school districts with clarifications on the assignment of accreditation statuses and the applicability of sanctions and any future district ratings on subsequent accreditation status assignments. 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 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 December 17, 2021, and ends January 18, 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 December 17, 2021. 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/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

DIVISION 1. INFORMAL REVIEW

19 TAC §§157.1121 - 157.1123

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §39.001(a), which authorizes the commissioner to adopt rules as necessary to administer TEC, Chapter 39; TEC, §39.003(e), as added by Senate Bill (SB) 1365, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to defer taking action under the section pending an independent third-party review, the completion of a corrective action plan, or both; TEC §39.003(f), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to decline to take the deferred action referenced in new TEC, §39.003(e), based on the action taken pursuant to subsection (d); TEC, §39.004(a-1), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to withhold the names of witnesses during the pendency of the investigation; TEC, §39.004(b), as transferred, redesignated, and amended by SB 1365, 87th Texas Legislature, Regular Session, 2021, which removes the informal review process required to finalize a report and replaces it with new processes; TEC, §39.004(c), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the Texas Education Agency (TEA) to provide any evidence relied on by TEA to make preliminary findings and disclose the identity of any witnesses whose statements were relied upon to make preliminary findings. The subsection also makes it clear that the preliminary report will not make a recommendation for sanctions or interventions; TEC, §39.004(d), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which excepts the report from the Public Information Act as an audit workpaper and prohibits disclosure of the report by the school district unless the disclosure is approved by a majority vote of the governing board of a school district or charter school; TEC, §39.004(e), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which makes the evidence gathered in the investigation confidential and excepts it from disclosure under the Public Information Act. The subsection allows the release of this information only to a person who has a legitimate interest in the investigation or in the legal process that is provided for in the section; TEC, §39.004(f), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which allows the governing board of a school district or charter school to accept or respond to the findings of a preliminary report issued under the section within 30 days of its receipt; TEC, §39.004(g), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires TEA to consider any response pursuant to TEC, §39.004(f), before issuing a final report; TEC, §39.004(h), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires TEA to provide an informal review before issuing a final sanction or intervention, except for higher level sanctions and interventions that are governed by new TEC, §39.005, and provides that this informal review is not a contested case proceeding governed by Texas Government Code, Chapter 2001 (Administrative Procedure Act); TEC, §39.005(i) and (j), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which authorize the commissioner to subpoena a current or former school district employee, agent, or official to attend a deposition or produce documents reasonably necessary for the investigation and authorizes the attorney general to file suit to enforce the subpoena; TEC, §39.005(a), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which applies the procedures created by the section to final investigative reports issued pursuant to TEC, §39.003, that recommend the appointment of a board of managers, alternative management of a campus, or the closure of the district or a district campus; TEC, §39.005(b)

and (c), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which require the governing board of a school district or charter school to request a hearing within 15 days of receiving a final report that is issued under TEC, §39.004(g), and subject to subsection (a) of the section. This deadline may be extended by up to an additional 30 days if the school district or charter school and TEA agree; TEC, §39.005(d), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which authorizes the State Office of Administrative Hearings (SOAH) to conduct the hearing unless the district or charter school and TEA agree to the appointment of another qualified person to conduct the hearing; TEC, §39.005(e), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which applies the Administrative Procedure Act to this hearing, except as otherwise provided in the section; TEC, §39.005(f), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the hearing be held at the administrative offices of the school district or charter school or another location if all parties agree; TEC, §39.005(g), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which sets forth procedures to protect the confidentiality of a child who is a witness in the case; TEC, §39.005(h), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the person conducting the hearing to issue findings of fact and conclusions of law within 90 days of the request for hearing submitted under subsection (b); TEC, §39.005(i), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which prohibits the hearings from being conducted on Saturday, Sunday, a state holiday or a federal holiday unless all parties agree; TEC, §39.006(a), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which allows all parties to present oral arguments to the commissioner of education regarding the dispute that formed the basis of the hearing conducted pursuant to TEC, §39.005. All parties must be given equal time to present such arguments; TEC, §39.006(b), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which authorizes the commissioner to issue a written decision with findings of facts, conclusions of law, and sanctions and interventions authorized by law; TEC, §39.006(c), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which establishes what the commissioner must consider in issuing a written decision described by subsection (b); TEC, §39.006(d), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which authorizes the commissioner to accept, reject, or amend the conclusions of law issued by the person who conducted the hearing; TEC, §39.006(e), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which authorizes the commissioner to change a finding of fact only when it is not supported by substantial, admissible evidence; TEC, §39.006(f), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to provide a written explanation of the basis for changing any finding of fact or conclusion of law; TEC, §39.007(a), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which makes the provisions in the section supersede conflicting procedures in the Administrative Procedure Act; TEC, §39.007(b), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which allows the appeal to be made to a district court with jurisdiction in the county where the central administrative offices are located or to Travis County District Court if all parties agree; TEC, §39.007(c), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the appeal to be filed within 30 days of the date the district receives the written decision issued under TEC, §39.006(b); TEC, §39.007(d), as added by SB 1365, 87th Texas

Legislature, Regular Session, 2021, which states that the filing of an appeal does not affect or stay the enforcement of the order being appealed; TEC, §39.007(e), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which establishes the scope and standard of review of the court considering the appeal; TEC, §39.007(f), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which prohibits the court from taking additional evidence; TEC, §39.007(g), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which sets forth the standard for the court to review findings of facts that were either amended or rejected by the commissioner; and TEC, §39.007(h), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which prohibits the court from reversing or remanding a decision based on a procedural error unless the court finds that the procedural error likely caused an erroneous decision.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §39.001(a); §39.003 and §39.004, as transferred, redesignated, and amended by Senate Bill (SB) 1365, 87th Texas Legislature, Regular Session, 2021; and §§39.005-39.007, as added by SB 1365, 87th Texas Legislature, Regular Session, 2021.

§157.1121. Applicability.

This division applies to:

(1) a final ~~[an]~~ investigation report issued under the Texas Education Code (TEC), §39.003, except when the final investigation report includes a recommendation for a board of managers, alternative management of a campus, or the closure of a district or district campus [Chapter 39, Subchapter C] ;

~~[(2) an assignment of a monitor, conservator, or management team under the TEC, Chapter 39;]~~

~~(2)~~ [(3)] an over-allocation to an open-enrollment charter school described under §100.1041(e) of this title (relating to State Funding);

(3) [(4)] a determination to deny a petition for renewal and allow a charter of an open-enrollment charter school to expire pursuant to the TEC, §12.1141(d);

(4) ~~[(5)]~~ a decision subject to review by the State Office of Administrative Hearings under Division 3 of this subchapter (relating to State Office of Administrative Hearings Substantial Evidence Review) or Division 4 of this subchapter (relating to State Office of Administrative Hearings Arbitrary and Capricious or Clearly Erroneous Review); ~~[and]~~

(5) the assignment of an accreditation status; and

(6) any other [an] investigation made subject to this division at the sole discretion of Texas Education Agency staff.

§157.1122. Notice of Informal Review .

~~[(a) Findings resulting from an investigation subject to this division must be presented in a preliminary investigative report. The report must be provided to a school district, an open-enrollment charter school, or any person the Texas Education Agency (TEA) finds has violated a law, rule, or policy and must:]~~

~~[(1) describe the factual and legal basis for each violation;]~~

~~[(2) identify the action to be taken as a result of the accreditation investigation;]~~

~~[(3) describe the procedures for obtaining an informal review of the findings in the preliminary investigative report;~~

~~[(4) identify the TEA representative to whom the request for an informal review may be addressed; and~~

~~[(5) set a deadline for requesting and submitting items and information to be considered during an informal review.]]~~

~~[(b)] A final report, an [An] assignment, a determination, or a decision subject to this division must be presented in writing to the school district or open-enrollment charter school that the Texas Education Agency (TEA) [TEA] finds has violated a law, rule, or policy and must:~~

~~(1) describe the factual and legal basis for each violation;~~

~~(2) identify the action proposed to be taken as a result of the final report, assignment, determination, or decision [accreditation investigation] ;~~

~~(3) describe the procedures for obtaining an informal review of the final report, assignment, determination, or decision [findings in the preliminary investigative report] ;~~

~~(4) identify the TEA representative to whom the request for an informal review may be addressed; and~~

~~(5) set a deadline for requesting and submitting items and information to be considered during an informal review.~~

§157.1123. Informal Review.

(a) A school district, an open-enrollment charter school, or any person who is subject to an investigation, assignment, determination, or decision identified in §157.1121 of this title (relating to Applicability) may request, in writing, an informal review under this section.

(b) A written request for informal review must be addressed to the designated Texas Education Agency (TEA) representative. The written request must be received by the TEA representative on or before the deadline identified in the notice issued under §157.1122 of this title (relating to Notice of Informal Review).

(c) A school district, an open-enrollment charter school, or any person requesting the informal review may submit written information to the TEA representative by the deadline set forth in the notice issued under §157.1122 of this title. In addition, the TEA representative may require attendance at a meeting at the TEA headquarters in Austin, Texas, or by telephone or virtual meeting platform , to discuss the findings and/or provide additional information for review. For an informal review of a decision to non-renew the charter of an open-enrollment charter school pursuant to the Texas Education Code (TEC), §12.1141(c), or a decision to revoke the charter of an open-enrollment charter school or reconstitute the governing board of the charter holder under the TEC, §12.115(a), the TEA representative shall, at the request of the open-enrollment charter school at the TEA headquarters in Austin, Texas, or by telephone or virtual meeting platform [if requested by the open-enrollment charter school] . This meeting is part of the informal review but is not a contested case hearing. The meeting will not include the examination of any witnesses, including TEA staff. The rules of civil procedure and evidence, including rules prohibiting ex parte communications, do not apply.

(d) If no informal review is requested by the deadline, an [a final report,] assignment, a determination, or a decision may be issued without informal review.

(e) An informal review is not governed by the TEC, §7.057, or by the Texas Government Code, Chapter 2001.

(f) Following the informal review by the TEA representative, an [a final report,] assignment, a determination, or a decision will be issued. The [final report,] assignment, determination, or decision may

include changes or additions to the preliminary report or action, and such modifications are not subject to another informal review procedure. An [A final report,] assignment, a determination, or a decision issued following an informal review is final and may not be appealed, except as provided by law or rule. For an informal review of a decision to non-renew the charter of an open-enrollment charter school pursuant to the TEC, §12.1141(c), or a decision to revoke the charter of an open-enrollment charter school or reconstitute the governing board of the charter holder under the TEC, §12.115(a), the final decision shall include [provide] a written response to any information the charter holder submits under this section.

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



DIVISION 2. FORMAL REVIEW

19 TAC §§157.1131 - 157.1137

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §39.001(a), which authorizes the commissioner to adopt rules as necessary to administer TEC, Chapter 39; TEC, §39.003(e), as added by Senate Bill (SB) 1365, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to defer taking action under the section pending an independent third-party review, the completion of a corrective action plan, or both; TEC §39.003(f), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to decline to take the deferred action referenced in new TEC, §39.003(e), based on the action taken pursuant to subsection (d); TEC, §39.004(a-1), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to withhold the names of witnesses during the pendency of the investigation; TEC, §39.004(b), as transferred, redesignated, and amended by SB 1365, 87th Texas Legislature, Regular Session, 2021, which removes the informal review process required to finalize a report and replaces it with new processes; TEC, §39.004(c), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the Texas Education Agency (TEA) to provide any evidence relied on by TEA to make preliminary findings and disclose the identity of any witnesses whose statements were relied upon to make preliminary findings. The subsection also makes it clear that the preliminary report will not make a recommendation for sanctions or interventions; TEC, §39.004(d), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which excepts the report from the Public Information Act as an audit workpaper and prohibits disclosure of the report by the school district unless the disclosure is approved by a majority vote of the governing board of a school district or charter school; TEC, §39.004(e), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which makes the evidence gathered in the investigation confidential and excepts it from

disclosure under the Public Information Act. The subsection allows the release of this information only to a person who has a legitimate interest in the investigation or in the legal process that is provided for in the section; TEC, §39.004(f), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which allows the governing board of a school district or charter school to accept or respond to the findings of a preliminary report issued under the section within 30 days of its receipt; TEC, §39.004(g), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires TEA to consider any response pursuant to TEC, §39.004(f), before issuing a final report; TEC, §39.004(h), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires TEA to provide an informal review before issuing a final sanction or intervention, except for higher level sanctions and interventions that are governed by new TEC, §39.005, and provides that this informal review is not a contested case proceeding governed by Texas Government Code, Chapter 2001 (Administrative Procedure Act); TEC, §39.005(i) and (j), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which authorize the commissioner to subpoena a current or former school district employee, agent, or official to attend a deposition or produce documents reasonably necessary for the investigation and authorizes the attorney general to file suit to enforce the subpoena; TEC, §39.005(a), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which applies the procedures created by the section to final investigative reports issued pursuant to TEC, §39.003, that recommend the appointment of a board of managers, alternative management of a campus, or the closure of the district or a district campus; TEC, §39.005(b) and (c), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which require the governing board of a school district or charter school to request a hearing within 15 days of receiving a final report that is issued under TEC, §39.004(g), and subject to subsection (a) of the section. This deadline may be extended by up to an additional 30 days if the school district or charter school and TEA agree; TEC, §39.005(d), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which authorizes the State Office of Administrative Hearings (SOAH) to conduct the hearing unless the district or charter school and TEA agree to the appointment of another qualified person to conduct the hearing; TEC, §39.005(e), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which applies the Administrative Procedure Act to this hearing, except as otherwise provided in the section; TEC, §39.005(f), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the hearing be held at the administrative offices of the school district or charter school or another location if all parties agree; TEC, §39.005(g), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which sets forth procedures to protect the confidentiality of a child who is a witness in the case; TEC, §39.005(h), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the person conducting the hearing to issue findings of fact and conclusions of law within 90 days of the request for hearing submitted under subsection (b); TEC, §39.005(i), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which prohibits the hearings from being conducted on Saturday, Sunday, a state holiday or a federal holiday unless all parties agree; TEC, §39.006(a), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which allows all parties to present oral arguments to the commissioner of education regarding the dispute that formed the basis of the hearing conducted pursuant to TEC, §39.005. All parties must be given equal time to present such arguments;

TEC, §39.006(b), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which authorizes the commissioner to issue a written decision with findings of facts, conclusions of law, and sanctions and interventions authorized by law; TEC, §39.006(c), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which establishes what the commissioner must consider in issuing a written decision described by subsection (b); TEC, §39.006(d), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which authorizes the commissioner to accept, reject, or amend the conclusions of law issued by the person who conducted the hearing; TEC, §39.006(e), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which authorizes the commissioner to change a finding of fact only when it is not supported by substantial, admissible evidence; TEC, §39.006(f), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to provide a written explanation of the basis for changing any finding of fact or conclusion of law; TEC, §39.007(a), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which makes the provisions in the section supersede conflicting procedures in the Administrative Procedure Act; TEC, §39.007(b), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which allows the appeal to be made to a district court with jurisdiction in the county where the central administrative offices are located or to Travis County District Court if all parties agree; TEC, §39.007(c), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the appeal to be filed within 30 days of the date the district receives the written decision issued under TEC, §39.006(b); TEC, §39.007(d), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which states that the filing of an appeal does not affect or stay the enforcement of the order being appealed; TEC, §39.007(e), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which establishes the scope and standard of review of the court considering the appeal; TEC, §39.007(f), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which prohibits the court from taking additional evidence; TEC, §39.007(g), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which sets forth the standard for the court to review findings of facts that were either amended or rejected by the commissioner; and TEC, §39.007(h), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which prohibits the court from reversing or remanding a decision based on a procedural error unless the court finds that the procedural error likely caused an erroneous decision.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §39.001(a); §39.003 and §39.004, as transferred, redesignated, and amended by Senate Bill (SB) 1365, 87th Texas Legislature, Regular Session, 2021; and §§39.005-39.007, as added by SB 1365, 87th Texas Legislature, Regular Session, 2021.

§157.1131. *Applicability.*

§157.1132. *Notice.*

§157.1133. *Request.*

§157.1134. *Procedures.*

§157.1135. *Formal Review.*

§157.1136. *Final Order and Appeal.*

§157.1137. *Other 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.

Filed with the Office of the Secretary of State on December 6, 2021.

TRD-202104810

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: January 16, 2022

For further information, please call: (512) 475-1497



DIVISION 2. HEARING FOLLOWING INVESTIGATION [FORMAL REVIEW]

19 TAC §§157.1131, 157.1133 - 157.1135

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §39.001(a), which authorizes the commissioner to adopt rules as necessary to administer TEC, Chapter 39; TEC, §39.003(e), as added by Senate Bill (SB) 1365, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to defer taking action under the section pending an independent third-party review, the completion of a corrective action plan, or both; TEC §39.003(f), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to decline to take the deferred action referenced in new TEC, §39.003(e), based on the action taken pursuant to subsection (d); TEC, §39.004(a-1), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to withhold the names of witnesses during the pendency of the investigation; TEC, §39.004(b), as transferred, redesignated, and amended by SB 1365, 87th Texas Legislature, Regular Session, 2021, which removes the informal review process required to finalize a report and replaces it with new processes; TEC, §39.004(c), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the Texas Education Agency (TEA) to provide any evidence relied on by TEA to make preliminary findings and disclose the identity of any witnesses whose statements were relied upon to make preliminary findings. The subsection also makes it clear that the preliminary report will not make a recommendation for sanctions or interventions; TEC, §39.004(d), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which excepts the report from the Public Information Act as an audit workpaper and prohibits disclosure of the report by the school district unless the disclosure is approved by a majority vote of the governing board of a school district or charter school; TEC, §39.004(e), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which makes the evidence gathered in the investigation confidential and excepts it from disclosure under the Public Information Act. The subsection allows the release of this information only to a person who has a legitimate interest in the investigation or in the legal process that is provided for in the section; TEC, §39.004(f), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which allows the governing board of a school district or charter school to accept or respond to the findings of a preliminary report issued under the section within 30 days of its receipt; TEC, §39.004(g), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires TEA to consider any response pursuant to TEC, §39.004(f), before issuing a final report; TEC, §39.004(h), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires TEA to provide an informal review before issuing a final sanction or

intervention, except for higher level sanctions and interventions that are governed by new TEC, §39.005, and provides that this informal review is not a contested case proceeding governed by Texas Government Code, Chapter 2001 (Administrative Procedure Act); TEC, §39.005(i) and (j), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which authorize the commissioner to subpoena a current or former school district employee, agent, or official to attend a deposition or produce documents reasonably necessary for the investigation and authorizes the attorney general to file suit to enforce the subpoena; TEC, §39.005(a), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which applies the procedures created by the section to final investigative reports issued pursuant to TEC, §39.003, that recommend the appointment of a board of managers, alternative management of a campus, or the closure of the district or a district campus; TEC, §39.005(b) and (c), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which require the governing board of a school district or charter school to request a hearing within 15 days of receiving a final report that is issued under TEC, §39.004(g), and subject to subsection (a) of the section. This deadline may be extended by up to an additional 30 days if the school district or charter school and TEA agree; TEC, §39.005(d), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which authorizes the State Office of Administrative Hearings (SOAH) to conduct the hearing unless the district or charter school and TEA agree to the appointment of another qualified person to conduct the hearing; TEC, §39.005(e), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which applies the Administrative Procedure Act to this hearing, except as otherwise provided in the section; TEC, §39.005(f), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the hearing be held at the administrative offices of the school district or charter school or another location if all parties agree; TEC, §39.005(g), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which sets forth procedures to protect the confidentiality of a child who is a witness in the case; TEC, §39.005(h), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the person conducting the hearing to issue findings of fact and conclusions of law within 90 days of the request for hearing submitted under subsection (b); TEC, §39.005(i), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which prohibits the hearings from being conducted on Saturday, Sunday, a state holiday or a federal holiday unless all parties agree; TEC, §39.006(a), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which allows all parties to present oral arguments to the commissioner of education regarding the dispute that formed the basis of the hearing conducted pursuant to TEC, §39.005. All parties must be given equal time to present such arguments; TEC, §39.006(b), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which authorizes the commissioner to issue a written decision with findings of facts, conclusions of law, and sanctions and interventions authorized by law; TEC, §39.006(c), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which establishes what the commissioner must consider in issuing a written decision described by subsection (b); TEC, §39.006(d), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which authorizes the commissioner to accept, reject, or amend the conclusions of law issued by the person who conducted the hearing; TEC, §39.006(e), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which authorizes the commissioner to change a finding of fact only when it is not supported by

substantial, admissible evidence; TEC, §39.006(f), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to provide a written explanation of the basis for changing any finding of fact or conclusion of law; TEC, §39.007(a), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which makes the provisions in the section supersede conflicting procedures in the Administrative Procedure Act; TEC, §39.007(b), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which allows the appeal to be made to a district court with jurisdiction in the county where the central administrative offices are located or to Travis County District Court if all parties agree; TEC, §39.007(c), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the appeal to be filed within 30 days of the date the district receives the written decision issued under TEC, §39.006(b); TEC, §39.007(d), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which states that the filing of an appeal does not affect or stay the enforcement of the order being appealed; TEC, §39.007(e), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which establishes the scope and standard of review of the court considering the appeal; TEC, §39.007(f), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which prohibits the court from taking additional evidence; TEC, §39.007(g), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which sets forth the standard for the court to review findings of facts that were either amended or rejected by the commissioner; and TEC, §39.007(h), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which prohibits the court from reversing or remanding a decision based on a procedural error unless the court finds that the procedural error likely caused an erroneous decision.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §39.001(a); §39.003 and §39.004, as transferred, redesignated, and amended by Senate Bill (SB) 1365, 87th Texas Legislature, Regular Session, 2021; and §§39.005-39.007, as added by SB 1365, 87th Texas Legislature, Regular Session, 2021.

§157.1131. Applicability.

This division applies only to a commissioner of education decision resulting from a special investigation to:

- (1) appoint a board of managers;
- (2) appoint alternative management to a campus; or
- (3) close a school district or district campus.

§157.1133. Hearing Procedures.

A hearing requested pursuant to §157.1131 of this title (relating to Applicability) shall be conducted in the following manner.

(1) The hearing shall be conducted by the State Office of Administrative Hearings unless the school district or open-enrollment charter school and the Texas Education Agency (TEA) agree in writing to the appointment of another qualified person to conduct the hearing.

(2) Except as otherwise provided by this subchapter, a hearing conducted under this section is a contested case under Texas Government Code, Chapter 2001.

(3) A hearing conducted under this section shall be held at the administrative offices of the school district or open-enrollment charter school that requested the hearing or at another location within the geographic boundaries of the district or charter school agreed to by the district and TEA, unless the district or charter school and TEA agree in writing to a different location.

(4) To protect the privacy of a witness who is a child, the hearing examiner or the person conducting the hearing may:

(A) close the hearing to receive the testimony of the witness; or

(B) order that the testimony or a statement of the witness be presented using the procedures prescribed by the Code of Criminal Procedure, Article 38.071.

(5) Not later than 90 calendar days after the date on which the school district or open-enrollment charter school requests a hearing, the hearing examiner or the person conducting the hearing shall issue and submit to the commissioner of education findings of fact and conclusions of law. The hearing examiner or the person conducting the hearing may not issue a recommendation for relief.

(6) A hearing conducted under this section may not be held on a Saturday, Sunday, or state or federal holiday, unless agreed to by the school district or open-enrollment charter school that requested the hearing and TEA.

§157.1134. Commissioner Determination.

(a) After a hearing is conducted under Texas Education Code (TEC), §39.005, the commissioner of education shall provide an opportunity for the Texas Education Agency (TEA) and the school district or open-enrollment charter school to present oral argument to the commissioner regarding the disagreement that formed the basis of the hearing. The commissioner shall provide TEA and the school district or open-enrollment charter school with equal time for oral argument.

(b) After hearing any oral argument presented under subsection (a) of this section, the commissioner shall issue a written decision to the school district or open-enrollment charter school that contains:

(1) findings of fact;

(2) conclusions of law; and

(3) sanctions, interventions, or other actions authorized by law.

(c) In determining the written decision under subsection (b) of this section, the commissioner shall consider:

(1) the record of the hearing conducted under TEC, §39.005;

(2) the findings of fact and conclusions of law issued by the hearing examiner or the person conducting the hearing under TEC, §39.005(h); and

(3) the oral arguments presented under subsection (a) of this section.

(d) The commissioner may accept, reject, or amend the conclusions of law issued by the hearing examiner or the person who conducted the hearing under TEC, §39.005, regarding the interpretation of a provision of the TEC.

(e) The commissioner may not reject or amend a finding of fact issued by the hearing examiner or the person who conducted the hearing under TEC, §39.005, unless the commissioner, after reviewing the record, determines that a finding of fact is not supported by substantial, admissible evidence.

(f) The commissioner shall provide in writing the legal basis and reason for any amendment or rejection of a finding of fact or conclusion of law made by the hearing examiner or the person who conducted the hearing under TEC, §39.005.

§157.1135. Judicial Review.

(a) Notwithstanding Texas Government Code, Chapter 2001, a school district or open-enrollment charter school may only appeal a decision made by the commissioner of education under Texas Education Code (TEC), §39.006, and this section in accordance with TEC, §39.007, and this section.

(b) A school district or open-enrollment charter school may appeal a decision made by the commissioner under TEC, §39.006, and this section to:

(1) a district court with jurisdiction in the county in which the school district's or open-enrollment charter school's central administrative offices are located; or

(2) a district court in Travis County, if agreed to by the school district or open-enrollment charter school and the commissioner.

(c) A school district or open-enrollment charter school must file an appeal under this section not later than 30 calendar days after the date on which the district or charter school received the commissioner's written decision under TEC, §39.006(b), and §157.1134(b) of this title (relating to Commissioner Determination).

(d) The filing of an appeal under this section does not affect or stay the enforcement of the commissioner's written decision issued under TEC, §39.006(b), and §157.1134 of this title.

(e) A court hearing an appeal under this section shall review the decision issued by the commissioner under TEC, §39.006(b), and §157.1134(b) of this title under the substantial evidence rule as provided by Texas Government Code, Chapter 2001, Subchapter G, after examining:

(1) the evidentiary record of the hearing conducted under TEC, §39.005, and §157.1133 of this title (relating to Hearing Procedures);

(2) the findings of fact issued by the hearing examiner or the person who conducted the hearing under TEC, §39.005, and §157.1133 of this title; and

(3) any amendment or rejection of a finding of fact made by the commissioner under TEC, §39.006, and §157.1134 of this title.

(f) A court hearing an appeal under this section may not take additional evidence.

(g) A court hearing an appeal under this section may review any amendment to or rejection of a finding of fact made by the commissioner. If the court determines that the amendment or rejection was not supported by substantial evidence, the court shall reject the commissioner's amended finding of fact and consider instead the original finding issued by the hearing examiner or the person who conducted the hearing under TEC, §39.005, and §157.1133 of this title.

(h) Notwithstanding Texas Government Code, §2001.174, the court may not reverse or remand a decision issued by the commissioner under TEC, §39.006(b), and §157.1134(b) of this title based on a procedural error or irregularity made by the commissioner, an agency investigator, or the hearing examiner or the person who conducted the hearing under TEC, §39.005, and §157.1133 of this title, unless the court determines that the procedural error or irregularity is likely to have caused an erroneous decision by the commissioner.

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 December 6, 2021.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: January 16, 2022

For further information, please call: (512) 475-1497



DIVISION 3. STATE OFFICE OF ADMINISTRATIVE HEARINGS SUBSTANTIAL EVIDENCE REVIEW

19 TAC §§157.1151, 157.1153, 157.1167

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §39.001(a), which authorizes the commissioner to adopt rules as necessary to administer TEC, Chapter 39; TEC, §39.003(e), as added by Senate Bill (SB) 1365, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to defer taking action under the section pending an independent third-party review, the completion of a corrective action plan, or both; TEC §39.003(f), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to decline to take the deferred action referenced in new TEC, §39.003(e), based on the action taken pursuant to subsection (d); TEC, §39.004(a-1), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to withhold the names of witnesses during the pendency of the investigation; TEC, §39.004(b), as transferred, redesignated, and amended by SB 1365, 87th Texas Legislature, Regular Session, 2021, which removes the informal review process required to finalize a report and replaces it with new processes; TEC, §39.004(c), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the Texas Education Agency (TEA) to provide any evidence relied on by TEA to make preliminary findings and disclose the identity of any witnesses whose statements were relied upon to make preliminary findings. The subsection also makes it clear that the preliminary report will not make a recommendation for sanctions or interventions; TEC, §39.004(d), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which excepts the report from the Public Information Act as an audit workpaper and prohibits disclosure of the report by the school district unless the disclosure is approved by a majority vote of the governing board of a school district or charter school; TEC, §39.004(e), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which makes the evidence gathered in the investigation confidential and excepts it from disclosure under the Public Information Act. The subsection allows the release of this information only to a person who has a legitimate interest in the investigation or in the legal process that is provided for in the section; TEC, §39.004(f), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which allows the governing board of a school district or charter school to accept or respond to the findings of a preliminary report issued under the section within 30 days of its receipt; TEC, §39.004(g), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires TEA to consider any response pursuant to TEC, §39.004(f), before issuing a final report; TEC, §39.004(h), as added by SB 1365, 87th Texas

Legislature, Regular Session, 2021, which requires TEA to provide an informal review before issuing a final sanction or intervention, except for higher level sanctions and interventions that are governed by new TEC, §39.005, and provides that this informal review is not a contested case proceeding governed by Texas Government Code, Chapter 2001 (Administrative Procedure Act); TEC, §39.005(i) and (j), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which authorize the commissioner to subpoena a current or former school district employee, agent, or official to attend a deposition or produce documents reasonably necessary for the investigation and authorizes the attorney general to file suit to enforce the subpoena; TEC, §39.005(a), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which applies the procedures created by the section to final investigative reports issued pursuant to TEC, §39.003, that recommend the appointment of a board of managers, alternative management of a campus, or the closure of the district or a district campus; TEC, §39.005(b) and (c), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which require the governing board of a school district or charter school to request a hearing within 15 days of receiving a final report that is issued under TEC, §39.004(g), and subject to subsection (a) of the section. This deadline may be extended by up to an additional 30 days if the school district or charter school and TEA agree; TEC, §39.005(d), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which authorizes the State Office of Administrative Hearings (SOAH) to conduct the hearing unless the district or charter school and TEA agree to the appointment of another qualified person to conduct the hearing; TEC, §39.005(e), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which applies the Administrative Procedure Act to this hearing, except as otherwise provided in the section; TEC, §39.005(f), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the hearing be held at the administrative offices of the school district or charter school or another location if all parties agree; TEC, §39.005(g), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which sets forth procedures to protect the confidentiality of a child who is a witness in the case; TEC, §39.005(h), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the person conducting the hearing to issue findings of fact and conclusions of law within 90 days of the request for hearing submitted under subsection (b); TEC, §39.005(i), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which prohibits the hearings from being conducted on Saturday, Sunday, a state holiday or a federal holiday unless all parties agree; TEC, §39.006(a), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which allows all parties to present oral arguments to the commissioner of education regarding the dispute that formed the basis of the hearing conducted pursuant to TEC, §39.005. All parties must be given equal time to present such arguments; TEC, §39.006(b), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which authorizes the commissioner to issue a written decision with findings of facts, conclusions of law, and sanctions and interventions authorized by law; TEC, §39.006(c), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which establishes what the commissioner must consider in issuing a written decision described by subsection (b); TEC, §39.006(d), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which authorizes the commissioner to accept, reject, or amend the conclusions of law issued by the person who conducted the hearing; TEC, §39.006(e), as added by SB 1365, 87th Texas Legislature,

Regular Session, 2021, which authorizes the commissioner to change a finding of fact only when it is not supported by substantial, admissible evidence; TEC, §39.006(f), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to provide a written explanation of the basis for changing any finding of fact or conclusion of law; TEC, §39.007(a), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which makes the provisions in the section supersede conflicting procedures in the Administrative Procedure Act; TEC, §39.007(b), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which allows the appeal to be made to a district court with jurisdiction in the county where the central administrative offices are located or to Travis County District Court if all parties agree; TEC, §39.007(c), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the appeal to be filed within 30 days of the date the district receives the written decision issued under TEC, §39.006(b); TEC, §39.007(d), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which states that the filing of an appeal does not affect or stay the enforcement of the order being appealed; TEC, §39.007(e), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which establishes the scope and standard of review of the court considering the appeal; TEC, §39.007(f), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which prohibits the court from taking additional evidence; TEC, §39.007(g), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which sets forth the standard for the court to review findings of facts that were either amended or rejected by the commissioner; and TEC, §39.007(h), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which prohibits the court from reversing or remanding a decision based on a procedural error unless the court finds that the procedural error likely caused an erroneous decision.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §39.001(a); §39.003 and §39.004, as transferred, redesignated, and amended by Senate Bill (SB) 1365, 87th Texas Legislature, Regular Session, 2021; and §§39.005-39.007, as added by SB 1365, 87th Texas Legislature, Regular Session, 2021.

§157.1151. Applicability.

This division applies only to review of a commissioner of education decision to:

- (1) close a school district under the Texas Education Code (TEC), Chapter 39 or 39A ;
- (2) close an open-enrollment charter school under [the] TEC, Chapter 39 or 39A ;
- (3) close a school district campus under [the] TEC, Chapter 39 or 39A ;
- (4) close an open-enrollment charter school campus under [the] TEC, Chapter 39 or 39A ;
- (5) order alternative management of a school district campus under [the] TEC, Chapter 39 or 39A ; [and]
- (6) order alternative management of an open-enrollment charter school under [the] TEC, Chapter 39 or 39A; [-]
- (7) appoint a board of managers to a school district under TEC, Chapter 39 or 39A, unless the school district is owed a contested hearing under TEC, §39.005;

(8) appoint a board of managers to an open-enrollment charter school under TEC, Chapter 39 or 39A, unless the charter school is owed a contested hearing under TEC, §39.005;

(9) appoint a conservator or management team to a school district under TEC, Chapter 39 or 39A; and

(10) appoint a conservator or management team to an open-enrollment charter school under TEC, Chapter 39 or 39A.

§157.1153. Applicability of Other Law.

(a) A review under this division shall be governed by the procedures provided by this division and is not subject to the Texas Government Code, Chapter 2001, except as provided by the Texas Education Code, §39A.301 [§39.152] .

(b) A review conducted by the State Office of Administrative Hearings (SOAH) under this division is governed by Chapter 155 of Title 1 (relating to Rules of Procedure), except as modified herein.

(c) To the extent that a provision of this division conflicts with a rule or practice of the SOAH, this division shall prevail.

§157.1167. Expedited Review.

(a) The State Office of Administrative Hearings (SOAH) shall expedite its review of a challenge under this division in order to meet the requirements of this section.

(b) The administrative law judge shall issue a pre-hearing order initially setting a date for closure of the record that is not later than the 30th calendar day after the date the petition for review is transmitted to the SOAH.

(c) The administrative law judge may grant a continuance of the date set in subsection (b) of this section only for good cause shown.

(d) The administrative law judge may not order a settlement conference, mediation, or other form of alternative dispute resolution.

(e) The administrative law judge shall issue a final order not later than the 30th calendar day after the date on which the record is finally closed.

(f) Where the revocation of a charter is an issue, in [H] all cases where the matter is docketed at the SOAH on or before March 15, the administrative law judge shall issue a final order not later than May 31 of the same year.

(g) Where the revocation of a charter is an issue, in [H] setting deadlines and issuing orders, the SOAH shall consider the following:

- (1) the need for parents and students to evaluate, select, and enroll in another school district or open-enrollment charter school;
- (2) the need for educators and staff to find other employment;
- (3) the need for the school district or open-enrollment charter school to engage in an orderly termination of its operations; and
- (4) the need for the Texas Education Agency to facilitate and complete an orderly termination of the operations of a school district or open-enrollment charter school.

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 December 6, 2021.

TRD-202104812



DIVISION 4. STATE OFFICE OF ADMINISTRATIVE HEARINGS ARBITRARY AND CAPRICIOUS OR CLEARLY ERRONEOUS REVIEW

19 TAC §157.1182

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §39.001(a), which authorizes the commissioner to adopt rules as necessary to administer TEC, Chapter 39; TEC, §39.003(e), as added by Senate Bill (SB) 1365, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to defer taking action under the section pending an independent third-party review, the completion of a corrective action plan, or both; TEC §39.003(f), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to decline to take the deferred action referenced in new TEC, §39.003(e), based on the action taken pursuant to subsection (d); TEC, §39.004(a-1), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to withhold the names of witnesses during the pendency of the investigation; TEC, §39.004(b), as transferred, redesignated, and amended by SB 1365, 87th Texas Legislature, Regular Session, 2021, which removes the informal review process required to finalize a report and replaces it with new processes; TEC, §39.004(c), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the Texas Education Agency (TEA) to provide any evidence relied on by TEA to make preliminary findings and disclose the identity of any witnesses whose statements were relied upon to make preliminary findings. The subsection also makes it clear that the preliminary report will not make a recommendation for sanctions or interventions; TEC, §39.004(d), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which excepts the report from the Public Information Act as an audit workpaper and prohibits disclosure of the report by the school district unless the disclosure is approved by a majority vote of the governing board of a school district or charter school; TEC, §39.004(e), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which makes the evidence gathered in the investigation confidential and excepts it from disclosure under the Public Information Act. The subsection allows the release of this information only to a person who has a legitimate interest in the investigation or in the legal process that is provided for in the section; TEC, §39.004(f), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which allows the governing board of a school district or charter school to accept or respond to the findings of a preliminary report issued under the section within 30 days of its receipt; TEC, §39.004(g), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires TEA to consider any response pursuant to TEC, §39.004(f), before issuing a final report; TEC, §39.004(h), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires TEA to provide an informal review before issuing a final sanction or intervention, except for higher level sanctions and interventions that are governed by new TEC, §39.005, and provides that this

informal review is not a contested case proceeding governed by Texas Government Code, Chapter 2001 (Administrative Procedure Act); TEC, §39.005(i) and (j), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which authorize the commissioner to subpoena a current or former school district employee, agent, or official to attend a deposition or produce documents reasonably necessary for the investigation and authorizes the attorney general to file suit to enforce the subpoena; TEC, §39.005(a), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which applies the procedures created by the section to final investigative reports issued pursuant to TEC, §39.003, that recommend the appointment of a board of managers, alternative management of a campus, or the closure of the district or a district campus; TEC, §39.005(b) and (c), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which require the governing board of a school district or charter school to request a hearing within 15 days of receiving a final report that is issued under TEC, §39.004(g), and subject to subsection (a) of the section. This deadline may be extended by up to an additional 30 days if the school district or charter school and TEA agree; TEC, §39.005(d), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which authorizes the State Office of Administrative Hearings (SOAH) to conduct the hearing unless the district or charter school and TEA agree to the appointment of another qualified person to conduct the hearing; TEC, §39.005(e), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which applies the Administrative Procedure Act to this hearing, except as otherwise provided in the section; TEC, §39.005(f), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the hearing be held at the administrative offices of the school district or charter school or another location if all parties agree; TEC, §39.005(g), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which sets forth procedures to protect the confidentiality of a child who is a witness in the case; TEC, §39.005(h), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the person conducting the hearing to issue findings of fact and conclusions of law within 90 days of the request for hearing submitted under subsection (b); TEC, §39.005(i), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which prohibits the hearings from being conducted on Saturday, Sunday, a state holiday or a federal holiday unless all parties agree; TEC, §39.006(a), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which allows all parties to present oral arguments to the commissioner of education regarding the dispute that formed the basis of the hearing conducted pursuant to TEC, §39.005. All parties must be given equal time to present such arguments; TEC, §39.006(b), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which authorizes the commissioner to issue a written decision with findings of facts, conclusions of law, and sanctions and interventions authorized by law; TEC, §39.006(c), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which establishes what the commissioner must consider in issuing a written decision described by subsection (b); TEC, §39.006(d), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which authorizes the commissioner to accept, reject, or amend the conclusions of law issued by the person who conducted the hearing; TEC, §39.006(e), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which authorizes the commissioner to change a finding of fact only when it is not supported by substantial, admissible evidence; TEC, §39.006(f), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to provide a written ex-

planation of the basis for changing any finding of fact or conclusion of law; TEC, §39.007(a), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which makes the provisions in the section supersede conflicting procedures in the Administrative Procedure Act; TEC, §39.007(b), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which allows the appeal to be made to a district court with jurisdiction in the county where the central administrative offices are located or to Travis County District Court if all parties agree; TEC, §39.007(c), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the appeal to be filed within 30 days of the date the district receives the written decision issued under TEC, §39.006(b); TEC, §39.007(d), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which states that the filing of an appeal does not affect or stay the enforcement of the order being appealed; TEC, §39.007(e), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which establishes the scope and standard of review of the court considering the appeal; TEC, §39.007(f), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which prohibits the court from taking additional evidence; TEC, §39.007(g), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which sets forth the standard for the court to review findings of facts that were either amended or rejected by the commissioner; and TEC, §39.007(h), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which prohibits the court from reversing or remanding a decision based on a procedural error unless the court finds that the procedural error likely caused an erroneous decision.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §39.001(a); §39.003 and §39.004, as transferred, redesignated, and amended by Senate Bill (SB) 1365, 87th Texas Legislature, Regular Session, 2021; and §§39.005-39.007, as added by SB 1365, 87th Texas Legislature, Regular Session, 2021.

§157.1182. Applicability of Other Law.

(a) A review under this division shall be governed by the contested case procedures provided by this division and is not subject to the Texas Government Code, Chapter 2001, except as provided by the Texas Education Code, §39A.301 [~~§39.152~~].

(b) A review conducted by the State Office of Administrative Hearings (SOAH) under this division is governed by Chapter 155 of Title 1 (relating to Rules of Procedure), except as modified herein.

(c) To the extent that a provision of this division conflicts with a rule or practice of the SOAH, this division shall prevail.

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 December 6, 2021.

TRD-202104813

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: January 16, 2022

For further information, please call: (512) 475-1497



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 208. EMPLOYMENT PRACTICES SUBCHAPTER C FAMILY LEAVE POOL

43 TAC §208.13

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes new 43 TAC §208.13 concerning a family leave pool. The new section is necessary to implement House Bill (HB) 2063, 87th Legislature, Regular Session (2021).

EXPLANATION. House Bill 2063 amended Government Code Chapter 661 by adding new Subchapter A-1, requiring all state agencies to create and administer an employee family leave pool. Under HB 2063, all state agencies must adopt rules and prescribe procedures relating to the operation of the agency family leave pool. The purpose of the family leave pool is to provide 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 or the employee. The pool must allow employees to voluntarily transfer sick or vacation leave earned by the employee to the pool while also allowing employees to apply for leave time under the pool.

The following paragraphs address the amendments in this proposal.

New §208.13 describes the purpose of the family leave pool.

New section §208.13(a) designates the Human Resources Director as the administrator of the family leave pool for the department.

New section §208.13(b) states that the pool administrator, with the advice and consent of the executive director, will establish operating procedures for the family leave pool which are consistent with Government Code, Chapter 661, Subchapter A-1 (relating to State Employee Family Leave Pool).

New Section §208.13(c) states that the procedures adopted related to the operation of the family medical leave pool will be published in the department's Human Resources Manual.

New Section §208.13(d) requires all donations to the family leave pool be voluntary.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the new sections are in effect, there will be no significant fiscal impact to the state or local governments as a result of the enforcement or administration of the proposal. There will be no significant costs to the department and the proposed amendments will have no significant impact on revenue collections.

Matthew Levitt, Director of the Human Resources Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal as the proposal relates to internal operations only.

PUBLIC BENEFIT AND COST NOTE. Mr. Levitt has also determined that, for each year of the first five years the proposed rules are in effect, the public benefits include providing eligible employees more flexibility in bonding and caring for children during a child's first year following birth, adoption, or foster placement, and caring for a seriously ill family member or the employee, in-

cluding pandemic-related illnesses or complications caused by a pandemic. Mr. Levitt anticipates that the proposal will create no additional costs for the public.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The cost analysis in the Public Benefit and Cost Note section of this proposal has determined that proposed §208.13 will not result in additional costs for the public, including any small businesses, micro-businesses, or rural communities. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code §2006.002(2).

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years 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 department;
- will not require an increase or decrease in fees paid to the department;
- will create new regulation establishing the process for determining the maximum number of temporary tags that may be allocated to dealers and converters and the procedures for requesting additional tags;
- will not expand existing regulations;
- will not repeal existing regulations;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on January 17, 2022. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to rules@txdmv.gov or by mail to Office of General Counsel, Texas

Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The department proposes new §208.13 under Transportation §1002.001.

Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department. Government Code §661.022(c) authorizes the department to adopt rules related to the operation of the department's family medical leave pool.

CROSS REFERENCE TO STATUTE. Government Code §661.021-661.028.

§208.13. Family Leave Pool.

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

(1) The director of human resources is designated as the pool administrator.

(2) The pool administrator, with the advice and consent of the executive director, will establish operating procedures consistent with the Government Code, Chapter 661, Subchapter A-1 (relating to State Employee Family Leave Pool).

(3) The prescribed procedures relating to the operation of the family leave pool will be published in the agency's Human Resources Manual.

(4) Donations to the pool are strictly voluntary.

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

Filed with the Office of the Secretary of State on December 3, 2021.

TRD-202104804

Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: January 16, 2022

For further information, please call: (512) 465-5665



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 11. QUALIFIED ALLOCATION PLAN (QAP)

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 11, Qualified Allocation Plan (QAP) including Subchapter A, Pre-Application, Definitions, Threshold Requirements and Competitive Scoring, §§11.1 - 11.10; Subchapter B, Site and Development Requirements and Restrictions, §11.101; Subchapter C, Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules, §§11.201 - 11.207; Subchapter D, Underwriting and Loan Policy, §§11.301 - 11.306 and Subchapter E, Fee Schedule, Appeals, and Other Provisions, §§11.901 - 11.904 without changes to the proposed text as published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6059). The rules will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal 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 allocation of Low Income Housing Tax Credits (LIHTC).

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

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

4. The repeal does not result in an increase in fees paid to the Department or in a decrease in fees paid to the Department.

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

6. The action will repeal an existing regulation, but is associated with a simultaneous re-adoption making changes to an existing activity, concerning the allocation of LIHTC.

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

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

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

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

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

The repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

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

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

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

Mr. Wilkinson has also determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule for administering the allocation of LIHTC. 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 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 September 17, 2021, to October 8, 2021, to receive stakeholder comment on the proposed repealed section. No comments on the repeal were received.

SUBCHAPTER A. PRE-APPLICATION, DEFINITIONS, THRESHOLD REQUIREMENTS AND COMPETITIVE SCORING

10 TAC §§11.1 - 11.10

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

Except as described herein the adopted 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 December 3, 2021.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-1762



SUBCHAPTER B. SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS

10 TAC §11.101

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

Except as described herein the adopted repealed sections affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. APPLICATION SUBMISSION REQUIREMENTS, INELIGIBILITY CRITERIA, BOARD DECISIONS AND WAIVER OF RULES

10 TAC §§11.201 - 11.207

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

Except as described herein the adopted repealed sections affect no other code, article, or statute.

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SUBCHAPTER D. UNDERWRITING AND LOAN POLICY

10 TAC §§11.301 - 11.306

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

Except as described herein the adopted repealed sections affect no other code, article, or statute.

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SUBCHAPTER E. FEE SCHEDULE, APPEALS, AND OTHER PROVISIONS

10 TAC §§11.901 - 11.904

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

Except as described herein the adopted 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 December 3, 2021.

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CHAPTER 11. QUALIFIED ALLOCATION PLAN (QAP)

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 11, Qualified Allocation Plan (QAP), §§11.1 - 11.10, 11.101, 11.201 - 11.207, 11.301 - 11.306, 11.901 - 11.907, and 11.1001 - 11.1009, with changes to the proposed text as published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6059). The rules will be republished.

The purpose of the new chapter is to provide compliance with Tex. Gov't Code §2306.67022 and to update the rule to: clarify multiple definitions; update the Program Calendar; add scoring for Developments comprised of single family homes or condos intended for ownership; remove a scoring item that generally duplicates another and expands the radius for Proximity to Jobs so that more potential Development sites will be competitive; add a scoring item related to proximity to veterans' health care; simplify the requirements for a Concerted Revitalization Plan; allow for increased costs in scoring; revise timelines and requirements associated with Tax-Exempt Bond Developments; add provisions for Commitments, Determination Notices, and Carryover Agreements; provide for the use of 2022 Competitive Housing Tax Credits to assist 2019 and 2020 Competitive Housing Tax Credit Applicants negatively impacted by the COVID-19 pandemic and; specify provisions for termination for Applications seeking Tax-Exempt Bond or Direct Loan funds; and make other changes as reflected.

Tex. Gov't Code §2001.0045(b) does not apply to the rule for two reasons: 1) the state's adoption of the QAP is necessary to comply with IRC §42; and 2) the state's adoption of the QAP is necessary to comply with Tex. Gov't Code §2306.67022. 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 re-adoption of this rule which makes changes to an existing activity, concerning the allocation of Low Income Housing Tax Credits (LIHTC) and other Multifamily Development programs.
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 any increases in fees. The rule removes a Determination Notice Reinstatement Fee.

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

6. The rule will not limit or repeal an existing regulation, but can be considered to "expand" the existing regulations on this activity because the rule has sought to clarify Application requirements. Some "expansions" are offset by corresponding "contractions" in the rules, compared to the 2021 QAP. Notably, the Department has sought to remove superfluous language wherever possible and to consolidate rules to reflect current process. A new subchapter is added to provide assistance to 2019 and 2020 Competitive Housing Tax Credit Applications negatively impacted by cost increases associated with the COVID-19 pandemic. These additions, removals, and revisions to the QAP are necessary to ensure compliance with IRC §42 and Tex. Gov't Code §2306.67022.

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

8. The rule will not negatively affect the state's economy, and may be considered to have a positive effect on the state's economy because changes at 10 TAC §11.9(c)(7), Proximity to Job Areas, may help to encourage the development of affordable multifamily housing in robust markets with strong and growing economies.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.67022. Some stakeholders have reported that their average cost of filing an Application is between \$50,000 and \$60,000, which may vary depending on the specific type of Application, location of the Development Site, and other non-state of Texas funding sources utilized. The rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

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

2. There are approximately 100 to 150 small or micro-businesses subject to the rule for which the economic impact of the rule may range from \$480 to many thousands of dollars, just to submit an Application for Competitive or non-Competitive HTC, or Direct Loans. The Department bases this estimate on the potential number of Applicants and their related parties who may submit applications to TDHCA for LIHTC. The fee for submitting an Application for LIHTC is \$30 per unit, and all Applicants are required to propose constructing, at a minimum, 16 Units. While, in theory, there is no limit to the number of Units that could be proposed in a single Application, practically speaking, the Department sees few proposed Developments larger than 350 Units, which, by way of example, would carry a fee schedule of \$10,500. These Application 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. Nor does this estimate include fees from the Department for Applications that successfully attain an award.

There are 1,285 rural communities potentially subject to the rule for which the economic impact of the rule is projected to be \$0. The rule places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. If anything, a rural community securing a LIHTC Development will experience an economic benefit, not least among which is the potential increased property tax revenue from a large multifamily Development.

3. The Department has determined that because there are rural tax credit 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 LIHTC 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 takings by the Department. Therefore, no Takings Impact Assessment is required.

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

The Department has evaluated the 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 LIHTC Developments often involve a total input of, typically at a minimum, \$5 million in capital, but often an input of \$10 million - \$30 million. Such a capital investment has concrete direct, indirect, and induced effects on the local and regional economies. However, because the exact location of where program funds and development are directed is not determined in rule, there is no way to determine during rulemaking where the positive effects may occur. Furthermore, while the Department knows that any and all impacts are positive, that impact is not able to be quantified for any given community until a proposed Development is actually awarded LIHTC, given the unique characteristics of each proposed multifamily Development and region in which it is being developed.

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 LIHTC Development and that 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 LIHTC 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 rule is in effect, the public benefit anticipated as a result of the new rule will be an updated and more germane rule for administering the allocation of LIHTC

with considerations made for applicants as it relates to the impact of the COVID-19 pandemic on the application process. There is no change to the economic cost to any individuals required to comply with the new section because the same processes described by the rule have already been in place through the rule found at this section being repealed. The average cost of filing an application remains between \$50,000 and \$60,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

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 rule is in effect, enforcing or administering the new rule does not have any foreseeable implications related to costs or revenues of the state or local governments because the same processes described by the rule have already been in place through the rule found at this section being repealed. If anything, Departmental revenues may increase due to a comparatively higher volume of Applications, which slightly increases the amount of fees TDHCA receives.

Note: the rules adopted herein have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

SUMMARY OF PUBLIC COMMENT. The public comment period was held September 17, 2021, to October 8, 2021, to receive stakeholder comment on the new proposed sections. Comment was received from 41 commenters as listed below:

(1) Arx Advantage, (2) Atlantic Pacific Communities, (3) BETCO Housing Lab, (4) Caritas of Austin, (5) Alyssa Carpenter, (6) DMA Companies, (7) Disability Rights Texas, (8) Marque Real Estate Consultants, (9) Eureka Holdings, (10) Foundation Communities, (11) Home Innovation Research Labs, (12) Housing Trust Group, (13) The Humane Society of the United States, (14) JC Development Consulting, (15) JES Dev Co, (16) Katopody, (17) KCG Development, (18) Locke Lord, (19) Marilyn Hartman, (20) McDowell Housing Partners, (21) MRE Capital, (22) MVAH Partners, (23) National Church Residences, (24) NRP Group, (25) Palladium USA, (26) Prospera Housing Community Services, (27) Purple Martin Real Estate, (28) Rural Rental Housing Association, (29) S. Anderson Consulting, (30) City of San Antonio Neighborhood and Housing Services Department, (31) Sierra Club, (32) Texas Affiliation of Affordable Housing Providers, (33) Texas Housers, (34) The Land Experts, (35) Tim Irvine, (36) Tropicana Building II, (37) True Casa Consulting, (38) Volunteers of America National Society, (39) Zimmerman Properties, (40) New Hope Housing and (41) International Association of Plumbing and Mechanical Officials.

It should be noted that in the interest of brevity some of the more extensive comments received have been summarized significantly. However copies of all comments received, with the commenter's number denoted, are all available on the Department website.

General, Request for No Changes (Commenters 9, 20, 21, 22)

COMMENT SUMMARY: Commenters 9, 20, 21 and 22 request that TDHCA keep the scoring and tie-breaker items in the QAP as currently drafted; they feel it is an onerous burden and punitive to modify the rule now as they have already been pursuing site acquisition and working with cities and contractors.

STAFF RESPONSE: The timeline used for the QAP is not only public, but in the Department's governing statute; accordingly the Board annually potentially makes changes to the QAP at the November Board meeting. The development community is well aware that changes may be made not only by the Department's Board, but potentially by the Governor until December 1 of each year. Staff recommends no changes based on these comments.

General, Comments for 2023 QAP (Commenters 1, 10, 13, 30, 33)

COMMENT SUMMARY: Several commenters specifically suggested topics for the development of the 2023 QAP; these are items that were generally more substantive and would not have been readily integrated into the 2022 QAP without further comment and discussion. Topics included: a revisit of the Request for Administrative Deficiency (RFAD) process to return this item to its original intent of bringing to the Department's attention items that may have been missed in a staff review (Commenter 1); a new Cap on Tax Credits per Unit (Commenters 10 and 33); a reevaluation of the Underserved Census Tracts item with a suggested shift towards focusing on tax credit density per tract, a requirement that Right of First Refusal (ROFR) be a threshold requirement of all 9% and 4% transactions, and continued improvements to the energy and water feature scoring items (Commenter 10); compliance guidance related to the average income set-aside (Commenter 30); incentives to promote deeper income targeting to serve Texans most in need by requiring that any Housing Tax Credit (HTC) developments that use the Income Averaging election, must have their HTC rents set at or below the local voucher payment standard so that no negative impacts occur for Housing Choice Voucher holders in HTC units (Commenter 13); incentives for more 2 and 3 bedroom units, points for affordability periods up to 55 year and/or threshold affordability terms of 50 years, and commitment to a ROFR being a threshold requirement for 4% and 9% tax credits (Commenter 33).

STAFF RESPONSE: Staff has committed that the 2023 QAP process will start in early 2022 and have significant public engagement. Comments provided above will be included in the planning topics for the 2023 QAP process. Staff recommends no changes based on these comments.

General, Comments on 4% HTC Streamlining (Commenter 14)

COMMENT SUMMARY: Commenter 14 relayed their support for the changes made to streamline the 4% application process including those relating to: documentation required for application submissions, third party reports, underwriting rules and guidelines, scope of work narrative, fee schedule and determination notices.

STAFF RESPONSE: Staff appreciates the positive feedback. Staff recommends no changes based on these comments.

General, Permanent Supportive Housing Set-Aside (Commenter 19)

COMMENT SUMMARY: Commenter 19 requests that the Department establish a set-aside for 10% to 15% of the Housing Tax Credits for Permanent Supportive Housing developments. She notes that this housing with necessary services is in short supply and is essential for homeless persons especially those struggling with their mental illness. Homeless and at-risk of homeless persons with serious mental illness have been left out of the correct housing solutions for decades which has resulted in their cycling through expensive alternatives including jails, hospitals, emergency rooms and homelessness. The commenter likens

the need for this set-aside to the Department's successful Project Access set-aside in the Housing Choice Voucher (i.e. Section 8) program for those exiting state hospitals.

STAFF RESPONSE: Additional public comment on this idea is needed as it proposes a new concept not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

General, Pre-Application Notifications (Commenter 3)

COMMENT SUMMARY: Commenter 3 requests that the Pre-Application add an additional drop-down menu option for notifications to be uploaded as attachments like site control documents are.

STAFF RESPONSE: The QAP does not require the actual notification letters to be submitted and the application includes a certification that they were in fact sent to the intended recipient. The QAP does require the applicant retain proof of delivery in the event such information is requested by the Department. Staff recommends no changes based on these comments.

General, Good Cause for Eviction Standard (Commenter 7)

COMMENT SUMMARY: Commenter 7 notes that the 2022 QAP does not include clear language around a good cause for eviction standard; while there is no defined good cause for eviction standard in federal law, states have often created such standards to protect tenants living in housing tax credit properties. Commenter 7 feels this standard is critical to holding landlords accountable to fair housing guidance and ensuring tenants have robust protections. Commenter 7 believes it is necessary for the QAP to define a good cause for eviction standard and to create a process by which TDHCA will ensure that properties meet the standard. They suggest the sample language used for the Section 8 program or the lease guidance for the Project Based Voucher Program.

STAFF RESPONSE: 10 TAC §10.613 identifies Lease Requirements, and good cause is discussed there. When the Department next releases its Compliance rules at 10 TAC Chapter 10, Subchapter F we encourage this commenter to make comment at that time. Staff recommends no changes based on these comments.

General, Eviction Forgiveness for LIHTC Tenant Applicants (Commenter 7)

COMMENT SUMMARY: Commenter 7 provides that the impact of COVID-19 has had far-reaching effects on renters and that persons with disabilities face this acutely; Commenter 7 has provided eviction assistance to persons with disabilities and the number of housing cases their team has received has increased by more than 1,000%. Evictions make it harder to find future housing. Commenter 7 feels that every renter who experiences the threat, risk of, or is evicted, is a person with, even temporarily a disability, because the eviction impacts their health; they suggest that TDHCA require that landlords be disallowed from considering the rental history of tenants (evictions, past debts owned due to evictions, etc.) from March 2020 through October 2022 (they note that this is when the ERAP funds must be spent, which is true of ERA1, but not ERA2).

STAFF RESPONSE: While staff appreciates the relative urgency of this suggestion, additional public comment on this idea would

have been needed. Staff recommends no changes based on these comments.

General, Direct Loan Funds (Commenter 28)

COMMENT SUMMARY: Commenter 28 believes that the added requirements brought on by layering an application with Multifamily Direct Loan (MFDL) funds is not worth the additional compliance. They are interested in seeing an incentive system that makes the use of direct loan funds more attractive to applicants.

STAFF RESPONSE: Staff appreciates this input; the Department has made efforts to make the MFDL funds more available and accessible within the confines of the federal regulations, and will continue to do so. One such effort is the Department's continued negotiations with HUD to allow MFDL funds to be layered with the Federal Housing Administration (FHA). Staff has made a change to §11.302(d)(4)(iv) to allow alternative loan terms for Federal Housing Administration loans that will be reflected in a NOFA if such a boilerplate agreement can be negotiated with HUD.

General, Energy Efficiency Threshold (Commenter 31)

COMMENT SUMMARY: Commenter 31 urges that TDHCA adopt minimum energy efficiency standards for overall energy use as well as for installed appliance for all of its multifamily programs as a mandatory threshold requirement. Commenter references to need to adopt multifamily standards as required by Texas Gov't Code 2306.187 and Chapter 388 of the Texas Health and Safety Code. The commenter notes that TDHCA has taken this action already on its single family programs and should adopt the 2015 IECC as a minimum multifamily standard. They further suggest providing points for properties that build to the 2021 IECC standard, since that standard is approximately 10% more energy efficient than prior versions of the code.

STAFF RESPONSE: Additional public comment on this idea is needed as it proposes a new concept not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

General, Threshold for Right of First Refusal (ROFR) (Commenter 33)

COMMENT SUMMARY: Commenter 33 recommends that a commitment to a ROFR be a threshold requirement for 4% and 9% HTC, not a scoring item and suggested specific language in this regard. As part of this threshold concept, they suggest that the ROFR notice period be required to be two years.

STAFF RESPONSE: Tex. Gov't Code §2306.6725(b) requires the Department to "provide appropriate incentives" in the QAP "to reward applicants who agree to" a ROFR. This language is the basis for incentivizing ROFR with points rather than considering ROFR as threshold. Furthermore, §2306.6726 sets out the duration of notice periods of a ROFR. Staff recommends no changes based on these comments.

General, Scoring for Waiving of Qualified Contract (Commenter 33)

COMMENT SUMMARY: Commenter 33 suggests adding a point for developments that waive their right to use the qualified contract process to exit the HTC program and suggested specific language in that regard. They also suggested that the Depart-

ment should study and share information on projects that exit the program through Qualified Contracts.

STAFF RESPONSE: Additional public comment on this idea is needed as it proposes a new concept not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.1 - General (Commenter 35)

COMMENT SUMMARY: Commenter 35 suggests language be added to this section that would relay that applications are "substantively entitled" to their best score and that accordingly, staff should use the administrative deficiency process as liberally as possible. They provided suggested language for this item which can be found in their letter on the Department's website.

STAFF RESPONSE: Staff appreciates this perspective and input, however, the QAP provides sufficient flexibility on this issue as drafted. Staff recommends no changes based on these comments.

§11.1(d) - Definitions (Commenter 3)

COMMENT SUMMARY: Commenter 3 suggests adding definitions for Qualified Census Tract (QCT) and Forward Commitment. They suggest adding the QCT definition to make sure all parties pursuing points under the Community Revitalization Plan (CRP) item are working from the same definition. They suggest the definition for Forward Commitment in light of the recent set of Forward Commitments made by the Board. Commenter 3 provided an excerpt from the 2011 QAP relating to Forward Commitments.

STAFF RESPONSE: Staff concurs and new definitions for these terms are reflected in the rule.

§11.1(d)(10) - Definition of Bedroom (Commenter 5)

COMMENT SUMMARY: Commenter 5 notes that while rehab developments are not required to meet Unit Size square footage requirements, they are not similarly exempt on bedroom requirements relating to sizes, and widths for walls and closets. They suggest that these requirements should not be required for rehabs where unit configurations are not being altered.

STAFF RESPONSE: Staff concurs and has added the following clause to the definition for Bedroom and included Supportive Housing Developments as they are also exempt from Unit Size Square footage requirements: "Rehabilitation (excluding Reconstruction) Developments in which Unit configurations are not being altered will be exempt from the bedroom and closet width, length, and square footage requirements. Supportive Housing Developments are exempt from the bedroom and closet width, length, and square footage requirements."

§11.1(d)(38) - Definition of Development (Commenter 27)

COMMENT SUMMARY: Commenter 27 notes that the new requirement that an owner secure an agreement with a local jurisdiction for a 30 to 45 year LURA term to provide an accessible route for developments separated by only a public right of way could be difficult to secure for some developments that are otherwise able to provide an accessible route; commenter suggests removing this requirement and instead conditioning the award on the provision of an accessible route which can be assured throughout compliance monitoring.

STAFF RESPONSE: It is a requirement of Section 2306.6722 of the Texas Government Code, and as further explained in Chapter 1, Subchapter B, that an accessible pedestrian route from 504 units to amenities and common areas must be present. Additionally, for many years the QAP has required an accessible pedestrian route to promote visitability in non-Fair Housing covered units. This is not a new requirement, but a clarification of existing law and regulations. State law does not allow placement of a LURA on property that the Owner does not own or control. Property standards, including accessibility and visitability, must be reflected in the LURA (See Section 2306.6720 of the Texas Government Code). Despite the commentator's contention, this rule would not outlaw any potential development, because the Owner has the option to submit the development as a scattered site development. Staff has changed this rule to reflect that the agreement must be in place by the 10% test for 9%, Cost Certification for 4%, or MFDL Contract execution, as applicable.

§11.1(d)(124) - Definition of Supportive Housing (Commenters 4, 13, 33)

COMMENT SUMMARY: Commenter 4 states that TDHCA should not mandate criminal history screening criteria except for federally required criteria; each recipient of tax credits should have the autonomy to establish screening criteria appropriate to each development. Commenter 4 further notes that if the requirement remains in the QAP, they suggest that: 1) the temporary denial period addressed in (B)(I)(-a-) be reduced from seven years to three years, and 2) that in (B)(I)(-b-) the term recertification be stricken so that if a conviction has occurred without violating the lease, their ability to renew their lease should not be negatively impacted.

Commenters 13 and 33 also strongly oppose the criminal background screening criteria in subsection (B)(v) believing the criteria are overly broad for the purpose of ensuring the safety of other tenants and staff, will have a discriminatory effect on the basis of race, and will only serve to further limit an already slim safety net of resources for low-income households and pet owners who are re-entering society after involvement in the criminal justice system. Commenter 33 notes their belief that black people in Texas are more likely to be excluded from renting in HTC Supportive Housing based on criminal record than people of other races, and provided further information to support this comment which can be found in their letter on the Department's website. They believe it is vital that our affordable housing policies are intentionally crafted to mitigate the state's uniquely high incarceration rates. They go on to note that the benefits of Supportive Housing for those experiencing homelessness, those with a history of substance abuse and those with a history of mental illness are well documented, and that those populations are correlated with increased interaction with the criminal justice system; there is a risk that a significant portion of those populations Supportive Housing is designed to serve will be ineligible for a unit. Commenter 13 notes that the criminal background screening will negatively impact the most vulnerable pet owners from access to a decent safe place to live and will likely result in harm to pets or force owners to give up their pets. Commenter 33 additionally points out that any issues of safety can be achieved with less discriminatory effect by tailored requirements such as security cameras, and also notes that there is no factual basis to assume that the screening will reduce crime. The suggested edit in this case is to remove all language in (B)(v) other than the requirement that the Tenant Selection Criteria must fully comply with §10.802, which relates to Written Policies and Procedures.

Commenter 37 suggests that a "guaranty agreement" is not needed as a tax credit financed development will automatically have a Guaranty Agreement with an operating deficit guarantee requirement. To eliminate confusion, Commenter 37 suggests that subsection (iv) which requires the guaranty agreement add "Not required for Applications seeking HTC", which would ensure the language remains applicable for applicants for only direct loan funds.

Commenter 37 also feels the addition to the 2021 QAP of (E)(ii)(V) (which requires that a resident is or will be a member of the Development Owner or service provider board of directors) is unnecessary and can cause nonprofits to have to re-write bylaws, shuffle board seats, and require on-boarding of new board members; they recommend deletion of this requirement.

STAFF RESPONSE: As it relates to the "guaranty agreement" rather than say this is not a requirement for an HTC application, staff has revised the QAP to provide that in the case of HTC only Applications, the Guaranty Agreement with operating deficit guarantee requirements utilized for the HTC investor will satisfy this requirement. Relating to the comments on the criminal screening criteria, §11.1(d)(126)(B)(v)(II) of the QAP provides that the screening criteria must include provisions for approving applications and recertification despite the tenant's criminal history on the basis of mitigation evidence. Therefore, the rule already allows properties to admit persons that would otherwise be excluded based only on the screening criteria standard. As it relates to the Board member composition requiring a resident to be a Board member, staff concurs and has removed this requirement.

§11.1(e) - Data (Commenters 2, 5, 26, 30)

COMMENT SUMMARY: Commenters 5 and 26 asks that the Department confirm usage of the 2010 census tracts for the 2022 QAP, not the 2020 tracts. The census data used for many of the scoring items and HUDs 2022 QCTs are both based on the 2010 census tracts. Further there has been significant variation with 2010 tracts broken into multiple new tracts, some tracts being combined, and some being renumbered. This makes associating related ACS data for those tracts problematic - there would be no data available for scoring categories where tracts have been newly created or renamed and for split or combined tracts data would not be accurate. Commenter 26 also requests that the specific tracts to be used for CRP be clarified. Commenter 39 agreed and suggested adding this language to the end of the sentence relating to ACS use: "and with the exception of census tract boundaries for which 2010 Census boundaries will continue to be used." Commenter 39 felt that use of the 2020 census tracts would be more broadly applicable for the 2023 QAP.

Alternatively, Commenter 2 suggested parsing this issue. They suggest that in follow-up to the conversation on this topic at the September roundtable, the 2010 census tract boundaries should be used for all items that rely on census tract level 2019 5-year ACS data and 2020 boundaries should be used on items that are not informed by census tract level ACS data (such as Underserved Area). They make this suggestion based on precedent (they note this approach was used in 2012) and integrity of the data as 2019 is the most recent 5-year dataset available and therefore the boundaries in place for that data should be used.

Commenter 2 also suggests that for Qualified Census Tract Designations, the 2022 designations should be used, which were made available by HUD on September 9, 2021.

STAFF RESPONSE: Staff prefers the simplicity of making a uniform decision relating to use of 2010 or 2020 tracts rather than parsing out the applicability in different cases. Staff agrees that clear guidance is needed and supports the use of the 2010 tracts for the reasons presented. Staff also agrees that the 2022 HUD QCT designations should be used. The rule has been changed to reflect these revisions.

§11.3 - Housing Deconcentration Factors (Commenters 8, 10, 12, 15, 25, 30, 34)

COMMENT SUMMARY: Commenters 10, 12, 15, 25, 30, and 34 request that the reference to Supplemental Allocations be removed from all deconcentration factors, with Commenters 10 and 30 specifically emphasizing this for the 2 mile same year rule. The commenters note that the goal of deconcentration was achieved in the prior years and should have no bearing on the 2022 applications since no new units are being provided and that 2022 applications should not be impacted by the 2019 or 2020 supplemental credits. Commenter 8 suggests that the rule should waive any statutory provisions that relate to de-concentration factors and elderly calculations; those transactions were already considered compliant with de-concentration factors in the year of their award. Commenter 8 feels that because the request for supplemental credits is an amendment to the application, it should not impede or be given preferential treatment over other 2022 transactions as it will further limit production of affordable housing. Commenters 25, 30 and 34 suggest that if not removed, the Department should allow the local governing body to "waive" this requirement by deeming that the proposed development is consistent with the jurisdiction's obligation to affirmatively further fair housing and that they have no objection to the application.

STAFF RESPONSE: To ensure compliance with statutory requirements, those deconcentration factors found in statute remain as originally proposed in the draft QAP. However for those items not originating in statute, staff has removed the applicability of the supplemental; those revisions are reflected in subsections (f), Proximity to Development sites and (g) One Award per Census Tract. Regarding the request relating to local officials waiving these requirements, statute does not provide the authority for a local jurisdiction to waive these requirements.

§11.3(b) - Two Mile Same Year Rule (Commenters 6, 30)

COMMENT SUMMARY: See also comment summary for §11.3 prior to this item. Commenter 6 requests that the reference to the Supplemental Allocation be removed from this item; they feel this unduly penalizes 2022 deals because the test for this was already applied and considered in the year the original allocation was made. Commenter 6 further suggests that much the way Subchapter F indicates that all threshold requirements in the original year are considered to be met for the Supplemental Allocation, concentration factors should be treated the same way; by having been treated correctly in their original allocation year, no further treatment is needed. Commenter 6 does note that should staff determine that it is necessary to keep this in the QAP for statutory compliance, they are supportive of the current language as proposed.

Commenter 30 is concerned that cities be able to accommodate their rapidly growing populations with an adequate supply of affordable units, and feels the two-mile same year rule impedes this effort; it causes unnecessary competition and creates delays and bottle necks. Commenter 30 feels that two developments can be in close proximity without concentrating poverty and that

cities are in the best position to make this decision. Commenter 30 recommends adding a provision to the QAP that any political subdivision subject to this rule have the ability to waive the rule if approved by local officials. Commenter 30 also suggests that the language in this section that allows for a waiver in the case of communities with a population of two million or more and where a disaster has been declared within the prior 5 years, be expanded to all cities, regardless of population size.

STAFF RESPONSE: This section of the QAP is compliant with statute. As it relates to comments regarding the Supplemental Allocation, to ensure compliance with statutory requirements, this item will remain as originally proposed in the draft QAP. As it relates to the comment from Commenter 30, which are more generally suggested for this issue not applicable to the Supplemental Allocation, the Department does not have the authority to give political subdivisions the ability to waive the rule; similarly, staff does not have the authority to provide a waiver in the case of large communities with a disaster declaration. Staff recommends no changes based on these comments.

§11.3(d) - One Mile Three Year Rule (Commenter 5)

COMMENT SUMMARY: See also comment summary for §11.3 prior to this item. Commenter 5 notes that it is unclear whether the new revised language means that the Supplemental application needs a resolution, or whether the 9% Regular 2022 cycle application would need a resolution. Clarification was requested.

STAFF RESPONSE: As it relates to comments regarding the Supplemental Allocation, to ensure compliance with statutory requirements, this item will remain as originally proposed in the draft QAP. Regarding the item noted by Commenter 5, staff feels the QAP is clear that the resolution would be needed for the 9% regular 2022 cycle application, not the development having received the Supplemental Allocation.

§11.3(g) - One Award Per Census Tract Limitation (Commenters 5, 30)

COMMENT SUMMARY: See also comment summary for §11.3 prior to this item. Commenter 5 suggests that this criteria not apply only to urban subregions as it does currently, but that rather it applies to both Urban and Rural subregions; Commenter 5 notes that this issue is as likely to occur in a rural areas and the importance of distributing awarded applications among areas is relevant in both Urban and Rural subregions. Commenter 30 feels that this deconcentration factor unduly limits large cities in Texas to support qualified developments and creates unnecessary competition and bottle necks. Commenter 30 feels that local governments know their city best and should have the ability to waive this rule if approved by local officials.

STAFF RESPONSE: As referenced above, it should be noted that the applicability of Supplemental Allocations for this limitation has been removed. Regarding the ideas that this limitation should be expanded to rural subregions and that cities should have the ability to waive this rule, additional public comment is needed as they are significant changes from the draft QAP proposed. As the timing of the 2022 QAP approval process does not allow for additional rounds of public comment, staff has recommended no change at this time, but will consider these issues as discussion items for the 2023 QAP input sessions.

§11.4(b) - Maximum Request Limit (Commenters 10, 15, 33, 39)

COMMENT SUMMARY: Commenter 10 opposes the increase of the limit to \$2 million; the increase provides 25% more tax credits with no associated incentive to build more units, which will result

in fewer units produced overall. The commenter urges that if the limit increase remains, then staff should add a tax credit per unit cap. Commenter 15 encourages TDHCA not to count the supplemental credit allocations for elderly transactions against the ceiling available for elderly in the tracts where there are such limits; the available credits for elderly are already very limited and this further reduces that limited resource. A tax credit per unit cap is also supported by Commenter 33. Commenter 33 further suggests that this increase to \$2 million should only be approved if it is tied directly to an increase in Extremely Low Income units for those at 30% of AMI and suggests that to get these extra credits accessed by raising the cap, at least 30% of the units should be for those at 30% of AMI.

Commenter 39 suggests that the penalty of \$1.50 per credit for those receiving a Supplemental Allocation should be increased to \$3.00 per credit because the \$1.50 will not create a sufficient penalty and that all available Supplemental credits will be exhausted; they allude to this in relations to comments they make elsewhere relating to a request to increase the amount allotted for Supplemental allocations.

STAFF RESPONSE: Commenters have raised important points on the implications of increasing the credit cap. The Department cannot add a new tax credits per unit cap without sufficient public comment. However, to ensure that the Department has sufficient time to consider this issue and develop the policy more fully, staff has reverted to the 2021 QAP language for 2022 (\$1.5 million cap except for At-Risk which is capped at \$2 million), and will revisit this issue in 2023. Regarding the suggestion that the penalty for accessing a Supplemental Allocation should increase from \$1.50 to \$3.00, the Department feels that such a change would have warranted comment from others, so recommends no change at this time. Regarding the applicability of the Supplemental Allocation to the Elderly caps, to ensure compliance with statutory requirements, this item will remain as originally proposed in the draft QAP.

§11.4(c) - Increase in Eligible Basis (Commenter 8)

COMMENT SUMMARY: Commenter 8 requests that given the major cost increases and pandemic related delays, the 30% boost is necessary for all 2022 transactions. They therefore suggest striking in subparagraph (E) the clause "is not an Elderly Development," which would therefore allow Elderly Developments to qualify for the boost.

STAFF RESPONSE: Additional public comment on this idea is needed as it proposes a new concept not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.5(1) - Nonprofit Set-Aside (Commenter 37)

COMMENT SUMMARY: Commenter 37 suggests that due to confusion that arises in the nonprofit set-aside, cleanup is proposed that clarifies that it is the "Manager of" the Managing General Partner and controlling Managing Member.

STAFF RESPONSE: Staff concurs. A responsive revision has been made.

§11.5(2) - USDA Set-Aside (Commenters 3, 23, 37, 38)

COMMENT SUMMARY: Commenter 3 suggests revising the "At least 5%" to "No less than 5%" to bring the QAP set-aside

language into greater consistency with Texas Gov't Code 2306.111(d-2) which states exactly 5%; commenter 3 suggests that the intent of the statutory section is to be no less than.

Commenter 23 feels that the provisions of §2306.6702(a)(5)(A)-(ii) and §2306.111 can only be harmonized if the USDA priority within At-Risk is established as a cap; the cap ensures that the statutory intent is met while leveling the playing field when competing against remaining At-Risk transactions, particularly because USDA set-aside applications do not qualify for the statutory At-Risk definition outside of the 5% USDA set-aside. Commenter 23 notes that the 2-prong approach provided for 2306.6702(a)(5)(A)(ii) requires that "the stipulation to maintain affordability in the contract granting the subsidy is nearing expiration," however, USDA typically has automatic rental assistance renewals which keep them from otherwise qualifying to complete in the remaining At-Risk pool. That two-prong approach also specifies that the HUD-insured or HUD-held mortgage is eligible for prepayments or is nearing the end of its term; the language does not refer to or allow for that party to be USDA. Commenter 23 further notes that the reference to the 5% in 2306.111 is to exactly 5%, nothing more. Commenter notes that if USDA is allowed to exceed 5% the tie-breakers pose a problem because the QAP essentially provides for USDA deals to get performance scores so they will win a tie every time (commenter provides explanation of this in their letter which can be found on the Department's website). Lastly Commenter 23 suggests that if the QAP continues to be interpreted that the USDA Set-Aside will exceed 5%, then at a minimum the applications must be required to at least select they want consideration in the At-Risk Set-Aside, and if not selected, they are not considered. Commenters 37 and 38 echo the comments made by Commenter 23.

STAFF RESPONSE: Staff concurs that clarification on this issue is needed and proposes a rule revision clarifying that USDA Applicants only receive a priority for 5% and will not be considered for the At-Risk Set-Aside if they do not fully meet the definition of an At-Risk development or have not checked the box in the application. Responsive edits have been made - note that the edits were made within the At-Risk Set-Aside language which is where this priority is discussed.

§11.5(3) - At-Risk Set-Aside (Commenters 27, 30)

COMMENT SUMMARY: Commenter 27 notes that in paragraph (3)(C)(ii) the language is inconsistent with statute; they note that while the QAP requires that units associated with development in this category must have received Section 9 assistance within the 2 years preceding the application, the statute actually requires that developments formerly received Section 9 assistance and provides a timeframe relative to demolition or disposition, not to the Section 9 assistance. Accordingly, Commenter 27 recommends revising the QAP to more accurately mirror statute. Commenter 30 feels that the At-Risk language limited to public housing authorities and public housing finance corporations is restrictive because not all developments with expiring affordability are associated with those organizations; they suggest remove language restricting access to this set-aside.

STAFF RESPONSE: In regards to the correction requested by Commenter 27, staff concurs and a responsive revision has been made. Regarding the comment made by Commenter 30, the Department does not have the authority to revise such statutory provisions and no change is made.

§11.6 - Competitive HTC Allocation Process (Commenter 3)

COMMENT SUMMARY: Commenter 3 suggested that either at this location in the rule, or in the definition for Commitment Notice, that if contingent Commitment Notices are issued by the Department, the rule should state that they expire by December 31 of the cycle year and that if the effective time for these notices is extended to the following year, then these notices shall only be extended by Board action. Commenter 3 makes this suggestion because the QAP does not currently provide for a commitment to be carried forward into a subsequent year, but that action did occur this past year. They note that if the rule is to dictate that the credits should have been returned and used in the 2021 cycle, the Department needs to be clear on that process. If contingent commitments or carryovers are going to be utilized then this needs to be transparently included in the rule, and require Board approval.

STAFF RESPONSE: Staff appreciates the perspective on this issue, but does not feel that a revision to the QAP is needed. Staff recommends no changes based on these comments.

Staff notes that a revision has been made to this section that clarifies that any unused Supplemental Allocations will be added to the appropriate subregion, rather than only referencing the pool of credits and corrects that the Supplemental Credits would have only been added in the statewide collapse.

§11.7 - Tie Breakers (Commenter 1, 5, 10, 23, 27, 28, 32, 33)

COMMENT SUMMARY: Commenter 32 finds that the current tie-breaker relating to the 3-year average poverty rate creates significant uncertainty since the average is not known until the updated site demographic report is published in October/November each year, well after site selection occurs. These same commenters request two revisions to bring greater certainty to the process: 1) Removing the three-year average calculation and replacing it with a flat 20% poverty rate threshold for all regions other than regions 11 and 13, and that for region 11, the rate be a flat 35% and for region 13 the rate be a flat 25%, which brings this into greater consistency with the Opportunity Index. 2) Requesting that the first tie-breaker be split into two independent tie-breakers: first poverty rate, second rent burden, and third distance to the nearest HTC development. This comment from TAAHP to increase the poverty rate to a flat 20% to align with Opportunity Index was supported and also requested by Commenters 1, 23, and 27. Commenter 27 also supported the second recommendation by TAAHP to split the first tie breaker into two separate items.

Commenter 28, suggests that there is a need for a separate tie breakers for the At-Risk and USDA set-asides. They suggest the first tie breaker for At-Risk go to the application with the oldest initial placed in service date that has not received tax credits for a federal funding award from the Department for rehabilitation. They suggest the second tie breaker use the existing language in the QAP relating to distance to the nearest HTC property. Such a revision will work to preserve the older housing stock. Commenter 28 does note that alternatively they would support a separate set of tie breakers for only the USDA set-aside, or both set-asides. This comment from RRHA was supported and also requested by Commenter 1.

Commenter 5 noted that they felt the QAP tiebreaker for poverty rate should remain unchanged. The last 3 year average provides a baseline to give advantage to low poverty areas and as is, more than 50% of all tracts in the state qualify for the first tie-breaker. Increasing the poverty rate to 20% (as requested by TAAHP and others noted above) means more tracts qualify so

there is less ability to serve as a true tie-breaker. Additionally, in many areas higher poverty rates equate to lower median income and higher rent burden so an increase up to 20% would mean that lower income areas would rank better than higher income areas. Because this would be a significant policy shift, they request that it remain unchanged for 2022 and discussed further for a subsequent QAP.

Commenter 10 suggests that a tie breaker for tax credits per affordable unit be added as the second tie breaker after poverty to promote awarding those properties that provide more units per credit.

Commenter 23 suggests that the tie-breaker is being interpreted incorrectly. It should be interpreted first as whether the application is above or below the poverty rate threshold, then second considered for rent burden, then lastly for distance.

Commenter 33 suggests adding a tie breaker as the second item after the poverty level that awards the tie decision to the application that provides the most units; this is meant to assist in generating as many units as possible with the limited resources available.

STAFF RESPONSE: As it relates to the comment from Commenter 23 relating to the incorrect application of the tie-breaker, staff has evaluated this and is confident in its application of this standard. For all comments relating to new tie-breakers or revisions to the tie-breakers, the variance in the comments certainly suggests the need for revisiting this issue. However, additional public comment on this idea is clearly needed as these concepts were not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.8(b)(2)(B) - Pre-Application Notifications (Commenters 3, 5, 8, 23, 29, 37)

COMMENT SUMMARY: Commenter 3 suggests that to address those instances where organizations are formed subsequently, the rule should be revised by adding that the Neighborhood Organization notification at Pre-Application include: "...where a reasonable search for applicable entities has been conducted."

Commenters 5 and 29 noted that the requirement to provide addresses for all notifications made was newly added to the QAP in 2021; most applicants did not provide the addresses and the Department did not issue deficiencies requiring them (until notified during the RFAD process). This would indicate that the item is not a necessity for staff, so these commenters suggest its deletion. Commenter 8 also supports striking this requirement because the QAP already requires that the applicants retain proof of delivery and Commenter 23 supports its removal as it will create unnecessary RFADs. Commenter 37 supports its removal as it was a significant "gotcha" in 2021 and serves no clear purpose.

STAFF RESPONSE: Regarding the comment from Commenter 3, a responsive revision has been made in the rule. Regarding the comments from commenters, 5, 8, 29 and 37, staff concurs and this requirement has been removed from the QAP.

§11.9 - Competitive HTC Selection Criteria (Introduction Paragraph) (Commenter 5)

COMMENT SUMMARY: Commenter 5 notes that this section provides for how boundaries will be measured from the Development Site to scoring items, but does not specify how that measurement should be performed for Scattered Site boundaries. They provide an example where last year only one parcel of several parcels in a scattered site application actually met a criteria, but points were awarded. Commenter asks that the rule indicate that in the case of Scattered Site developments, each individual parcel will be evaluated against the scoring criteria (or Tie Breaker criteria) and if there is a difference in points among the sites, the lower number of points or lower tie-breaking rank will be used for the application.

STAFF RESPONSE: Staff agrees that this is an area where clarification is needed, however additional public comment on this is needed as it proposes a new concept not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.9(b)(1)(A)(i) - Unit Size Scoring Item (Commenter 29)

COMMENT SUMMARY: Commenter 29 notes that with the addition of the provision of units for homeless populations, the development community needs to be able to provide more efficiency units at a lower cost; the best way to achieve this is to reduce the minimum unit size for efficiency units for threshold and scoring. Commenter 29 suggests that the minimum size for scoring be 450 square feet, which aligns with the general market for efficiency unit sizes.

STAFF RESPONSE: Staff sees the value in revising the minimum unit size for efficiencies as there is an increasing trend toward smaller units. However, additional public comment on this idea is needed as it proposes a new concept not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.9(b)(2) - Sponsor Characteristics Scoring Item (Commenters 5, 23, 38)

COMMENT SUMMARY: Commenter 5 asks that clarification be provided on whether more than one HUB can be used to meet the percentage requirements specified; as written the rule implies only one HUB ("the HUB"), however in the prior application round an applicant used two HUBs to satisfy the owner, cash flow, and developer fee combination requirements. If this is allowable it should be clearly noted. Commenters 23 and 38 appreciate the revisions made for paragraph (C) to promote more affordable service enriched housing sponsored by nonprofits.

STAFF RESPONSE: Staff concurs that this should be clarified. Responsive revisions have been made to the rule allowing for more than one HUB to meet these requirements.

§11.9(c)(1) and (2) - Income and Rent Levels of Tenants Scoring Item (Commenter 33)

COMMENT SUMMARY: Commenter 33 supports the high priority of Rent Levels of Tenants but suggests strengthening it by increasing the percentage of units that must meet specific rent levels. More specifically they suggest that for maximum score for Supportive Housing (13 points) instead of 20% of Units at 30% of AMGI, that this be 40% of the units at 30% of AMGI; that

for the second highest scoring item (11 points) instead of 10% or 7.5% (depending on whether rural or urban, respectively) of units at 30% AMGI that these be increased to 35% and 30%; and that the lowest scoring item (7 points) be increased from 5% at 30% AMGI up to 30% AMGI. Commenter 33 presents data on the great need for units for households at or below this income level and notes that the provisions of such units will help to reduce the risk of homelessness for these very low income populations.

STAFF RESPONSE: Additional public comment on this suggestion is needed as it proposes a new concept not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.9(c)(4)(B) - Opportunity Index Scoring Item (Commenters 13, 33)

COMMENT SUMMARY: Commenter 13 opposes the increased distance to amenities allowed in the rural and urban opportunity index points and recommends returning to the maximum distances in the 2020 QAP, as these greater distances disproportionately impact tenants who are pet owners and who are physically disabled and/or do not have access to a car. Commenter 13 notes that is important for affordable housing development to be sited close to vital resources like grocery stores and pet supply stores. They suggest it is likely that proposed sites under the new rule may mean developments are built in places that US Department of Agriculture would consider "low access" to healthy food, which would include grocery stores, where many pet owners purchase the items needed for their pets.

Commenter 33 supports the use of Opportunity Index points to reward projects for their proximity to amenities and high performing schools as they feel without such incentives HTC development will gravitate to low opportunity areas where land is cheaper. Commenter 33 suggests two additional revisions to strengthen this section: 1) they recommend that the distances to amenities be reduced. Commenter provided specific suggested distances for both rural and urban areas of different distances for each of the amenity types (which can be seen in Commenter 33's letter provided on the Department's website). Commenter 33 noted that the changes made last year doubled the distances which made these amenities much less accessible for those without a car or for a tenant with a disability. 2) Commenter 33 suggests increasing the total number of points available for Opportunity Index up to 15 points (currently 7 points), while reducing the scope to a few key factors that are mutually exclusive for points (these factors being low poverty, sidewalks and transit, full-service grocery stores, and attendance zone for highly rated public schools), with the menu of many options available for the remainder.

STAFF RESPONSE: Staff notes that the distances opposed by Commenter 13 were changed in the 2021 QAP and not altered in the draft 2022 QAP. Additional public comment on the ideas of reducing distances to amenities and increasing the total number of points available for Opportunity Index both warrant additional public comment as they are new concepts not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.9(c)(5) - Underserved Area Scoring Item (Commenter 17)

COMMENT SUMMARY: Commenter 17 notes that for rural areas, the current rule drives developers to not pursue developments in municipalities which already have an HTC development. They suggest alternatively, for rural areas only, that paragraphs (C), (D), (E) and (F) be revised to specify "for rural areas, this applies to census tracts that do not have another development serving the same Target Population" so that another development could be served in those tracts.

STAFF RESPONSE: Staff agrees, but additional public comment on this suggestion is needed as it proposes a new concept not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.9(c)(6) - Residents with Special Housing Needs Scoring Item (Commenters 5, 10, 15, 25, 29, 33)

COMMENT SUMMARY: Commenters 5 and 29 suggest that because this item is limited only to counties of populations more than 1 million and because At-Risk and USDA applications compete on a statewide basis, applicants in those two set-asides should not be eligible for this scoring item as it gives a significant advantage. Commenters 10, 15 and 25 asks that to avoid confusion, the QAP should use terminology used on the Veterans Affairs website for locating VA facilities or release a list of which facilities are eligible.

Commenter 33 supports the provisions in paragraphs (A) and (B) that grant points for dedicating beds and marketing to residents with Special Housing needs including homelessness and the coordination with Continuum of Care organizations. To strengthen this item, they suggest that language in both (A) and (B) be revised to expand this from being applicable during the Compliance Period, to being applicable throughout the Affordability Period.

STAFF RESPONSE: Regarding the suggestion that At-Risk and USDA Applicants not be permitted to earn the new proximity to veterans services points, staff does not agree that this can or should be limited or restricted; At-Risk and USDA will be able to earn these points as reflected in the draft. Regarding seeking greater clarity on which facilities are eligible, staff concurs and has made responsive changes to the QAP that now provides a link to a specific webpage with what medical facilities are and are not eligible. Regarding the comment that the homeless special needs units be expanded to being applicable for the Affordability Period, rather than the shorter Compliance period, staff feels that additional public comment on this suggestion is needed as it proposes a significant expansion of an existing concept that was not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions.

§11.9(c)(7) - Proximity to Jobs Area Scoring Item (Commenters 1, 3, 5, 8, 10, 12, 15, 16, 17, 25, 27, 29, 30, 32, 34, 37, 39, 40)

Commenter 32 appreciates the changes made in the draft in this section, but requests that the 2-mile radius only apply to all urban subregions and the 4-mile radius apply only to all rural subregions rather than using the population factors as laid out in the QAP. As drafted Commenter 32 believes an advantage is given to unincorporated areas that are competing in an urban

subregion as a municipality outside of an incorporated area but within a county with a population of 1 million or more will be able to use the alternate methodology. Sites directly competing with one another would be evaluated under different standards. This comment from TAAHP was supported and also requested by Commenters 3, 8, 10, 27, and 40 who gave similar justifications. Commenter 37 thanks TDHCA for the changes to this item.

Commenter 1 notes that while they support the request made by TAAHP (Commenter 32 summarized above), they urge TDHCA to seek another solution for this point category for 2023 for several reasons: jobs counted in the radius are not jobs that would be filled by residents, the job mapping tool is not accurate, and jobs are often counted at employer headquarters, not where the jobs are in fact located.

Commenters 5, 15, 29 and 39 recommend the language remain as drafted, without changes as proposed above, because the development community has been working with the distances noted in the draft for several weeks. Any changes would create an unfair advantage only to those who are requesting changes in distance. Commenter 6 notes they support the QAP language as proposed as they will result in more affordable sites.

Commenters 12, 16, 25 and 34 also support the language as drafted with no change as the expanded radii in the current draft add mid-size cities and outlying cities that would not have been previously competitive, many of which are experiencing exponential growth. Commenter 17 also supports the language as is, specifically noting the radius should not be based on the urban or rural classification. Commenter 37 supports the modifications already made and hopes that it will mitigate the issue of small, high-priced, commercial-oriented sites.

Commenter 17 further suggests that the radius should actually be expanded to 5 miles for areas with populations greater than 500,000, and to 10 miles for areas with populations less than 500,000; doing so would help move development away from highways and highly commercial areas, allowing developers to pursue land that the commenter feels is proper for residential use, while still being within a reasonable driving distance of jobs. They note that having expanded the rural ratio from 2 to 4 miles has little impact on rural sites - a radius would need to be much larger to capture enough jobs. Commenter 17 also thinks that if the radius distances are not increased, more ties will result as achieving a max score will be too easy; they feel that the maximum job points should be a challenge to attain so that true variability is accomplished among applicants. Lastly Commenter 17 notes that it would be more beneficial and relevant if the data used for this item was current, instead of three to four years old.

Commenter 30 does not support the new expansion of the radius from 1 mile to 2 miles, and requests the QAP revert to the 2021 language, because families living in HTC developments benefit from access to jobs, amenities and services.

STAFF RESPONSE: As it relates to the suggestions to adjusting the criteria to being applied for each urban and rural sub-region from a variety of commenters, to not accepting the draft changes (Commenter 30), or to increasing the radius to greater distances (Commenter 17), staff feels that in light of the expansion already made to the radius distances in the draft and the subsequent broad spectrum of comments that have been received on this item both for and against changes being made, that no further changes should be made until additional public comment on this scoring item can be heard. The timing of the QAP process does not allow for additional rounds of public comment. Staff has rec-

ommended no further changes at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions.

§11.9(c)(8) - Readiness to Proceed Scoring Item (Commenter 3)

COMMENT SUMMARY: Commenter 3 requests deleting this scoring item because the item restricts a developer's ability to adjust to market conditions such as increases in construction costs and decreases in equity pricing that arise from inflationary pressures, delays in the supply chain, and labor shortages. Commenter 3 further notes that the deadline forces developers to spend significantly more on design and other expenses prior to certainty of an award and estimated that at least twice the typical amount of pre-development funds have been spent on these transactions than would have been typically, and in some cases on developments that ultimately were not awarded. Commenter 3 concludes by noting that the scoring item has not in fact resulted in units being produced any earlier than those that do not pursue these points.

STAFF RESPONSE: Staff appreciates the comment, but remains committed to prioritizing applications that are ready to proceed. It should be noted that this item is suspended for 2022. Staff recommends no changes based on these comments.

§11.9(d)(1) - Local Government Support Scoring Item (Commenters 5, 33)

COMMENT SUMMARY: Commenter 5 requests that the QAP be revised to provide clear direction on what resolutions are needed if a site is partially within a municipality and partially within the ETJ or county (questioning whether it should be only a resolution from the city or a resolution being needed from both the city and the county/ETJ).

Commenter 33 is opposed to the striking of language in the draft that reminds local governments to consult their own staff and counsel regarding consistency with fair housing laws. Because the commenter feels such consideration is not consistently occurring across the state, they feel the reminder is needed. They suggest reducing the amount of text stricken and keeping this sentence: "A municipality or county should consult its own staff and legal counsel as to whether its handling of their actions regarding such resolution(s) are consistent with Fair Housing laws as they may apply." Commenter 33 notes that the Department has a duty to affirmatively further fair housing which includes educating other units of government.

STAFF RESPONSE: As it relates to addressing what resolutions are needed if a site is partially within a municipality and partially within the ETJ or county, clarification has been added to the QAP that resolutions must be obtained from both entities. As it relates to Commenter 33's comment, this was removed because the same comment is made in §11.1(j) as broadly applicable responsibilities for municipalities and counties.

§11.9(d)(4) - Quantifiable Community Support Scoring Item (Commenter 5)

COMMENT SUMMARY: Commenter 5 notes that they have found that in the past there have been discrepancies between boundary maps and descriptions or no published boundaries. To prevent uncertainty and conflicts, Commenter 5 requests that the QAP clarify that Neighborhood Organizations must have their boundaries published and on record with the state or county and that those published boundaries will be the boundaries used for the scoring item.

STAFF RESPONSE: Staff does not feel that such a requirement can be made within the statutory language.

§11.9(d)(5)(B) - Community Support from State Representative Scoring Item (Commenters 5, 12, 33)

COMMENT SUMMARY: Commenter 5 requests that the QAP be revised to provide clear direction on how this scoring item will be applied when no letter is submitted if a site is partially within a municipality and partially within the ETJ or county. Commenter 12 requests that the Department be required to notify Applicants within 3 business days of receipt of any letter of Support, Opposition or Neutrality so that necessary business decisions can be made.

Commenter 33 notes that in §2306.6710(b)(1) - which provides how the QAP must score and rank Applications for certain items - the state representative's statement should be weighted less than many other factors; they believe that because the QAP grants a spectrum of points from positive 8 to negative 8 that in effect this can differentiate projects by up to 16 points, and thus it is receiving more points than warranted by the statutory ranking. They feel this misalignment with statute requires an immediate change and they suggest that the easiest remedy for this item is to revise the points down to a range of positive four to negative four, bringing it properly into alignment (the other points for lower values should be proportionally adjusted downward as well, with the items at 4 or -4 reduced to 2 or -2).

STAFF RESPONSE: As it relates to the handling of properties within the boundaries of a municipality and an ETJ or county, clarification has been added to the QAP that resolutions must be obtained from both entities. As it relates to the request that the Department notify Applicants within 3 business days of receipt of any comment letters received, that is not administratively feasible for the Department. The Department can commit, not in the rule, that it will strive to notify as soon as it is able to.

§11.9(d)(7)(A) - Concerted Revitalization Plan Scoring Item (Commenter 1, 3, 5, 10, 12, 15, 16, 23, 25, 29, 30, 32, 34, 37, 40)

COMMENT SUMMARY: Commenters 32 and 15 appreciate the changes made to this section that simplified this item. Commenter 32, however, requests that sites not located in a QCT be able to achieve equal points as those sites within a QCT. Therefore, the commenter recommends that a 2-point option be added for those sites within a CRP area, but not within a QCT if the applicant can provide "A letter from the appropriate local official for the municipality (or county if the Development Site is completely outside of a municipality) that explicitly identifies the proposed Development as contributing to the concerted revitalization efforts of the municipality or county (as applicable)." The commenter specifically suggests that this be a letter, and not a resolution, in keeping with the changes toward simplifying this item. These comments from TAAHP was supported and also requested by Commenters 1, 12, 25, 37, and 40. One commenter supported this request as well but noted their support based on the challenge of otherwise no longer being able to access the 30% basis boost in §11.4(c)(3)(E) (which provides the 30% basis boost for developments in a CRP area that is not an Elderly Development, and is not located in a QCT). Commenter 40 thought the parity requirements could be achieved by merely removing the reference to QCT versus non-QCT.

Commenter 10 asked that the points for CRP in a QCT be removed, but if they are not removed, supports the comment noted above from TAAHP providing for an alternative 2 points for lo-

cal support (they referenced a resolution); they note that CRP areas no longer in QCTs may be because revitalization efforts have been accomplishing their purpose of increasing incomes and reducing poverty.

Alternatively Commenters 5, 23 and 29 support the 2-point advantage for applications in a QCT; Commenter 5 notes that if comment suggests removing the QCT advantage, they propose that sites that are eligible for Opportunity Index points not be eligible for CRP because it gives a competitive advantage due to the statutory provision directing that the initial award in some regions go to revitalization applications.

Commenter 3 recommends fixing the inconsistency found in (1)(ii) that says both a plan may consist of one or more documents, but then following says that no more than two plans may be submitted; they feel clarity on this is needed around the number of plans that may be submitted. Commenter 3 recommends requiring a letter from the municipality that the site contributes to revitalization to affirm the plan. Commenter 3 also recommends that the rural CRP points structure be revised to clarify that 7 points are allowable if the development proposed is rural and rehabilitation or reconstruction, but that if it is rural and new construction it can earn 5 points; commenter cited an article on the critical need for rural affordable housing and also provided information on the high poverty rates in some rural counties. They felt that valuing this item at 5 points would still preserve the intent of the scoring item, with prioritizes the preservation of existing stock, but would still provide opportunities for new construction as well.

Commenter 16 notes that giving preference to CRPs that are within a QCT diminishes the ability of municipalities to influence in a proactive manner, as QCTs are HUD designated while CRPs are locally driven.

Alternatively, Commenters 30 and 34 feels that while there was a need to simplify the CRP item, there should not have been the removal of the municipality's input. The changes remove the municipality from identifying projects that contribute to its own efforts, and usurp local control. They recommend continuing to allow cities to identify one project per CRP that will contribute the most to the city's efforts through a resolution which would be worth 2 points, but supports removal of the letter requirement.

STAFF RESPONSE: As it relates to allowing two points to bring parity for non-QCTs, and to address the comments relating to the importance of local input, staff concurs that this is a good compromise to support revitalization statewide while still meeting the interests of the Internal Revenue Code preference and simplifying the requirements of this section. Responsive language has been added providing two points for a letter from the municipality. Regarding the inconsistency noted by Commenter 3 staff concurs and has revised the rule to reflect that no more than two plans may be submitted. The other comment suggested by Commenters 3 regarding the rural point structure would require additional public comment as it proposes a new concept not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions.

§11.9(e)(1) - Financial Feasibility Scoring Item (Commenter 23)

COMMENT SUMMARY: Commenter 23 suggests that to more accurately reflect the ability for there to be approved underwriting exceptions, the language for this scoring item should have added at the end "...unless an underwriting exception applies."

STAFF RESPONSE: While staff appreciates the perspective provided, this comment suggests a change that would conflate two distinct issues - the feasibility of a transaction as presented by a pro forma and approval letter of a Third Party permanent lender for points, and the underwriting performed by the Department, a process intentionally distinct and separate from scoring. To add the suggested language would bring underwriting exceptions identified by Department underwriters into the scoring process. No change is made to this section.

§11.9(e)(2) - Cost of Development per Square Foot Scoring Item (Commenters 3, 15, 17, 28, 37)

COMMENT SUMMARY: Commenters 3, 28 and 37 thank the Department for the increase to the cost per square foot. Commenter 8 notes that the high cost development item which is related to Opportunity Index, does not specify whether this means Opportunity Index points to qualify are those under subparagraph (A) or (B) or both. They suggest clarifying that this can be achieved under either or both of the subparagraphs. Commenter 15 requests that the language be amended to state that, for purposes of this scoring item for all proposed developments, the NRA will include Common Area up to 75 square feet per Unit, of which at least 50 square feet will be air conditioned (note that currently this provision is applicable only for Supportive Housing Developments). Commenter 28 encourages staff to continue to review the data to support increases.

Several commenters felt that the increase was not sufficient. Commenter 15 recommended that the cost per square foot limits, which were increased by 5% in the draft, instead be increased by 7.5% given the cost increases seen in the industry to date and the uncertainty of what costs will be when the supply chain normalizes. Commenter 17 also supported an increase, noting that the 5% increase provided "barely puts a dent" in the recent cost increases; they provided a set of costs for seven 2021 transactions and six 2016 transactions that they summarize reflect a 31.5% increase in building cost per square foot on average. Commenter 17 therefore urges that TDHCA increase the voluntary eligible basis for both building construction costs and hard costs by no less than 15%.

STAFF RESPONSE: Regarding the clarification suggested by Commenter 8 relating to Opportunity Index, staff concurs that it was not clear and has clarified that a development qualifies for points only if qualifying whether under subparagraph (A) and (B). Regarding the comment by Commenter 15 which suggests allowing all developments to have the same Common Area standards for scoring as Supportive Housing, staff does not agree; the added space is specifically included for Supportive Housing developments because units are quite small and may lack the same amenities such as full kitchens. Common kitchens and lounges are key features for Supportive Housing. While staff is sympathetic to those commenters that requested larger increases than the 5% reflected in the draft, staff does not agree; staff based this increase on measuring the CPI change from November 2020 to present, which (not seasonally adjusted) was 4.9%.

§11.9(e)(5) - Extended Affordability Period Scoring Item (Commenter 33)

COMMENT SUMMARY: Commenter 33 supports maintaining the current language granting points for extended affordability periods.

STAFF RESPONSE: Duly noted. Staff recommends no changes based on these comments.

§11.9(e)(6) - Historic Preservation Scoring Item (Commenter 15)

COMMENT SUMMARY: Commenter 15 suggests that the scoring item for historic preservation be based on the proportion of the space that is historic in relation to the space that is non-historic which would allow developers to be creative in large and small markets, by allowing smaller projects in small markets to support local cultural resources.

STAFF RESPONSE: While staff is open to considering this suggestion, it would require additional public comment as it proposes a new concept not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.9(e)(7)(B) - Right of First Refusal Scoring Item (Commenters 1, 2, 3, 5, 10, 12, 15, 27, 29, 32, 33, 37, and 39)

COMMENT SUMMARY: Commenter 32 requests that the new single family scoring criteria be removed from the 2022 QAP given the lack of discussion with the development community, the complexity of rent-to-own programs and the many considerations that must be evaluated, and consider this item for the 2023 QAP round tables when other additional items relating to Section 42 compliance are raised. Concerns included that the number of points allotted to this item was too high, there is insufficient detail and standards for what the plan must include, there is no requirement for financial counseling, there would be significant impacts that have not been worked on, that possible abuses may arise at the end of the 15 year period, and that this item will prioritize lower density developments and thus fewer units produced per tax credit. This comment from TAAHP was supported and also requested by Commenters 1, 3, 10, 12, 15, 27, 29, 37, and 39 who had complementary comments.

Commenter 5 noted that traditional apartment developments can also be converted to condominiums and should not be precluded from the opportunity to pursue these points; they suggest that if this item remains in the QAP, that it be open to any construction type, except for Single-Room Occupancy design (which may not have complete kitchen facilities).

Commenters 2 and 10 were also concerned about numerous and significant unintended consequences of this item and suggested that the scoring item be reduced from 3 points to 1 point. Commenter 2 suggested that the tenant ROFR item be integrated into the original paragraph A, as opposed to a separate additional item, saying only that "if a development is planned to be sold as single-family detached homes" then the tenant right of first refusal would apply. They do note that if such an edit isn't made, they request like those above, that this be delayed for another year and gave a list of concerns for this issue including: an expected reduction in the total number of units created by the program, the insufficient time to design the financing and conversion, an expected result of the program becoming a single-family program, a push of the program's units into the suburbs, concern that units other than single-family design are excluded, and issues that will arise at the end of the Compliance Period.

Commenter 15 suggests that perhaps a set-aside dedicated to rent-to-own projects would meet the same objective.

Commenter 33 provides an explanation of the current process by which properties are reducing their contractual LURA through routine staff and Board action, and the fact that TDHCA staff al-

low two year ROFR requirements to be reduced to 180 day requirements retroactively on existing LURAs as a given based on recent legislative change. However, Commenter 33 feels that to take these actions on existing LURAs is not what was contemplated by the legislature and should not be done. They note the possible harm tenants will face by increasing rents and possible displacement. While they feel a change to the QAP should not be necessary, they suggest that to address this issue, the QAP add a clause to the end of this section that states: "Such ROFR must be included in the LURA, specifying the required time period for the ROFR." They also suggest that the ROFR notice period should be required to be for two years.

STAFF RESPONSE: While staff appreciates the perspective provided, the Department is committed to ensuring compliance with the Section 42 preference. As such this item has been left in the rule. However, the limitation to the tenant ROFR points has been expanded from single-family development on individual lots to include units that are organized, at the time of LURA recording, as condominiums and for 2022 the point item has been reduced from 3 points to 1 point for this first year of the new scoring item, with the expectation that it will increase again to 3 points in 2023. As it relates to Commenter 33's comments regarding the ROFR procedures of the Department, staff appreciates the input, however such a change would require additional public comment as it proposes a new concept not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions.

§11.10 - Request for Administrative Deficiency (Commenters 8, 35, 39)

COMMENT SUMMARY: Commenter 8 feels strongly that the RFAD process should remain in the rules, but asks that staff disallow anything that does not bring to staff's attention new material information about an application that is not otherwise available to staff.

Commenter 39 notes that there appears to be a contradiction between (d) stating that testimony to the Board cannot be used to appeal staff decisions, and (f) stating that if based on public testimony it can remand the RFAD for further staff consideration; commenter encourages that the QAP be clear on whether or not public testimony may be used to appeal staff decisions made through the RFAD process.

Commenter 35 notes that the RFAD process has become a process by which applicants are appealing other applications, and it creates a record beyond the application itself being included in what the Board considers in making awards, which does not align with statute. Because of this, Commenter 35 suggests that §11.10, Third Party Request for Administrative Deficiency for Competitive HTC Applications, be struck in its entirety. Commenter 35 provides legal rationale for this suggestion. In the event the revision is not made, as suggested, specific language was provided that could be included in the QAP to make clear the components of an RFAD are not considered to be a part of the application.

STAFF RESPONSE: Staff appreciates the input provided on this section from Commenter 35 and their thoughts on this issue. As it relates to Commenter 39's concern of a contradiction, staff disagrees that a contradiction exists; one of the items relates to staff's presentation, while the other relates to an appeal. Staff recommends no changes based on these comments.

§11.101 - Site and Development Requirements and Restrictions (Commenter 33)

COMMENT SUMMARY: Commenter 33 supports maintaining the array of rules and requirements in this section that protect future tenants; however they request that all of these items should be made immediately applicable to Rehabilitation developments which could be effectuated by striking the sentences throughout this section that exclude Rehabilitation developments. They noted the importance of the floodplain provisions in protecting tenants and believe that tenants of any Department-assisted property should have the same protections regardless of whether that property was a rehabilitation or not.

STAFF RESPONSE: Such a change would require additional public comment as it proposes a new concept not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.101(a)(2) - Undesirable Site Features (Commenters 3, 5, 24)

COMMENT SUMMARY: Commenter 3 recommends removing paragraph (K) relating to Joint Land Use Study for a military installation; they note that one instance relating to Joint Land Use Study occurring the prior year should not be the basis for prompting all such similar properties as undesirable. Commenter 3 notes that when military service members live off site, they need affordable housing and lower ranking members earn salaries similar to teachers, first responders and food service employees. Commenter 3 further suggests that if the item is not removed, then the Department should consider adding military service entities to the list of those entities to receive notifications regarding the property. Commenter 24 feels that as written the language in (K) is too vague and some content of Joint Land Use Study's allude only to discouraged areas so are not a clear violation. Commenter 24 notes that for the area surrounding Randolph Joint Base residential use is merely discouraged, but not prohibited. Commenter 24 is looking at development sites in several areas that are "discouraged" but plan to mitigate the inside of the units to HUD's standards; the developer notes that have developed more than 34 communities in San Antonio that all adhere to local military requirements but may fall outside of "encouraged" areas. They suggest that clearer language be used, replacing "Development Sites that would violate a Joint Land Use Study for any military installation" with "Development Sites built within Clear, APZ1 or APZ2 zone" or that building within a 65-69 db DNL zone (db DNL refers to the decibels for the Day Night Level, a standard used in Air Installation Studies) is acceptable. They conclude by noting that non-affordable properties of new construction are currently occurring in these areas.

Commenter 5 suggests that if a local ordinance is able to supersede the distances in this section (found in the introductory paragraph of (2)), then the QAP should be revised to allow a local resolution also; this would allow the local government to approve the development and remove subjectivity and interpretation around certain features, while also avoiding unnecessary RFADs.

STAFF RESPONSE: As it relates to either removing subparagraph (K) or revising it, staff does not recommend removing the item entirely as Joint Land Use Studies are documents generated through extensive coordination and serve as important planning documents in communities with military installations.

Staff has revised the wording on this item, but has continued to leave this as broadly applicable, so that the Board will have the opportunity to decide on such applications. As it relates to the request from Commenter 5, staff does not recommend making such a change; a local ordinance is substantially different from a resolution and staff does not think one can be replaced with the other.

§11.101(a)(3) - Neighborhood Risk Factors (Commenters 13, 30, 33)

COMMENT SUMMARY: Commenter 30 supports not requiring mitigation for schools for Applications submitted under the 2022 QAP due to COVID closures.

Commenter 13 opposes language in this section that allows developers to obtain a resolution from the local government rather than being required to submit a Neighborhood Risk Factors Report if a development is in a tract with a poverty rate greater than 40%. Commenter 13 notes that because high-poverty areas have patterns of insufficient investment in grocery stores, hospitals, vet clinics and pet stores, to site affordable housing there is putting that housing where there is known disinvestment. They state that to build a development in a high poverty area the developer should have to prove to the Department that the neighborhood is receiving both public and private investment to benefit existing residents.

Commenter 33 opposes waiving the mitigation requirements for poorly performing schools. Proximity to high quality schools is critical to HTC residents with children; the QAP essentially picks the schools where children of residents will go and commenter urges the Department to use the same judgment it would use in picking schools for its own children. Commenter 33 provided additional discussion on the impact of good schools on low income students and the need for reducing intergenerational poverty. Commenter 33 further notes that the mitigation required (if not waived) is still only a requirement for only very poorly performing schools - in 2018 only 4% of campuses received an Improvement Required rating and in 2018 and 2019 fewer than 5% of campuses received the F rating. Commenter 33 suggests that eliminating the mitigation is akin to expecting that mitigation will naturally take place, but notes that mitigation in reality does not widely occur. "Supply-side" housing policies, including those made through the QAP, have the potential to break the link between economic status and educational opportunity by providing low-income people with the opportunity to live in higher income areas with access to better schools. Commenter 33 provides that incentivizing HTC development near high quality schools is important in addressing racial segregation in the state and providing further explanation on this issue which can be found in Commenter 33's letter provided on the Department's website. Mitigation for poor schools should be accomplished even during the pandemic as the children who will occupy these properties over the affordability term of the property will suffer with poor performing schools. Overall, Commenter 33 urges a return to past standards requiring HTC developments to be located near standard performing schools with additional points awarded to those located near exemplary schools.

Commenter 33 emphasizes also that even if the waiver for mitigation is approved for 2022, staff should ensure it enforces the process in subparagraph (B) of this section of the QAP that requires an Applicant to demonstrate actions being taken that would lead staff to conclude that there is a high probability and reasonable expectation the risk factor will be sufficiently

mitigated or improved prior to placement in service as required in §11.101(a)(3)(B).

STAFF RESPONSE: Staff appreciates the extensive consideration given to this issue by Commenters 13 and 33. As it relates to the ability for an applicant to obtain a local resolution rather than being required to submit a Neighborhood Risk Factors Report in a tract with a poverty rate greater than 40%, staff believes that submission of any other documentation to mitigate a poverty rate that exceeds the threshold could result in a subjective review and recommendation by staff. By allowing a resolution instead, it provides the local municipality the opportunity to review efforts that may be underway that could serve to mitigate the poverty rate. A local municipality can provide a perspective on local efforts that staff simply cannot.

As it relates to not allowing the waiver for 2022, in light of the draft QAP having reflected the waiver, and the development community having begun the possible process of site selection, to now remove the waiver may be very problematic for applicants. Staff does not recommend any changes to this section. As it relates to the final comment noted above by Commenter 33 regarding the Applicant's demonstration of actions under subparagraph (B), staff feels that by the mitigation required in subparagraph (C) being waived, the mitigation provided for in (B) is already waived, by reference; however staff has included subparagraph (B) in the waiver language to provide clarity. Staff recommends no other changes based on these comments.

§11.101(b)(1)(C) - Ineligibility of Developments within Certain School Attendance Zones (Commenters 5, 29, 33)

COMMENT SUMMARY: Commenters 5 and 29 suggest that rather than eliminating some development locations because TEA ratings have been unable to be performed for some time, they recommend that if a Development Site is located in a school attendance zone that is rated F for the most recent year available prior to Application and an Improvement Required Rating for the preceding year, they be considered eligible if they include documentation that the application commits to providing an after school educational service for tenants and a letter from the ISD Superintendent that outlines specific improvements that have been made. Commenter 33 strongly supports the current language as drafted that maintains the ineligibility of developments within certain attendance zones.

STAFF RESPONSE: In the discussion by the Department's Rules Committee relating to the 2022 Draft QAP, Board members indicated an expectation that Applications in these cases would be considered ineligible with no opportunity for mitigation. It should be noted that a waiver may be requested at or before the submission of an application.

§11.1-1(b)(4) - Mandatory Development Amenities (Commenter 31)

COMMENT SUMMARY: Commenter 31 notes their concern for the use of "or equivalently" when discussing Energy Star applicants and measures; they are concerned this could undermine efforts to improve energy efficiency; they also support inclusion of water-sense plumbing appliances to these requirement amenities.

STAFF RESPONSE: Where a developer chooses to use something that is "equivalently rated," the Department will be looking for confirmation that it is indeed equivalently rated. Similarly, the same would be expected where "equivalently qualified" plumb-

ing fixtures are used instead of EPA WaterSense. Staff recommends no changes based on these comments.

§11.101(b)(6)(A) - Unit Sizes (Commenter 29)

COMMENT SUMMARY: Commenter 29 notes that with the addition of the provision of units for homeless populations, the development community needs to be able to provide more efficiency units at a lower cost; the best way to achieve this is to reduce the minimum unit size for efficiency units for threshold and scoring. Commenter 29 suggests that the minimum size for threshold be 400 square feet, which aligns with the general market for efficiency unit sizes.

STAFF RESPONSE: As noted in the discussion on this similar topic in relation to scoring, staff sees the value in revising the minimum unit size for efficiencies for points as there is an increasing trend toward smaller units. However, additional public comment on this idea is needed as it proposes a new concept not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.101(b)(6)(B) - Unit, Development Construction, and Energy and Water Efficiency Features (Commenter 31)

COMMENT SUMMARY: Commenter 31 appreciates the attention in this section to energy and water efficiency but feels that some of the measures are already required as mandatory and are then also being given points (for instance energy star dishwashers and refrigerators are already required, yet points are given if they have an ice-maker or are front-loading). Commenter 31 also questions the need to give points for LED recessed lighting or fixtures as they are now the standard for all new construction in Texas under the 2015 IECC. Commenter 31 suggests that an even higher rated HVAC system be added, such as an 10 or 20 SEER, for up to two points.

STAFF RESPONSE: Staff agrees that greater distinction should be made between what is used for threshold and what they can receive points; however, additional public comment on this idea is needed. The timing of the QAP process does not allow for additional rounds of public comment and staff research. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.101(b)(8)(B) - Green Building (Commenters 11, 31, 41)

COMMENT SUMMARY: Commenter 11 praises TDHCA for maintaining competitive points for third-party green building certification and particularly for incentivizing certification to the ICC-700 standard; commenter feels these items encourage development that is efficient, comfortable, and supports resident health and requests that the items remain in the QAP. Commenter 11 notes that Texas is one of 29 states recognizing this standard in its QAP and provided significant description and background on the National Green Building Standard's Green certification program, which for brevity are not restated herein but whose comments can be found on the Department's website. (Note that this was not a new revision to the QAP, but already in the 2021 QAP.) Commenter 31 supports the continued inclusion of the 2018 IGCC as a new Green Building standard, but also recommends that TDHCA add passive solar standards as another standard that could earn up to four points (this standard is known as the PHIUS+ 2015 passive building

energy standard). Commenter 31 also suggests that PV rooftop solar options be added as a feature for which a development could receive points, for instance one point could be achieved if the solar option provided at least 10% of the buildings total energy use.

Commenter 41 applauds TDHCA for looking to building codes and standards that further more sustainable building, but suggests that in an effort to balance that with keeping costs low, several other standards should be added as options for this item which include: The International Living Future Institute's Living Building Challenge or Core Green Building Certification; Green Globes by the Green Building Institute; ASHRAE's Building EQ; ASHRAE's Standard 62.1-2019, Standard 62.2-2019 and ANSI/ASHRAE Standard 105; and IAPMO's Water Efficiency and Sanitation Standard. Commenter 41 also then notes concerns about using the IGCC standard currently in the QAP; the IGCC Standard in its current form is not completely developed by a nationally recognized consensus-based process. They note that the IGCC document is not ANSI approved.

STAFF RESPONSE: Staff appreciates the excellent additional suggestions from Commenters 31 and 41 that would provide more creative and expansive options for promoting green building, however, additional public comment and staff research on this idea is needed as it proposes new concepts not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.101(b)(8)(B) - Visitability, Grab Bar Installation (Commenter 7)

COMMENT SUMMARY: Commenter 7 notes that the QAP already requires properties to provide appropriate blocking to support the installation of a grab bar; they note that while the cost of the grab bar itself is approximately \$21, the labor typically adds another \$150 to this cost, which may be out of reach for low-income persons with disabilities. Commenter 7 suggests that to ensure people with disabilities are not priced out of obtaining this commonly necessary modification, that the QAP should require the tenants to pay for the materials, while the landlord pays for the labor costs.

STAFF RESPONSE: Owners are already required to pay for the installation of grab bars on all awards post 2001, unless doing so would be a financial and administrative burden (which would be unlikely). Staff recommends no changes based on these comments.

§11.201(2)(A)(i) - Lottery Applications (Waitlist) Priority 1 or 2 Applications (Commenter 1)

COMMENT SUMMARY: Commenter 1 requested that architectural drawings be considered as part of the Third-Party reports for Private Activity Bond/HTC applications that are on the Bond Review Board waiting list. The three day notice prior to issuance of the reservation does not provide sufficient time for the drawings to be completed and thus results in deficiency notices to clear the inconsistencies.

STAFF RESPONSE: There are several exhibits in the application that require consistency with the architectural drawings. Submission of architectural drawings along with the third party reports post-submission would require revised exhibits be submitted to the application itself. While staff understands that

the timeframe allowed is short, there are not date constraints surrounding how old the architectural drawings can be in the QAP, as there are with third party reports. This would indicate that upon submission of the application to the Bond Review Board to await a bond reservation, the architectural drawings could already be in process.

Staff recommends no change based on this comment but has clarified in this section that applications approved by the Board will not have the Determination Notice administratively issued as reflected in the following sentence. Moreover, staff is also providing a clarifying change under §11.201(2)(B)(i) relating to submission of the Application.

§11.201(7) - Limited Review (Commenter 8)

COMMENT SUMMARY: Commenter 8 suggests that the ability to request a limited review for an isolated issue should not only exclude scoring items, but should be expanded to also exclude "failure to comply with any statutory requirement."

STAFF RESPONSE: Additional public comment on this idea is needed as it proposes a new limitation not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.202 - Ineligible Applicants and Applications (Commenter 33)

COMMENT SUMMARY: Commenter 33 suggests adding another criteria to the list of Applicants that would be ineligible for credits, specifically those applicants who have been in control of TDHCA portfolio properties with abysmal inspection scores for more than two years. They cite an example of a specific property owner (Sandpiper Cove) for which the QAP has no provisions to preclude that owner for applying for more credits. Commenter 33 suggests adding language: "Has at any point in the past 30 years been in control of a property in the Department's inventory where the REAC score was below 50 (or the equivalent UPCS score) for two consecutive years. To be disqualified based on this subsection the party must have been in control of the property for two full years prior to the two years of inadequate inspections."

STAFF RESPONSE: Staff appreciates the comment however additional public comment on this idea is needed as it proposes a new concept not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.204(6) - Experience Requirement (Commenter 1, 12, 29, 32, 40)

COMMENT SUMMARY: As pointed out to staff at the September Round Table, Commenter 32 notes that the experience requirement date window was adjusted by staff inadvertently moving the year 2014 up by one year. They request that because the requirements in 2014 were largely the same, the year 2014 should remain. This comment from TAAHP was supported and also requested by Commenters 1, 12, 29, and 40.

STAFF RESPONSE: Staff concurs. This edit was made in error and is corrected back to 2014 in the attached draft.

§11.204(8) - Required Documentation, Operating and Development Costs (Commenter 8)

COMMENT SUMMARY: Commenter 8 recommends that subparagraph (G) relating to Occupied Developments be revised to clarify that the rule and the items to be submitted in Tab 21 of the Application applies to those that are proposing the redevelopment of occupied residential structures so that it is consistent with section 2306.6705(6) of Texas Gov't Code and/or applying for Direct Loan funds whose development sites include occupied structures.

STAFF RESPONSE: The QAP already specifies that subparagraph (G): "must be submitted with any Application where any structure on the Development Site is occupied at any time after the Application Acceptance Period begins or if the Application proposes the demolition of any housing occupied at any time after the Application Acceptance Period begins." Staff recommends no changes based on this comment.

§11.204(13)(B) - Required Documentation, Organizational Charts (Commenter 14)

COMMENT SUMMARY: Commenter 14 notes that for applications with private equity fund investors who are passive investors in the sponsorship entity, the QAP should allow the fund manager to be named in the organizational chart, and not require a full list of investors, as they do not exercise control of the development or make decisions.

STAFF RESPONSE: The purpose of the Organizational Chart is for the Department to do the Previous Participation Review as outlined in 10 TAC Chapter 1 Subchapter C. Staff concurs with this edit for LIHTC only developments, and this edit has been made to the rule. The Department is in discussions with HUD to see if the same consideration can be made to the Multifamily Development Loan Program, as those developments must follow the expanded definition of Principal in 2 CFR Part 2424.

§11.207(3) - Waiver of Rules (Commenter 1)

COMMENT SUMMARY: Commenter 1 does not support a revision to the rule that gives the Board authority to grant forward commitments at their pleasure, but only in cases that affect the application pool or industry as a whole. They suggested the waiver language be revised by adding, "due to circumstances that affect the Texas application pool or industry as a whole."

STAFF RESPONSE: Staff recommends no revision based on this comment.

§11.302(d)(1)(A)(i) - Market Rents (Commenter 12)

COMMENT SUMMARY: Commenter 12 recommends that for developments that contain less than 15% unrestricted units, the underwriter should use the lower of market study approved rents, or the Gross Program Rent at 80% AMI rather than 60% AMI; they suggest that developments proposing unrestricted rents should be held to a standard whereby the unrestricted rents (after adjustment for utilities) should fall 10% below the prevailing market rate as established in the market study so that there is an affordable "rent advantage" between the market and affordable units. Commenter 12 suggests that underwriting the rents to 60% AMI creates an "on paper" shortfall that is not consistent with financial market practices for HTC developments.

STAFF RESPONSE: For developments that contain less than 15% market units, the existing rule limits the Market Rent used for underwriting purposes to the lesser of the Market Rent as reported in the Market Study or the highest allowable HTC Gross

Program Rent for the development (80% AMI if electing Income Averaging, 60% AMI otherwise). Staff believes the current rule addresses the comment and recommends no revision.

§11.302(e) Total Housing Development Costs (Commenter 3)

COMMENT SUMMARY: Commenter 3 requests removing the language that had been newly added to this section that provides that the underwriter will adjust cost schedule line items to meet rules, but will not make subsequent adjustments to meet feasibility requirements as a result of the initial adjustment. Commenter 3 suggests that any change to an application by staff must allow the developer to review or challenge the adjustment as even one line adjustment can affect the credit request and sources and uses; changes often create ripple effects and if a change makes an application infeasible, the developer must know to prevent loss of time and money.

STAFF RESPONSE: The Underwriter only adjusts items that exceed limits specified in the Rules. The purpose of the newly added language is to clarify that it is not the Underwriter's role to rework the application beyond enforcing limits specified in the Rules. Staff recommends no revision.

§11.302(e)(7) - Developer Fees (Commenters 23, 33)

COMMENT SUMMARY: Commenter 23 recommends that any cash out to developers on identity of interest transactions should not be included in Total Development Costs and in the leveraging calculation in 9% HTC; the commenter notes that this practice allows an application to take away tax credits that could go to another application in order to fund additional profit to another development. They suggest, alternatively, that applicants should leave in a Seller Note as opposed to cash out. They note that the 2021 changes to this item are what is allowing this to occur.

Commenter 33 recommends amending the Developer Fee such that the fee is based on the number of units rather than costs. With a massive need for affordable housing, this would allow developers to benefit from being creative and resourceful in maximizing the output of units; the current structure has the wrong incentives which have the developers making their fee tied to the overall costs.

STAFF RESPONSE: As it relates to both suggestions additional public comment on these ideas is needed as they propose new concepts not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.302(g)(2)(B) - Other Underwriting Conditions, Floodplain (Commenters 1, 8, 18)

COMMENT SUMMARY: Commenters 1 and 8 suggests removing the requirement that the Applicant must provide flood insurance for the tenant's contents of their unit; they note that flood insurance is difficult to obtain and expensive and many private insurance companies will not insure a tenant's belongings. They note that the Department is already requiring mitigation for all finished ground floor elevations located wholly or partially in a floodplain.

Commenter 18, submitting a comment on behalf of Commenter 8, notes that this requirement to have a landlord price or acquire insurance on its tenant's personal property is impossible under Texas law and therefore unenforceable; they note that it is well

settled in the State of Texas that a landlord may not obtain insurance covering a tenants personal property as they do not have an insurable interest (further explanation and reference to case law were provided which is available in the commenter's letter available on the Department's website). Commenter 18 states that even the Texas Department of Insurance recognizes that a landlord's insurance will not cover a tenant's personal property. Commenter 18 feels this section of the QAP must be changed and suggests that in lieu of subparagraph (B) as written ("The Applicant must identify the cost of flood insurance for the buildings and for the tenant's contents for buildings within the 100 year floodplain and certify that the flood insurance will be obtained") paragraph (B) instead should state: "The Applicant must provide evidence that all tenants will be informed that all or a portion of the buildings are located within the 100-year floodplain and that it is encouraged that they consider getting appropriate renter's insurance." They also suggest a new paragraph (C) be added that states: "The Applicant undertakes and substantiates sufficient mitigation efforts, with documentation of such submitted at Cost Certification." This proposed revision brings TDHCA standards into consistency with HUD standards.

STAFF RESPONSE: Though staff does not agree with the legal arguments made by the commenters, the Texas Legislature's recent addition of Section 92.0135 to the Texas Property Code indicates an expectation of landlords to only provide notice to prospective tenants when dwellings are located in a 100-year floodplain; particularly, written notice that "[m]ost tenant insurance policies do not cover damages or loss incurred in a flood," and written notice to a tenant prior to or at the time of lease signing stating "[tenant] should seek insurance coverage that would cover losses caused by a flood." Therefore, staff has removed the requirement but added clarification in §11.101(a)(1) that notification must occur.

§11.302(i) - Feasibility Conclusion (Commenter 3)

COMMENT SUMMARY: Commenter 3 asks to correct a citation in the introductory paragraph for this section from (6)(B) to (5)(B).

STAFF RESPONSE: Thank you for identifying the incorrect citation. A responsive correction has been made.

§11.901 - Fees (Commenter 23)

COMMENT SUMMARY: Commenter 23 requests that the QAP clarify when the Appraisal Review Fee is due since it is unclear when an application is considered priority and suggested that the Application Log have a column added that specifically denotes Priority. Commenter 23 also requested that if an appraisal is not reviewed, the fee be refunded.

STAFF RESPONSE: Staff agrees that there could be uncertainty regarding the point in time in which a competitive housing tax credit application becomes priority. Staff has revised the rule to reflect that once an application becomes priority and is reviewed by staff, staff will include as an Administrative Deficiency to submit the Appraisal Review Fee. To clear the deficiency, the applicant must submit a copy of the check and provide the date that it was submitted to the Department.

§11.902(f) - Appeals Process (Commenter 39)

COMMENT SUMMARY: Commenter 39 suggesting deleting subsection (f) which had been newly added in the draft QAP and provided that if there is insufficient time for the Executive Director to respond to a Competitive Housing Tax Credit Application appeal prior to the agenda being posted for the July Board meeting at which awards from the Application Round

will be made, the appeal may be posted to the Board agenda prior to the Executive Director's issuance of a response. The commenter suggest alternatively that the language state that: "Competitive Housing Tax Credit Application appeals must be submitted no later than four weeks prior to July Board meeting at which awards for the Application Round will be made so that all appeals can be resolved at Board meeting(s) prior to July Board meeting at which awards from the Application Round will be made." Their suggestion is made to reduce the unnecessary chaos for staff and the development community and allow staff enough time to make sound decisions.

STAFF RESPONSE: While staff aspires to issue scoring notices and other application deficiencies within a timeframe that would allow all applicants to file an appeal at least four weeks prior to the late July Board meeting which has not historically been achievable. To add this provision to the QAP would either take away important appeal rights from Applicants, or conversely force Department reviews in a timeline that cannot be performed. As such, staff recommends no revisions. Staff recommends no changes based on these comments.

Subchapter F - General (Commenter 8)

COMMENT SUMMARY: Commenter 8 requests that Subchapter F be a stand-alone chapter that is unique to the 2022 QAP and rules as this would further strengthen its ability to consider the Supplemental Allocations as not impacting the 2022 regular credit allocations in the deconcentration factors.

STAFF RESPONSE: The Department is required by Section 42 to have any actions that are the basis for the allocation of credits to be within the Qualified Allocation Plan. No change is recommended.

Subchapter F, §11.1001 - General, Supplemental HTC (Commenters 6, 8, 36, 39)

COMMENT SUMMARY: Commenter 6 feels that because the large portion of cost increases happened in the last 10 to 12 months, the 2020 deals have been the ones most adversely impacted and warrant prioritization over 2019 deals; from that perspective Commenter 6 strongly supports that the ineligibility for developments that have already placed in service be kept in the QAP as proposed as those developments are not at risk of not being completed. Commenter 8 suggests that any forward commitments be limited to no more than \$5 million in 2022 tax credit equity and such proceeds be limited to only assisting 2019 and 2020 transactions (not 2021).

Commenters 36 and 39 support that the supplemental allocations are only for 2019 and 2020 and oppose the funds being used for 2021 applications as it will dilute the funding for those truly caught off guard by the cost increases (whereas 2021 applicants had some indication of the inflation). Commenter 39 suggests that language be explicitly added that states that 2017 and 2018 allocations that received Force Majeure treatment in 2019 be prohibited from requesting Supplemental allocations to provide clarity on their eligibility. Commenter 36 also notes that they support the suggestion made at the Round Table that the Cost of Development per Square Foot scoring item and the leveraging scoring item be considered satisfied and not affected by the additional credits.

STAFF RESPONSE: Staff appreciates the feedback on the draft from Commenters 6 and 8, who are not suggesting changes beyond those already reflected. Staff agrees that to ensure the policy is as clear as possible, the ineligibility of 2017 and 2018 Force

Majeure recipients, as well as 2021 applications, is added, and the clarification regarding the two scoring items has been added. Staff recommends no changes based on these comments.

Subchapter F, §11.1002 - Program Calendar for Supplemental HTC (Commenter 15, 25, 30, 32, 34, 36, 39, 40)

COMMENT SUMMARY: Commenter 32 requests that a notice of intent be made a requirement. Ideally the notices of intent would be due around November 5 so that the development community can evaluate those potential applications as it makes decisions for the traditional 2022 application round. Commenter 32 also requests that the Supplement request deadline be moved up by a month to December 10 (or so) with Board approval in March 2022. This comment from TAAHP to require a notice of intent was supported and also requested by Commenters 15, 25, 34, 36, 39, and 40. Commenter 15 additionally noted the deadline for the notice of intent should be included in the calendar. The TAAHP comment to move the submission date and award date of the supplemental earlier was supported by Commenters 30 and 36.

STAFF RESPONSE: Staff concurs and has added a requirement for a Notice of Intent in §11.1005. The deadline for the Notice of Intent and the deadline for the Supplemental Request were both added to the calendar. The dates for when expected awards will be made was moved to February 2022.

It should be noted that other staff revisions to this section include adding specific 10% Test and Placement in Service deadlines in lieu of the clause "Determined by Board Action."

Subchapter F, §11.1003 - Maximum Supplemental HTC Requests and Award Limits (Commenter 6, 12, 32, 36, 37, 39, 40)

COMMENT SUMMARY: Commenter 32 requests that the cap in subsection (b) on supplemental credits be reduced from 15% to 7%. Commenter 36 suggests a similar reduction but down to 7.5%, while Commenter 39 recommends reducing this cap down to 5%. Lowering the cap would allow more 2019 and 2020 deals to access the credits within each subregion and stretch this limited resource as much as possible. This comment from TAAHP to reduce the maximum request amount was supported and also requested by Commenters 6, 12, 37, and 40.

Commenter 36 supports minimally increasing the total amount of credits available for the Supplemental Allocation, to \$6.5 million, which would equate to 10% of the amount of estimated credits from the 2022 RAF methodology; such a change would allow for a larger number of 2019 and 2020 developments to be assisted. Commenter 36 notes that they are hopeful that Congress will authorize an increase to the 9% allocation by possibly 50% which could help offset this allotment toward supplemental allocations.

Commenter 39 suggests increasing the total amount of credits available for the Supplemental Allocation, to \$8,150,000, and state that this amount will provide sufficient credits to fully fund all requests; their earlier suggestion that the cap for requests go down to 5%, combined with this increase, would all 2019 and 2020 awardees to request up to that 5% limit of their original allocation. If all awardees are provided funds, the only review by staff that would have to occur is the underwriting analysis, thereby expediting reviews. Commenter 39 further states that competition for these credits seems unwise and unfair given the supply chain and labor shortage issues that have caused the issue; they further note that the 5% suggested is consistent with

what most Limited Partnership Agreements will allow and those that need more than that amount can access direct loan funds.

STAFF RESPONSE: Staff agrees with the suggested revision to reduce the cap from 15% to 7%, but does not agree with increasing the total credits available for Supplemental Allocations, which will further constrain the 2022 regular tax credit cycle.

Other staff revisions to this section include removing the reference to creating a Supplemental Allocation waitlist, as any Supplemental Credits remaining after the Board's approval of Supplemental Allocations will be transferred to the subregion for the regular 2022 competitive cycle, and added that Supplemental Allocations are limited to the increase in eligible costs and made a corresponding edit to §11.1008.

Subchapter F, §11.1004 - Competitive HTC Set-Asides

Staff revisions to this section include the addition of the At-Risk and USDA Set-asides as part of the allocation process for Supplemental Allocations.

Subchapter F, §11.1005 - Supplemental Credit Allocation Process (Commenters 6, 8, 12, 15, 32, 40)

COMMENT SUMMARY: Commenter 32 concurs with the premise of using the original score as the basis for the ranking of requests for Supplemental Allocations reflected in subsection (c). TAAHP further suggests that a tie-breaker be added to further prioritize requests. The first tie-breaker would be those transactions that are closed and under construction, and the second tie-breaker would be the tie-breakers currently proposed by Commenter 32 for the 2022 QAP which are first poverty rate, second rent burden and third distance to the nearest HTC development. The comment from TAAHP to use the final scores from the award year was supported and also requested by Commenters 12 and 40.

Commenter 6 feels that because the large portion of increases happened in the last 10 to 12 months, the 2020 deals have been the ones most adversely impacted and warrant prioritization over 2019 deals; while their preference would have been that all 2020 applications are assured some credits, they realize this is unlikely and therefore they support the proposed ranking system as drafted because it gives a scoring priority to 2020 deals, who generally score higher than 2019 deals. Commenter 6 specifically noted their opposition to the suggestion by TAAHP that the first tie-breaker be for transactions that are closed because such a priority does not help struggling transactions; they recommend that the rule be left as is on this issue.

Alternatively Commenter 8 is opposed to the use of the original allocation year scoring for that same reason - which is that it gives a natural priority to 2020 transactions. To prevent that preference for 2020 transactions, which will be felt particularly in subregions where only one supplemental is likely to be awarded, Commenter 8 suggests using the following award priorities in this order: transactions that are closed and under construction the longest receive first priority as they are most at risk with the ability for the Real Estate Analysis staff to reprioritize based on what they see are the most impacted financially performing a "harm analysis" to reprioritize within subregions. Commenter 8 also does not support the use of tie-breakers in the supplemental allocation decisions as those tie breakers in the QAP currently do not differentiate those transactions most at risk.

Commenter 15 suggests that rather than using the raw score from the year in which the awards were made, that the allocation requests should be ranked based on the percentage of points

awarded in their relevant calendar year, which would be more equitable.

STAFF RESPONSE: Based on the spectrum of comments received both supporting changes to the scoring and prioritization method and leaving them as drafted, staff is recommending to leave this section as currently drafted. Regarding the issue of tie breakers, staff does recommend that tie breakers be put in place to ensure that there is some contemplation of the ties that may occur. As such staff has recommended the use of the tie-breakers as currently drafted in the QAP (not variations suggested by commenters).

Other staff revisions to this section include: addition of the requirement for an Intent to Request a Supplemental Allocation; addition of the process for submitting an actual Request for Supplemental Allocation including that requested amounts may vary from the amount noted in the Notice of Intent without penalty; adding the ability for the Department to make awards of the Supplemental Allocations conditioned on completion of underwriting to help accelerate the timeline for making such awards; and adding reference to the use of Tie Breaker Factors in the case of a tie.

Subchapter F, §11.1006 - Procedural Requirements (Commenter 15)

COMMENT SUMMARY: Commenter 15 suggests that language referencing the requirement to submit a Notice of Intent should be added to this section or the prior section.

STAFF RESPONSE: The section requested was added to §11.1005.

Subchapter F, §11.1007 - Required Documentation for Supplemental Credit Request (Commenter 6, 12, 32, 40)

COMMENT SUMMARY: Commenter 32 requests that an applicant be required to provide evidence from their investor that the additional credits will be purchased and state the dollar value associated with that purchase. This will provide the Department's underwriters with information needed to evaluate the application and ensure the credits will be used. This comment from TAAHP relating to evidence required was supported and also requested by Commenters 12, 40

Commenters 6 and 12 further recommends that more extensive documentation be required for closed transactions to included executed construction contracts, executed change orders, and the final investor projections attached to an executed operating agreement or company agreement; they recommend these items so that TDHCA can be confident its receiving the actual numbers.

STAFF RESPONSE: Staff concurs and language has been added to require the documentation suggested by Commenter 32; however staff did not recommend the more extensive documentation requirements suggested by Commenters 6 and 12.

Other staff revisions to this section include clarifying that eligible cost increases are not limited to construction costs, but must be substantiated.

Subchapter F, §11.1008 - Supplemental Underwriting and Loan Policy (Commenter 36)

COMMENT SUMMARY: Commenter 36 supports this item as drafted and feels it was well written and ensures that the extra credits go toward mitigating the cost increases from hyperinfla-

tion experienced the in the market and does not go towards increasing developer fees or decreasing deferred developer fee.

STAFF RESPONSE: Staff appreciates the feedback.

Subchapter F, §11.1009 - Supplemental Credit Fee Schedule

A staff revision to this section was made removing the second clause of the fee schedule as return of credits is not applicable in these cases; this had been inadvertently brought into the rule.

SUBCHAPTER A. PRE-APPLICATION, DEFINITIONS, THRESHOLD REQUIREMENTS AND COMPETITIVE SCORING

10 TAC §§11.1 - 11.10

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

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

§11.1. General.

(a) Authority. This chapter applies to the awarding and allocation by the Texas Department of Housing and Community Affairs (the Department) of Competitive Housing Tax Credits and the issuance of Determination Notices for non-Competitive Housing Tax Credits. The federal laws providing for the awarding and allocation of Competitive Housing Tax Credits and issuance of Determination Notices for non-Competitive Housing Tax Credits require states to adopt a qualified allocation plan. Pursuant to Tex. Gov't Code, Chapter 2306, Subchapter DD, the Department is assigned responsibility for this activity. As required by Internal Revenue Code (the Code), §42(m)(1), the Department has developed this Qualified Allocation Plan (QAP) and it has been duly approved to establish the procedures and requirements relating to an award and allocation of Competitive Housing Tax Credits and issuance of Determination Notices for non-Competitive Housing Tax Credits. All requirements herein and all those applicable to a Housing Tax Credit Development or an Application under Chapter 10 of this title (relating to Post Award and Asset Management Requirements, Compliance Monitoring, and Incomes and Rents rules) collectively constitute the QAP required by Tex. Gov't Code §2306.67022 and §42(m)(1)(B) of the Code. Unless otherwise specified, certain provisions in this section and §§11.2 - §11.4 of this title also apply to non-Competitive Housing Tax Credits. Subchapters B - E of this chapter also apply to non-Competitive Housing Tax Credits and Multifamily Direct Loans. Applicants are required to certify, among other things, that they have familiarized themselves with the rules that govern that specific program including, but not limited to, 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 12 of this title (relating to Multifamily Housing Revenue Bond Rules), Chapter 13 of this title (relating to Multifamily Direct Loan Rule), and other Department rules. This subchapter does not apply to operating assistance programs or funds unless incorporated by reference in whole or in part in a Notice of Funding Availability (NOFA) or rules for such a program except to the extent that Developments receiving such assistance and otherwise subject to this chapter remain subject to this chapter.

(b) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the QAP, or may be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit ac-

curate information, Applicants should also appreciate that this type of guidance is limited by its nature, and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. The Multifamily Programs Procedures Manual is not a rule and is provided as good faith guidance and assistance, but in all respects the statutes and rules governing the Low Income Housing Tax Credit program supersede these guidelines and are controlling. Moreover, after the time that an issue is initially presented and guidance is provided, additional information may be identified and the issue itself may continue to develop based upon additional research and guidance. Thus, until confirmed through final action of the Board, staff guidance must be considered merely as an aid and an Applicant continues to assume full responsibility for any actions Applicant takes regarding an Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to perform independently the necessary due diligence to research, confirm, and verify any data, opinions, interpretations, or other information upon which an Applicant bases an Application or includes in any submittal in connection with an Application.

(c) **Competitive Nature of Program.** Applying for Competitive Housing Tax Credits is a technical process that must be followed completely and correctly. Any person who desires to request any reasonable accommodation for any aspect of this process is directed to §1.1 of this title (relating to Reasonable Accommodation Requests to the Department). As a result of the highly competitive nature of applying for Competitive Housing Tax Credits, an Applicant should proceed on the assumption that deadlines are fixed and firm as further provided for in subsection (f) of this section.

(d) **Definitions.** The capitalized terms or phrases used herein are defined below. Any capitalized terms not specifically mentioned in this section or any section referenced in this document shall have the meaning as defined in Tex. Gov't Code Chapter 2306, Internal Revenue Code (the Code) §42, the HOME Final Rule, and other federal or Department rules, as applicable. Defined terms, when not capitalized, are to be read in context and construed according to common usage.

(1) **Adaptive Reuse--**The change-in-use of an existing building not, at the time of Application, being used, in whole or in part, for residential purposes, into a building which will be used, in whole or in part, for residential purposes. Adaptive Reuse requires that at least 75% of the original building remains at completion of the proposed Development. Ancillary non-residential buildings, such as a clubhouse, leasing office or amenity center may be newly constructed outside the walls of the existing building or as detached buildings on the Development Site. Adaptive Reuse Developments will be considered as New Construction.

(2) **Administrative Deficiency--**Information requested by Department staff that is required to clarify or explain one or more inconsistencies; to provide non-material missing information in the original Application or pre-application; or to assist staff in evaluating the Application or pre-application that, in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application or pre-application. Administrative Deficiencies may be issued at any time while the Application, or pre-application is under consideration by the Department, including at any time after award or allocation and throughout the Affordability Period. A matter may begin as an Administrative Deficiency but later be determined to have constituted a Material Deficiency. If an Applicant claims points for a scoring item, but provides supporting documentation that would support fewer points for that item, staff would treat this as an inconsistency and may issue an Administrative

Deficiency or take action without an Administrative Deficiency which will result in a correction of the claimed points to align with the provided supporting documentation.

(3) **Affiliate--**An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, has Control of, is Controlled by, or is under common Control with any other Person. All entities that share a Principal are Affiliates.

(4) **Affordability Period--**The Affordability Period commences as specified in the Land Use Restriction Agreement (LURA) or federal regulation, or commences on the first day of the Compliance Period as defined by the Code §42(i)(1), and continues through the appropriate program's affordability requirements or termination of the LURA, whichever is earlier. The term of the Affordability Period shall be imposed by the LURA or other deed restriction, and in some circumstances may be terminated upon foreclosure or deed in lieu of foreclosure. The Department reserves the right to extend the Affordability Period for Developments that fail to meet program requirements. During the Affordability Period, the Department shall monitor to ensure compliance with programmatic rules as applicable, regulations, and Application representations.

(5) **Applicable Percentage--**The percentage used to determine the amount of the Housing Tax Credit for any Development, as defined more fully in Code, §42(b).

(A) For purposes of the Application, the Applicable Percentage will be:

- (i) nine percent for 70% present value credits; or
- (ii) four percent for 30% present value credits.

(B) For purposes of making a credit recommendation at any other time, the Applicable Percentage will be based on:

- (i) the percentage indicated in the Agreement and Election Statement, if executed; or
- (ii) the percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.

(6) **Applicant--**Means any Person or a group of Persons and any Affiliates of those Persons who file an Application with the Department requesting funding or a tax credit allocation subject to the requirements of this chapter or Chapters 12 or 13 of this title and who have undertaken or may contemplate the later formation of one or more business entities, such as a limited partnership, that is to be engaged in the ownership of a Development.

(7) **Application Acceptance Period--**That period of time during which Applications may be submitted to the Department. For Tax-Exempt Bond Developments it is the date the Application is submitted to the Department.

(8) **Award Letter --**A document that may be issued to an awardee of a Direct Loan before the issuance of a Contract which preliminarily sets forth the terms and conditions under which the Direct Loan will be made available. An Award Letter will typically be contingent on the awardee satisfying certain requirements prior to executing a Contract.

(9) **Bank Trustee--**A federally insured bank with the ability to exercise trust powers in the State of Texas.

(10) **Bedroom--**A portion of a Unit which is no less than 100 square feet; has no width or length less than eight feet; is self-con-

tained with a door (or the Unit contains a second level sleeping area of 100 square feet or more); has at least one window that provides exterior access; and has at least one closet that is not less than two feet deep and three feet wide and high enough to accommodate five feet of hanging space. A den, study or other similar space that could reasonably function as a Bedroom and meets this definition is considered a Bedroom. Rehabilitation (excluding Reconstruction) Developments in which Unit configurations are not being altered will be exempt from the bedroom and closet width, length, and square footage requirements. Supportive Housing Developments will be exempt from the bedroom and closet width, length, and square footage requirements.

(11) Breakeven Occupancy--The occupancy level at which rental income plus secondary income is equal to all operating expenses, including replacement reserves and taxes, and mandatory debt service requirements for a Development.

(12) Building Costs--Cost of the materials and labor for the vertical construction or rehabilitation of buildings and amenity structures.

(13) Carryover Allocation--An allocation of current year tax credit authority by the Department pursuant to the provisions of the Code, §42(h)(1)(C) and U.S. Treasury Regulations, §1.42-6.

(14) Carryover Allocation Agreement--A document issued by the Department, and executed by the Development Owner, pursuant to §11.907 of this title (relating to Carryover Agreement General Requirements and Required Documentation).

(15) Cash Flow--The funds available from operations after all expenses and debt service required to be paid have been considered.

(16) Certificate of Reservation or Traditional Carryforward Designation--The notice given by the Texas Bond Review Board (TBRB) to an issuer reserving a specific amount of the private activity bond state ceiling for a specific Development.

(17) Code--The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the U.S. Department of the Treasury or the Internal Revenue Service (IRS).

(18) Code of Federal Regulations (CFR)--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the *Federal Register*.

(19) Commitment Notice (also referred to as Commitment)--An agreement issued pursuant to §11.905(a) of this title (relating to General Information for Commitments or Determination Notices), setting forth the terms and conditions under which Competitive Housing Tax Credits, from the Department will be made available. A Commitment or Commitment Notice does not mean commitment of federal funds under the Direct Loan Program.

(20) Commitment of Funds--Occurs after the Development is approved by the Board and once a Contract is executed between the Department and Development Owner. The Department's Commitment of Funds may not align with commitments made by other financing parties.

(21) Committee--See Executive Award and Review Advisory Committee.

(22) Common Area--Enclosed space outside of Net Rentable Area, whether conditioned or unconditioned, to include such area contained in: property management offices, resident service offices, 24-hour front desk office, clubrooms, lounges, community kitchens, community restrooms, exercise rooms, laundry rooms,

mailbox areas, food pantry, meeting rooms, libraries, computer labs, classrooms, break rooms, flex space programmed for resident use, interior corridors, common porches and patios, and interior courtyards. Common Area does not include individualized garages, maintenance areas, equipment rooms, or storage.

(23) Comparable Unit--A Unit, when compared to the subject Unit, is similar in net rentable square footage, number of Bedrooms, number of bathrooms, overall condition, location (with respect to the subject Property based on proximity to employment centers, amenities, services and travel patterns), age, Unit amenities, utility structure, and common amenities.

(24) Competitive Housing Tax Credits --Sometimes referred to as Competitive HTC. Tax credits available from the State 9% Housing Credit Ceiling.

(25) Compliance Period--With respect to a building financed, in part with proceeds of Housing Tax Credits, the period of 15 taxable years, beginning with the first taxable year of the credit period pursuant to Code, §42(i)(1).

(26) Continuously Occupied--The same household has resided in the Unit for at least 12 months.

(27) Contract--A legally binding agreement between the Development Owner and the Department, setting forth the terms and conditions under which Multifamily Direct Loan Program funds will be made available.

(28) Contract Rent--Net rent based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.

(29) Contractor--See General Contractor.

(30) Control (including the terms "Controlling," "Controlled by," and "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. As used herein "acting in concert" involves more than merely serving as a single member of a multi-member body. A member of a multi-member body is not acting in concert and therefore does not exercise control in that role, but may have other roles, such as executive officer positions, which involve actual or apparent authority to exercise control. Controlling entities of a partnership include the general partners, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. Persons with Control of a Development must be identified in the Application. Controlling individuals and entities are set forth in subparagraphs (A) - (E) of this paragraph. Multiple Persons may be deemed to have Control simultaneously.

(A) For for-profit corporations, any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 50% or more interest in the corporation, and any individual who has Control with respect to such stockholder.

(B) For nonprofit corporations or governmental instrumentalities (such as housing authorities), any officer authorized by the board, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, the Audit committee chair, the Board chair, and anyone identified as the executive director or equivalent.

(C) For trusts, all beneficiaries that have the legal ability to Control the trust who are not just financial beneficiaries.

(D) For limited liability companies, all managers, managing members, members having a 50% or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.

(E) For partnerships, Principals include all General Partners, and Principals with ownership interest and special limited partners with ownership interest who also possess factors or attributes that give them Control.

(31) Debt Coverage Ratio (DCR)--Sometimes referred to as the "Debt Coverage" or "Debt Service Coverage." Calculated as Net Operating Income for any period divided by scheduled debt service required to be paid during the same period, and as described in §11.302(d)(4) of this chapter (relating to Operating Feasibility).

(32) Deferred Developer Fee--The portion of the Developer Fee used as a source of funds to finance the development and construction of the Property, and as described in §11.302(i)(2) of this chapter (relating to Feasibility Conclusion).

(33) 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.

(34) Determination Notice--A notice issued by the Department to the Development Owner of a Tax- Exempt Bond Development which specifies the Department's preliminary determination as to the amount of tax credits that the Development may be eligible to claim pursuant to the Code, §42(m)(1)(D).

(35) Developer--Any Person entering into a contractual relationship with the Owner to provide Developer Services with respect to the Development and receiving the right to earn a fee for such services and any other Person receiving any portion of a Developer Fee, whether by subcontract or otherwise, except if the Person is acting as a consultant with no Control. The Developer may or may not be a Related Party or Principal of the Owner.

(36) Developer Fee--Compensation in amounts defined in §11.302(e)(7) of this chapter (relating to Total Housing Development Costs) paid by the Owner to the Developer for Developer Services inclusive of compensation to a Development Consultant(s), Development Team member or any subcontractor that performs Developer Services or provides guaranties on behalf of the Owner will be characterized as Developer Fee. A person who is entitled to a Developer Fee assumes the risk that it may not be paid if the anticipated sources of repayment prove insufficient.

(37) Developer Services--A scope of work relating to the duties, activities and responsibilities for pre-development, development, design coordination, and construction oversight of the Property generally including but not limited to:

(A) Site selection and purchase or lease contract negotiation;

(B) Identifying and negotiating sources of construction and permanent financing, including financing provided by the Department;

(C) Coordination and administration of activities, including the filing of applications to secure such financing;

(D) Coordination and administration of governmental permits, and approvals required for construction and operation;

(E) Selection and coordination of development consultants including architect(s), engineer(s), third-party report providers, attorneys, and other design or feasibility consultants;

(F) Selection and coordination of the General Contractor and construction contract(s);

(G) Construction oversight;

(H) Other consultative services to and for the Owner;

(I) Guaranties, financial or credit support if a Related Party or Affiliate; and

(J) Any other customary and similar activities determined by the Department to be Developer Services.

(38) Development--A residential rental housing project that consists of one or more buildings under common ownership and financed under a common plan which has applied for Department funds. This includes a proposed qualified low income housing project, as defined by Code, §42(g), that consists of one or more buildings containing multiple Units that is financed under a common plan, and that is owned by the same Person for federal tax purposes and may consist of multiple buildings that are located on scattered sites and contain only rent restricted Units. (§2306.6702(a)(6)).

(A) Development will be considered to be scattered site if the property where buildings or amenities are located do not share a common boundary and there is no accessible pedestrian route that the Development Owner controls (transportation in a motor vehicle will not meet the requirement for an accessible route).

(B) A Development for which several parcels comprise the Development Site and are separated only by a private road controlled by the Development Owner, or a public road or similar barrier where the Development Owner has a written agreement with the public entity for at least the term of the LURA stating that the accessible pedestrian route will remain, is considered contiguous. The written agreement with the public entity must be in place by the earlier of the 10% Test for Competitive HTC or Cost Certification for Tax-Exempt Bond Developments, or the execution of the Multifamily Direct Loan Contract, as applicable.

(39) Development Consultant or Consultant--Any Person who provides professional or consulting services relating to the filing of an Application, or post award documents as required by the program.

(40) Development Owner (also referred to as "Owner")--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department and is responsible for performing under the allocation or Commitment with the Department. (§2306.6702(a)(7)).

(41) Development Site--The area or, if more than one tract (which may be deemed by the Internal Revenue Service or the Department to be a scattered site), areas on which the Development is proposed and to be encumbered by a LURA, including access to that area or areas through ingress and egress easements.

(42) Development Team--All Persons and Affiliates thereof that play a role in the development, construction, rehabilitation, management or continuing operation of the Development, including any Development Consultant and Guarantor.

(43) Direct Loan--Funds provided through the HOME Program, Neighborhood Stabilization Program (NSP), National Housing Trust Fund (NHTF), Tax Credit Assistance Program Repayment Funds (TCAP RF) or State Housing Trust Fund or other program available through the Department for multifamily development. The terms and conditions for Direct Loans will be determined by provisions in Chapter 13 of this title (relating to Multifamily Direct Loan Rule) and the

NOFA under which they are awarded, the Contract, or the loan documents. The tax-exempt bond program is specifically excluded.

(44) Economically Distressed Area--An area that is in a census tract that has a median household income that is 75% or less of the statewide median household income and in a municipality or, if not within a municipality, in a county that has been awarded funds under the Economically Distressed Areas Program administered by the Texas Water Development Board. Notwithstanding all other requirements, for funds awarded to another type of political subdivision (e.g., a water district), the Development Site must be within the jurisdiction of the political subdivision.

(45) Effective Gross Income (EGI)--As provided for in §11.302(d)(1)(D) of this chapter (relating to Operating Feasibility). The sum total of all sources of anticipated or actual income for a rental Development, less vacancy and collection loss, leasing concessions, and rental income from employee-occupied units that is not anticipated to be charged or collected.

(46) Efficiency Unit--A Unit without a separately enclosed Bedroom.

(47) Elderly Development--A Development that either meets the requirements of the Housing for Older Persons Act (HOPA) under the Fair Housing Act, or a Development that receives federal funding that has a requirement for a preference or limitation for elderly persons or households, but must accept qualified households with children.

(48) Eligible Hard Costs--Hard Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation.

(49) Environmental Site Assessment (ESA)--An environmental report that conforms to the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527) and conducted in accordance with §11.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines) as it relates to a specific Development.

(50) Executive Award and Review Advisory Committee (EARAC also referred to as the Committee). The Department committee required by Tex. Gov't Code §2306.1112.

(51) Existing Residential Development--Any Development Site which contains any type of existing residential dwelling at any time as of the beginning of the Application Acceptance Period.

(52) Extended Use Period--With respect to an HTC building, the period beginning on the first day of the Compliance Period and ending the later of:

(A) The date specified in the LURA; or

(B) The date which is 15 years after the close of the Compliance Period.

(53) First Lien Lender--A lender whose lien has first priority as a matter of law or by operation of a subordination agreement or other intercreditor agreement.

(54) Forward Commitment--the issuance of a Commitment of Housing Tax Credits from the State Housing Credit Ceiling for the calendar year following the year of issuance, made subject to the availability of State Housing Credit Ceiling in the calendar year for which the Commitment has been made.

(55) General Contractor (including "Contractor")--One who contracts to perform the construction or rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical

contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, in the scenarios described in subparagraphs (A) or (B) of this paragraph:

(A) Any subcontractor, material supplier, or equipment lessor receiving more than 50% of the contract sum in the construction contract will be deemed a prime subcontractor; or

(B) If more than 75% of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed prime subcontractors.

(56) General Partner--Any person or entity identified as a general partner in a certificate of formation for the partnership or is later admitted to an existing partnership as a general partner that is the Development Owner and that Controls the partnership. Where a limited liability corporation is the legal structure employed rather than a limited partnership, the manager or managing member of that limited liability corporation is deemed, for the purposes of these rules, to be the functional equivalent of a general partner.

(57) Governing Body--The elected or appointed body of public or tribal officials, responsible for the enactment, implementation, and enforcement of local rules and the implementation and enforcement of applicable laws for its respective jurisdiction.

(58) Governmental Entity--Includes federal, state or local agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts, tribal governments and other similar entities.

(59) Gross Capture Rate--Calculated as the Relevant Supply divided by the Gross Demand, and as described in §11.302(i)(1) of this chapter (relating to Feasibility Conclusion).

(60) Gross Demand--The sum of Potential Demand from the Primary Market Area (PMA) and demand from other sources, as described in §11.303(d)(9)(E)(ii) of this chapter (relating to Market Analysis Rules and Guidelines).

(61) Gross Program Rent--Maximum rent limits based upon the tables promulgated by the Department's division responsible for compliance, which are developed by program and by county or Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) or national non-metro area.

(62) Guarantor--Any Person that provides, or is anticipated to provide, a guaranty for all or a portion of the equity or debt financing for the Development.

(63) Hard Costs--The sum total of Building Costs, Site Work costs, Off-Site Construction costs and contingency.

(64) Historically Underutilized Businesses (HUB)--An entity that is certified as such under and in accordance with Tex. Gov't Code, Chapter 2161.

(65) 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 for Direct Loan Programs administered by the Department.

(66) Housing Credit Allocation--An allocation of Housing Tax Credits by the Department to a Development Owner as provided for in Code.

(67) Housing Credit Allocation Amount--With respect to a Development or a building within a Development, the amount of Housing Tax Credits the Department and the Board, if applicable, determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the Affordability Period.

(68) HTC Development (also referred to as HTC Property)--A Development subject to an active LURA for Housing Tax Credits allocated by the Department.

(69) HTC Property--See HTC Development.

(70) Initial Affordability Period--The Compliance Period or such longer period as shall have been elected by the Owner as the minimum period for which Units in the Development shall be retained for low-income tenants and rent restricted, as set forth in the LURA.

(71) Integrated Disbursement and Information System (IDIS)--The electronic grants management information system established by HUD to be used for tracking and reporting HOME and NHTF funding and progress and which may be used for other sources of funds as established by HUD.

(72) Land Use Restriction Agreement (LURA)--An agreement, regardless of its title, between the Department and the Development Owner which is a binding covenant upon the Development Owner and successors in interest, that, when recorded, encumbers the Development with respect to the requirements of the programs for which it receives funds. (§2306.6702)

(73) Low-Income Unit (also referred to as a Rent Restricted Unit)--A Unit that is intended to be restricted for occupancy by an income eligible household, as defined by the Department utilizing its published income limits.

(74) Managing General Partner--A general partner of a partnership (or, as provided for in the definition of General Partner in this subsection, its functional equivalent) that is vested with the authority to take actions that are binding on behalf of the partnership and the other partners. The term Managing General Partner can also refer to a manager or managing member of a limited liability company where so designated to bind the limited liability company and its members under its Agreement or any other person that has such powers in fact, regardless of their organizational title.

(75) Market Analysis--Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand and rental rates conducted in accordance with §11.303 of this chapter (relating to Market Analysis Rules and Guidelines) as it relates to a specific Development.

(76) Market Analyst--A real estate appraiser or other professional satisfying the qualifications in §11.303(c) of this chapter, and familiar with the subject property's market area who prepares a Market Analysis.

(77) Market Rent--The achievable rent at the subject Property for a Unit without rent and income restrictions determined by the Market Analyst or Underwriter after adjustments are made to actual rents on Comparable Units to account for differences in net rentable square footage, functionality, overall condition, location (with respect to the subject Property based on proximity to primary employment centers, amenities, services and travel patterns), age, Unit amenities, utility structure, and Common Area amenities. The achievable rent conclusion must also consider the proportion of market Units to total Units proposed in the subject Property.

(78) Market Study--See Market Analysis.

(79) Material Deficiency--Any deficiency in a pre-application or an Application or other documentation that exceeds the scope of an Administrative Deficiency. Inability to provide documentation that existed prior to submission of an Application to substantiate claimed points or meet threshold requirements is material and may result in denial of the requested points or a termination in the case of threshold items. It is possible that multiple deficiencies that could individually be characterized as Administrative Deficiencies, when taken as a whole would create a need for substantial re-review of the Application and as such would be characterized as constituting a Material Deficiency.

(80) Multifamily Programs Procedures Manual--The manual produced and amended from time to time by the Department which reiterates and implements the rules and provides guidance for the filing of multifamily related documents. The Manual is not a rule and is provided only as good faith guidance and assistance.

(81) Net Operating Income (NOI)--The income remaining after all operating expenses, including replacement reserves and taxes have been paid, as provided for in §11.302(d)(3) of this chapter (relating to Operating Feasibility).

(82) Net Program Rent--Calculated as Gross Program Rent less Utility Allowance.

(83) Net Rentable Area (NRA)--The Unit space that is available exclusively to the tenant and is heated and cooled by a mechanical HVAC system. NRA is measured to the outside of the studs of a Unit or to the middle of walls in common with other Units. If the construction does not use studs, NRA is measured to the outside of the material to which the drywall is affixed. Remote Storage of no more than 25 square feet per Unit may be included in NRA. For Developments using Multifamily Direct Loan funds the Remote Storage may only be included in NRA if the storage area shares a wall with the residential living space. NRA does not include common hallways, stairwells, elevator shafts, janitor closets, electrical closets, balconies, porches, patios, or other areas not actually available to the tenants for their furnishings, nor does NRA include the enclosing walls of such areas.

(84) Non-HTC Development--Sometimes referred to as Non-HTC Property. Any Development not utilizing Housing Tax Credits or Exchange funds.

(85) Notice of Funding Availability (NOFA)--A notice issued by the Department that announces funding availability, usually on a competitive basis, for multifamily rental programs requiring Application submission from potential Applicants.

(86) Office of Rural Affairs--An office established within the Texas Department of Agriculture; formerly the Texas Department of Rural Affairs.

(87) Off-Site Construction--Improvements up to the Development Site such as the cost of roads, water, sewer, and other utilities to provide access to and service the Site.

(88) One Year Period (1YP)--The period commencing on the date on which the Department and the Owner agree to the Qualified Contract price in writing and continuing for 12 calendar months.

(89) Original Application--The Competitive HTC Application submitted and approved in 2019 or 2020 for an awarded Development as it relates to a request made for a Supplemental 2022 Allocation.

(90) Owner--See Development Owner.

(91) Person--Without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability

ity company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization or entity of any nature whatsoever, and shall include any group of Persons acting in concert toward a common goal, including the individual members of the group.

(92) Person or Persons with Disabilities--With respect to an individual, means that such person has:

(A) A physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) A record of such an impairment; or

(C) Is regarded as having such an impairment, to include persons with severe mental illness and persons with substance abuse disorders.

(93) Physical Needs Assessment--See Scope and Cost Review.

(94) Place--An area defined as such by the United States Census Bureau, which, in general, includes an incorporated city, town, or village, as well as unincorporated areas known as Census Designated Places. Any part of a Census Designated Place that, at the time of Application, is within the boundaries of an incorporated city, town or village will be considered as part of the incorporated area. The Department may provide a list of Places for reference.

(95) Post Award Activities Manual--The manual produced and amended from time to time by the Department which explains the post award requirements and provides guidance for the filing of such documentation.

(96) Potential Demand--The number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placement in service date.

(97) Preservation--Activities that extend the Affordability Period for rent-restricted Developments that are at risk of losing low-income use restrictions or subsidies.

(98) Primary Market--Sometimes referred to as "Primary Market Area." The area defined by the Market Analyst as described in §11.303 of this chapter (relating to Market Analysis Rules and Guidelines) from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(99) Primary Market Area (PMA)--See Primary Market.

(100) Principal--Persons that will be capable of exercising Control pursuant to §11.1(d) of this chapter (relating to the definition of Control) over a partnership, corporation, limited liability company, trust, or any other private entity.

(101) Pro Forma Rent--For a restricted Unit, the lesser of the Net Program Rent or the Market Rent. For an unrestricted Unit, the Market Rent. Contract Rents, if applicable, will be used as the Pro Forma Rent.

(102) Property--The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built or rehabilitated thereon in connection with the Application.

(103) Qualified Census Tract (QCT)--those tracts designated as such by the U.S. Department of Housing and Urban Development.

(104) Qualified Contract (QC)--A bona fide contract to acquire the non-low-income portion of the building for fair market value

and the low-income portion of the building for an amount not less than the Applicable Fraction (specified in the LURA) of the calculation as defined within §42(h)(6)(F) of the Code.

(105) Qualified Contract Price (QC Price)--Calculated purchase price of the Development as defined within Code, §42(h)(6)(F) and as further delineated in §10.408 of this title (relating to Qualified Contract Requirements).

(106) Qualified Contract Request (Request)--A request containing all information and items required by the Department relating to a Qualified Contract.

(107) Qualified Entity--Any entity permitted under Code, §42(i)(7)(A) and any entity controlled by such a qualified entity.

(108) Qualified Nonprofit Development--A Development which meets the requirements of Code, §42 (h)(5), includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive Housing Tax Credits.

(109) Qualified Nonprofit Organization--An organization that meets the requirements of Code §42(h)(5)(C) for all purposes, and for an allocation in the nonprofit set-aside or subsequent transfer of the property, when applicable, meets the requirements of Tex. Gov't Code §2306.6706, and §2306.6729, and Code, §42(h)(5), including having a Controlling interest in the Development.

(110) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the construction of Units on the same or another Development Site. At least one Unit must be reconstructed in order to qualify as Reconstruction. The total number of Units to be reconstructed will be determined by program requirements. Developments using Multifamily Direct Loan funds are required to follow the applicable federal requirements.

(111) Rehabilitation--The improvement or modification of an Existing Residential Development through alteration, incidental addition or enhancement. The term includes the demolition of an Existing Residential Development and the Reconstruction of any Development Units on the Development Site, but does not include Adaptive Reuse. (§2306.004(26-a)) Reconstructed Units will be considered New Construction for purposes of calculating the Replacement Reserves under §11.302(d)(2)(I) (relating to Operating Feasibility). More specifically, Rehabilitation is the repair, refurbishment or replacement of existing mechanical or structural components, fixtures and finishes. Rehabilitation will correct deferred maintenance, reduce functional obsolescence to the extent possible and may include the addition of: energy efficient components and appliances, life and safety systems; site and resident amenities; and other quality of life improvements typical of new residential Developments.

(112) Relevant Supply--The supply of Comparable Units in proposed and Unstabilized Developments targeting the same population including:

(A) The proposed subject Units;

(B) Comparable Units in another proposed Development within the PMA in an Application submitted prior to the subject, based on the Department's evaluation process described in §11.201(5) of this chapter (relating to Procedural Requirements for Application Submission) that may not yet have been presented to the Board for consideration of approval; and

(C) Comparable Units in previously approved but Unstabilized Developments in the PMA.

(113) Report--See Underwriting Report.

(114) Request--See Qualified Contract Request.

(115) Reserve Account--An individual account:

(A) Created to fund any necessary repairs or other needs for a Development; and

(B) Maintained by a First Lien Lender or Bank Trustee.

(116) Right of First Refusal (ROFR)--An Agreement to provide a series of priority rights to negotiate for the purchase of a Property by a Qualified Entity or a Qualified Nonprofit Organization at a negotiated price at or above the minimum purchase price as defined in Code §42(i)(7) or as established in accordance with an applicable LURA.

(117) Rural Area--

(A) A Place that is located:

(i) outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;

(ii) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an Urban Area; or

(iii) within the boundaries of a local political subdivision that is outside the boundaries of an Urban Area.

(B) For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §11.204(5)(A) of this chapter (relating to Required Documentation for Application Submission) or as requested in accordance with §11.204(5)(B) of this chapter.

(118) Scope and Cost Review (SCR)--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." The SCR provides an evaluation of the physical condition of an existing Property to evaluate the immediate cost to rehabilitate and to determine costs of future capital improvements to maintain the Property. The SCR must be prepared in accordance with §11.306 of this chapter (relating to Scope and Cost Review Guidelines), as it relates to a specific Development.

(119) Scoring Notice--Notification provided to an Applicant of the score for their Application after staff review. More than one Scoring Notice may be issued for a Competitive HTC or a Direct Loan Application.

(120) Single Room Occupancy (SRO)--An Efficiency Unit that meets all the requirements of a Unit except that it may, but is not required, to be rented on a month to month basis to facilitate Transitional Housing. Buildings with SRO Units have extensive living areas in common and are required to be Supportive Housing and include the provision for substantial supports from the Development Owner or its agent on site.

(121) Site Control--Ownership or a current contract or series of contracts that meets the requirements of §11.204(10) of this chapter, that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the Owner or anyone else, to develop and operate a Property and subject it to a LURA reflecting the requirements of any awards of assistance it may receive from the Department.

(122) Site Work--Materials and labor for the horizontal construction generally including excavation, grading, paving, underground utilities, and site amenities.

(123) State Housing Credit Ceiling--The aggregate amount of Competitive Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time

by the Department in accordance with applicable federal law, including Code, §42(h)(3)(C), and Treasury Regulation §1.42-14.

(124) Sub-Market--An area defined by the Underwriter based on general overall market segmentation promulgated by market data tracking and reporting services from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(125) Supplemental Credits--2022 Housing Tax Credits awarded through Subchapter F of this chapter to assist 2019 and 2020 Competitive Housing Tax Credit Developments.

(126) Supportive Housing--A residential rental Development and Target Population meeting the requirements of subparagraphs (A) - (E) of this paragraph:

(A) Be intended for and targeting occupancy for households in need of specialized and specific non- medical services in order to maintain housing or transition into independent living;

(B) Be owned and operated by an Applicant or General Partner that must:

(i) have supportive services provided by the Applicant, an Affiliate of the Applicant, or a Third Party provider if the service provider is able to demonstrate a record of providing substantive services similar to those proposed in the Application in residential settings for at least three years prior to the beginning of the Application Acceptance Period, or Application Submission Date for Multifamily Direct Loan Applications;

(ii) secure sufficient funds necessary to maintain the Supportive Housing Development's operations throughout the entire Affordability Period;

(iii) provide evidence of a history of fundraising activities reasonably deemed to be sufficient to address any unanticipated operating losses;

(iv) provide a fully executed guaranty agreement whereby the Applicant or its Affiliate assume financial responsibility of any outstanding operating deficits, as they arise, and throughout the entire Affordability Period (in the case of HTC only Applications, the Guaranty Agreement with operating deficit guarantee requirements utilized for the HTC investor will satisfy this requirement); and

(v) have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of credit, criminal conviction, and prior eviction history that may disqualify a potential resident. This process must also follow §1.204 of this title (regarding Reasonable Accommodations), and:

(I) The criminal screening criteria must not allow residents to reside in the Development who are subject to a lifetime sex offender registration requirement; and provide at least, for:

(-a-) Temporary denial for a minimum of seven years from the date of conviction based on criminal history at application or recertification of any felony conviction for murder related offense, sexual assault, kidnapping, arson, or manufacture of a controlled substance as defined in §102 of the Controlled Substances Act (21 U.S.C. 802); and

(-b-) Temporary denial for a minimum of three years from the date of conviction based on criminal history at application or recertification of any felony conviction for aggravated assault, robbery, drug possession, or drug distribution;

(II) The criminal screening criteria must include provisions for approving applications and recertification despite the

tenant's criminal history on the basis of mitigation evidence. Applicants/tenants must be provided written notice of their ability to provide materials that support mitigation. Mitigation may be provided during initial tenant application or upon appeal after denial. Mitigation may include personal statements/certifications, documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. In addition, the criteria must include provision for individual review of permanent or temporary denials if the conviction is more than 7 years old, or if the applicant/resident is over 50 years of age, and the prospective resident has no additional felony convictions in the last 7 years. The criteria must prohibit consideration of any previously accepted criminal history or mitigation at recertification, unless new information becomes available. Criminal screening criteria and mitigation must conform to federal regulations and official guidance, including HUD's 2016 Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records; and

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect;

(C) Where supportive services are tailored for members of a household with specific needs, such as:

- (i) homeless or persons at-risk of homelessness;
- (ii) persons with physical, intellectual, or developmental disabilities;
- (iii) youth aging out of foster care;
- (iv) persons eligible to receive primarily non-medical home or community-based services;
- (v) persons transitioning out of institutionalized care;
- (vi) persons unable to secure permanent housing elsewhere due to specific, non-medical, or other high barriers to access and maintain housing;
- (vii) Persons with Special Housing Needs including households where one or more individuals have alcohol or drug addictions, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), HIV/AIDS, or is a veteran with a disability; or
- (viii) other target populations that are served by a federal or state housing program in need of the type and frequency of supportive services characterized herein, as represented in the Application and determined by the Department on a case-by-case basis;

(D) Supportive services must meet the minimum requirements provided in clauses (i) - (iv) of this subparagraph:

- (i) regularly and frequently offered to all residents, primarily on-site;
- (ii) easily accessible and offered at times that residents are able to use them;
- (iii) must include readily available resident services or service coordination that either aid in addressing debilitating conditions, or assist residents in securing the skills, assets, and connections needed for independent living; and

(iv) a resident may not be required to access supportive services in order to qualify for or maintain tenancy in a rent restricted Unit that the household otherwise qualifies for; and

(E) Supportive Housing Developments must meet the criteria of either clause (i) or (ii) of this subparagraph:

(i) not financed, except for construction financing, or a deferred-forgivable or deferred-payable construction-to-permanent Direct Loan from the Department, with any debt containing foreclosure provisions or debt that contains scheduled or periodic repayment provisions. A loan from a local government or instrumentality of local government is permissible if it is a deferred-forgivable or deferred-payable construction-to-permanent loan, with no foreclosure provisions or scheduled or periodic repayment provisions, and a maturity date after the end of the Affordability Period. For tax credit applications only, permanent foreclosable debt that contains scheduled or periodic repayment provisions (including payments subject to available cash-flow) is permissible if sourced by federal funds and otherwise structured to meet valid debt requirements for tax credit eligible basis considerations. In addition, permanent foreclosable, cash-flow debt provided by an Affiliate is permissible if originally sourced from charitable contributions or pass-through local government funds and the foreclosure provisions are triggered only by default on non-monetary default provisions. Developments meeting these requirements are not subject to §11.302(i)(4) & (5) (relating to Feasibility Conclusion). Any amendment to an Application or Underwriting Report resulting in the addition of debt prohibited under this definition will result in the revocation of IRS Form(s) 8609, and may not be made for Developments that have Direct Loans after a LURA is executed, except as a part of Work Out Development approved by the Asset Management Division; or

(ii) financed with debt that meets feasibility requirements under Subchapter D of this chapter without exemptions and must also be supported by project-based rental or project-based operating subsidies for 25% of the Units evidenced by an executed agreement with an unaffiliated or governmental third party able to make that commitment, and meet all of the criteria in subclauses (I) - (VII) of this clause:

(I) the Application includes documentation of how resident feedback has been incorporated into design of the proposed Development;

(II) the Development is located less than 1/2 mile from regularly-scheduled public transportation, including evenings and weekends;

(III) at least 10% of the Units in the proposed Development meet the 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 Federal Register 29671 for persons with mobility impairments;

(IV) multiple systems will be in place for residents to provide feedback to Development staff;

(V) the Development will have a comprehensive written eviction prevention policy that includes an appeal process; and

(VI) the Development will have a comprehensive written services plan that describes the available services, identifying whether they are provided directly or through referral linkages, by whom, and in what location and during what days and hours. A copy of the services plan will be readily accessible to residents.

(F) Supportive housing Units included in an otherwise non-Supportive Housing Development do not meet the requirements of this definition.

(127) Target Population--The designation of types of housing populations shall include Elderly Developments, and those that are Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations, although the Application may request that any other populations required for targeting, preference, or limitation by a federal or state fund source are identified.

(128) Tax-Exempt Bond Development--A Development requesting or having been issued a Determination Notice for Housing Tax Credits and which receives a portion of its financing from the proceeds of Tax-Exempt Bonds which are subject to the state volume cap as described in Code, §42(h)(4).

(129) Tax-Exempt Bond Process Manual--The manual produced and amended from time to time by the Department which explains the process and provides guidance for the filing of a Housing Tax Credit Application utilizing Tax-Exempt Bonds.

(130) TDHCA Operating Database--Sometimes referred to as "TDHCA Database." A consolidation of recent actual income and operating expense information collected through the Department's Annual Owner Financial Certification process, as required and described in Chapter 10, Subchapter F of this title (relating to Compliance Monitoring), and published on the Department's web site (www.tdhca.state.tx.us).

(131) Third Party--A Person who is not:

(A) An Applicant, General Partner, Developer, or General Contractor;

(B) An Affiliate to the Applicant, General Partner, Developer, or General Contractor;

(C) Anyone receiving any portion of the administration, contractor, or Developer Fee from the Development; or

(D) In Control with respect to the Development Owner.

(132) Total Housing Development Cost--The sum total of the acquisition cost, Hard Costs, soft costs, Developer Fee and General Contractor fee incurred or to be incurred through lease-up by the Development Owner in the acquisition, construction, rehabilitation, and financing of the Development.

(133) Transitional Housing--A Supportive Housing Development funded with HOME, NSP, or TCAP RF, and not layered with Housing Tax Credits that includes living Units with more limited individual kitchen facilities and is:

(A) Used exclusively to facilitate the transition of homeless individuals and those at-risk of becoming homeless, to independent living within 24 months; and

(B) Is owned by a Development Owner that includes a Governmental Entity or a nonprofit which provides temporary housing and supportive services to assist such individuals in, among other things, locating and retaining permanent housing. The limited kitchen facilities in individual Units must be appropriately augmented by suitable, accessible shared or common kitchen facilities.

(134) U.S. Department of Agriculture (USDA)--Texas Rural Development Office (TRDO) serving the State of Texas.

(135) U.S. Department of Housing and Urban Development (HUD)-regulated Building--A building for which the rents and utility allowances of the building are reviewed by HUD.

(136) Underwriter--The author(s) of the Underwriting Report.

(137) Underwriting Report--Sometimes referred to as the Report. A decision making tool prepared by the Department's Real Estate Analysis Division that contains a synopsis of the proposed Development and that reconciles the Application information, including its financials and market analysis, with the underwriter's analysis. The Report allows the Department and Board to determine whether the Development will be financially feasible as required by Code §42(m), or other federal or state regulations.

(138) Uniform Multifamily Application Templates--The collection of sample resolutions and form letters, produced by the Department, as may be required under this chapter or Chapters 12 and 13 of this title (relating to Multifamily Housing Bond Rules and Multifamily Direct Loan Rule, respectively) that may, but are not required to, be used to satisfy the requirements of the applicable rule.

(139) Uniform Physical Condition Standards (UPCS)--As developed by the Real Estate Assessment Center of HUD.

(140) Unit--Any residential rental Unit in a Development consisting of an accommodation, including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation.

(141) Unit Type--Units will be considered different Unit Types if there is any variation in the number of Bedrooms, full bathrooms or a square footage difference equal to or more than 120 square feet.

(142) Unstabilized Development--A Development with Comparable Units that has been approved for funding by the Department's Board of Directors or is currently under construction or has not maintained a 90% occupancy level for at least 90 days following construction completion. A development may be deemed stabilized by the Underwriter based on factors relating to a development's lease-up velocity, Sub-Market rents, Sub-Market occupancy trends and other information available to the Underwriter. The Market Analyst may not consider such development stabilized in the Market Study.

(143) Urban Area--A Place that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than a Place described by subparagraph (A) within the definition of Rural Area in this subsection. For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §11.204(5) of this chapter.

(144) Utility Allowance--The estimate of tenant-paid utilities made in accordance with Treasury Regulation, §1.42-10 and §10.614 of this title (relating to Utility Allowances).

(145) Work Out Development--A financially distressed Development for which the Owner or a primary financing participant is seeking a change in the terms of Department funding or program restrictions.

(e) Data. Where this chapter requires the use of American Community Survey or Housing & Urban Development data, the Department shall use the most current data available as of October 1 of the year prior to Application, unless specifically otherwise provided in federal or state law or in the rules, with the exception of census tract boundaries for which 2010 Census boundaries will continue to be used. All references to census tracts throughout this chapter will mean the 2010 Census tracts. All American Community Survey (ACS) data must be 5-year estimates, unless otherwise specified and it is the ACS data that will be used for population determination. The availability of

more current data shall be disregarded. Where other data sources are specifically required, such as NeighborhoodScout, the data available after October 1, but before Pre-Application Final Delivery Date, will be permissible. The NeighborhoodScout report submitted in the Application must include the report date. All references to QCTs throughout this chapter mean the 2022 QCTs designated by HUD in September 2021, to be effective January 1, 2022.

(f) **Deadlines.** Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be received by the Department on or before 5:00 p.m. Austin local time on the day of the deadline. If the deadline falls on a weekend or holiday, the deadline is 5:00 p.m. Austin local time on the next day which is not a weekend or holiday and on which the Department is open for general operation. Unless otherwise noted or provided in statute, deadlines are based on calendar days. Deadlines, with respect to both date and time, cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that could not have been anticipated and makes timely adherence impossible. Applicants should further ensure that all required documents are included, legible, properly organized, and tabbed, and that materials in required formats involving digital media are complete and fully readable. Applicants are strongly encouraged to submit the required items well in advance of established deadlines.

(g) **Documentation to Substantiate Items and Representations in a Competitive HTC Application.** In order to ensure the appropriate level of transparency in this highly competitive program, Applications and all correspondence and other information relating to each Application are posted on the Department's website and updated on a regular basis. Applicants must use the Application form posted online to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, meeting of threshold requirements, or timely requesting a waiver or determination. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the Deficiency process. Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application. Although a responsive narrative will be created after Application submission, all facts and materials to substantiate any item in response to such an Administrative Deficiency must have been clearly established at the time of submission of the Application.

(h) **Board Standards for Review.** Some issues may require or benefit from Board review. The Board is not constrained to a particular standard, and while its actions on one matter are not binding as to how it will address another matter, the Board does seek to promote consistency with its policies, including the policies set forth in this chapter.

(i) **Public Information Requests.** Pursuant to Tex. Gov't Code §2306.6717, any pre-application and any full Application, including all supporting documents and exhibits, must be made available to the public, in their entirety, on the Department's website. The filing of a pre-application or Application with the Department shall be deemed as consent to the release of any and all information contained therein, including supporting documents and exhibits. As part of its certifications, the Applicant shall certify that the authors of the reports and other information and documents submitted with the Application have given their consent to the Applicant to submit all reports and other information and documents to the Department, and for the Department to publish anything submitted with the Application on its website and use such information and documents for authorized purposes.

(j) **Responsibilities of Municipalities and Counties.** In considering resolutions regarding housing de-concentration issues, threshold

requirements, or scoring criteria, municipalities and counties should consult their own staff and legal counsel as to whether their handling of actions regarding such resolution(s) are consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas (FHA-AST) form on file, any current Analysis of Impediments to Fair Housing Choice, any current Assessment of Fair Housing, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds.

(k) **Request for Staff Determinations.** Where the requirements of this chapter do not readily align with the activities proposed in an Application, an Applicant may request and Department staff may provide a determination to an Applicant explaining how staff will review an Application in relation to the applicable rules. In no instance will staff provide a determination regarding a scoring item. Any such request must be received by the Department prior to submission of the pre-application (if applicable to the program) or Application (if no pre-application was submitted). Staff may, in its sole discretion, provide the request to the Board for it to make the determination. Staff's determination may take into account the articulated purpose of or policies addressed by a particular rule or requirement, materiality of elements, substantive elements of the development plan that relate to a term or definition, a common usage of the particular term, or other issues relevant to a rule or requirement. All such requests and determinations will be conveyed in writing. If the determination is finalized after submission of the pre-application or Application, the Department may allow corrections to the pre-application or the Application that are directly related to the issues in the determination. It is an Applicant's sole responsibility to request a determination and an Applicant may not rely on any determination for another Application regardless of similarities in a particular fact pattern. For any Application that does not request and subsequently receive a determination, the definitions and applicable rules will be applied as used and defined herein. An Applicant may appeal a determination for their Application, using the Appeal Process provided for in §11.902 of this chapter (relating to Appeals Process), if the determination provides for a treatment that relies on factors other than the explicit definition. A Board determination may not be appealed. A staff or Executive Director determination not timely appealed cannot be further appealed or challenged.

§11.2. Program Calendar for Housing Tax Credits.

(a) **Competitive HTC Deadlines.** Non-statutory deadlines specifically listed in the Program Calendar may be extended by the Department for a period of not more than 5 business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the Department that there is good cause for the extension. Figure: 10 TAC §11.2(a)

(b) **Tax-Exempt Bond and Direct Loan-only Application Dates and Deadlines.** Applicants are strongly encouraged to submit the required items well in advance of published deadlines. Other deadlines may be found in Chapters 12 and 13 or a NOFA.

(1) **Full Application Delivery Date.** The deadline by which the Application must be received by the Department. For Direct Loan Applications, deadlines will be defined in the applicable NOFA and for Tax-Exempt Bond Developments, such deadlines are more fully explained in §11.201 of this chapter (relating to Procedural Requirements for Application Submission).

(2) **Administrative Deficiency Response Deadline.** Such deadline shall be five business days after the date on the deficiency notice, unless extended as provided for in §11.201(6) of this chapter (relating to Deficiency Process).

(3) Third Party Report Delivery Date (Environmental Site Assessment (ESA), Scope and Cost Review (SCR), Appraisal (if applicable), Market Analysis and the Feasibility Report (if applicable)). For Direct Loan Applications, the Third Party reports meeting the requirements described in §11.205 of this title (relating to Required Third Party Reports) must be submitted in order for the Application to be considered complete, unless the Application is made in conjunction with an Application for Housing Tax Credits or Tax-Exempt Bond, in which case the Delivery Date for those programs will apply. For Tax-Exempt Bond Developments, the Third Party Reports must be received by the Department pursuant to §11.201(2) of this chapter.

(4) Resolutions Delivery Date. Resolutions required for Tax-Exempt Bond Developments must be received by the Department no later than 14 calendar days before the Board meeting or prior to the issuance of the Determination Notice, as applicable. If the Direct Loan Application is made in conjunction with an Application for Housing Tax Credits, or Tax-Exempt Bond Developments, the Resolution Delivery Date for those programs will apply to the Direct Loan Application.

(5) Challenges to Neighborhood Organization Opposition Delivery Date. Challenges must be received by the Department no later than 45 calendar days prior to the Board meeting at which consideration of the award will occur.

§11.3. *Housing De-Concentration Factors.*

(a) Rules reciting statutory limitations are provided as a convenient reference only, and to the extent there is any deviation from the provisions of statute, the statutory language is controlling.

(b) Two Mile Same Year Rule (Competitive HTC Only).

(1) As required by Tex. Gov't Code §2306.6711(f), staff will not recommend for award, and the Board will not make an award to an Application that proposes a Development Site located in a county with a population that exceeds one million, if the proposed Development Site is also located less than two linear miles from the proposed Development Site of another Application, or from the Development Site of a Supplemental Allocation of 2022 credits, within said county that is awarded in the same calendar year. If two or more Applications or Supplemental Allocations are submitted that would violate §2306.6711(f), the Supplemental Allocation of 2022 credits will be the one considered eligible, and the other Applications will not be reviewed; if there is no Supplemental Allocation of 2022 credits, the lower scoring of the Applications will not be reviewed unless the higher scoring Application is terminated or withdrawn.

(2) This subsection does not apply if an Application is located in an area that, within the past five years, meets the requirements of Tex. Gov't Code §2306.6711(f-1), which excludes any municipality with a population of two million or more where a federal disaster has been declared by the Full Application Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines), and the governing body of the municipality containing the Development has by vote specifically authorized the allocation of housing tax credits for the Development in a resolution submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter, and the municipality is authorized to administer disaster recovery funds as a subgrant recipient, for the disaster identified in the federal disaster declaration.

(c) Twice the State Average Per Capita (Competitive HTC and Tax-Exempt Bond Only). As provided for in Tex. Gov't Code §2306.6703(a)(4), if a proposed Development is located in a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Acceptance Period Begins (or for Tax-Exempt Bond

Developments, Applications submitted after the Application Acceptance Period Begins), then the Applicant must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development. Such approval must include a resolution adopted by the Governing Body of the municipality or county, as applicable, setting forth a written statement of support, specifically citing Tex. Gov't Code §2306.6703(a)(4) in the text of the actual adopted resolution, and authorizing an allocation of Housing Tax Credits for the Development. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines) or Resolutions Delivery Date in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Direct Loan Application Dates and Deadlines), as applicable.

(d) One Mile Three Year Rule (Competitive HTC and Tax-Exempt Bond Only). (§2306.6703(a)(3)).

(1) An Application that proposes the New Construction or Adaptive Reuse of a Development that is located one linear mile or less (measured between closest boundaries by a straight line on a map) from another development that meets all of the criteria in subparagraphs (A) - (C) of this paragraph shall be considered ineligible.

(A) A Development that serves the same Target Population as the proposed Development, regardless of whether the Development serves general, Elderly, or Supportive Housing; and

(B) A Development that has received an allocation of Housing Tax Credits or private activity bonds, or a Supplemental Allocation of 2022 credits, for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Certificate of Reservation is issued); and

(C) The Development in subparagraph (B) of this paragraph has not been withdrawn or terminated from the Housing Tax Credit Program.

(2) Paragraph (1) of this subsection does not apply to a proposed Development:

(A) That is using federal HOPE VI (or successor program) funds received through HUD;

(B) That is using locally approved funds received from a public improvement district or a tax increment financing district;

(C) That is using funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.);

(D) That is using funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.);

(E) That is located in a county with a population of less than one million;

(F) That is located outside of a metropolitan statistical area; or

(G) That the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the

Full Application Delivery Date as identified in §11.2(a) of this chapter, regarding Competitive HTC Deadlines, or Resolutions Delivery Date in §11.2(b) of this chapter, regarding Tax-Exempt Bond and Direct Loan Development Dates and Deadlines, as applicable.

(3) Where a specific source of funding is referenced in paragraphs (2)(A) - (D) of this subsection, a commitment or resolution documenting a commitment of the funds must be provided in the Application.

(e) Limitations on Developments in Certain Census Tracts. An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 20% Housing Tax Credit Units per total households as reflected in the Department's current Site Demographic Characteristics Report shall be considered ineligible unless the Governing Body of the appropriate municipality or county containing the Development has adopted a resolution stating the proposed Development is consistent with the jurisdiction's obligation to affirmatively further fair housing and that the Governing Body of the appropriate municipality or county containing the Development has no objection to the Application. Rehabilitation Developments are not required to obtain such resolution. The resolution must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter or Resolutions Delivery Date in §11.2(b) of this chapter, as applicable.

(f) Proximity of Development Sites. (Competitive HTC Only) In a county with a population that is less than one million, if two or more HTC Applications, regardless of the Applicant(s), are proposing Developments serving the same Target Population on sites separated by 1,000 feet or less, the lower scoring of the Application(s), including consideration of tie-breakers, will be considered ineligible and will not be reviewed unless the higher scoring Application is terminated or withdrawn.

(g) One Award per Census Tract Limitation (Competitive HTC Only). If two or more Competitive HTC Applications are proposing Developments in the same census tract in an urban subregion, the lower scoring of the Application(s), including consideration of tie breakers, will be considered ineligible and will not be reviewed unless the higher scoring Application is terminated or withdrawn. This subsection does not apply to Applications submitted under §11.5(2) of this chapter (relating to USDA Set-Aside) or §11.5(3) (relating to At-Risk Set-Aside).

§11.4. Tax Credit Request, Award Limits and Increase in Eligible Basis.

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not award or allocate to an Applicant, Developer, Affiliate, or Guarantor (unless the Guarantor is also the General Contractor or provides the guaranty only during the construction period, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an aggregate amount greater than \$3 million in a single Application Round. Any Supplemental Allocation of credits awarded to such parties will carry a value of \$1.50 for every \$1.00 Supplemental Allocation awarded when calculating the \$3 million maximum for all 2022 Applications. Prior to posting the agenda for the last Board meeting in June, an Applicant that has Applications pending for more than \$3 million in credit may notify staff in writing or by email of the Application(s) they will not pursue in order to bring their request within the \$3 million cap. Any other Applications they do not wish to pursue will remain on the waiting list if not otherwise terminated. If the Applicant has not made this self-selection by this date, staff will first select the Application(s) that will enable the Department to comply with the state and federal non-profit set-asides, and will then select the highest scoring Application, including consideration of tie-breakers if there are tied scores. The Application(s) that

does not meet Department criteria will not be reviewed unless the Applicant withdraws an Application that is eligible for an award and has been reviewed. All entities that are under common Control are Affiliates. For purposes of determining the \$3 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate, or Guarantor solely because it:

- (1) Raises or provides equity;
- (2) Provides "qualified commercial financing";
- (3) Is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or
- (4) Receives fees as a consultant or advisor that do not exceed \$200,000.

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150% of the credit amount available in the subregion based on estimates released by the Department on December 1, or \$2,000,000 whichever is less. In addition, for Elderly Developments in a Uniform State Service Region containing a county with a population that exceeds one million, the request may not exceed the final amount published on the Department's website after the annual release of the Internal Revenue Service notice regarding the credit ceiling (2306.6711(h)); Supplemental Allocations made from the 2022 ceiling to Elderly Developments in such tracts will be included in calculating the allocated Elderly credits in that region, thereby reducing the available credits for Elderly Developments in that region for 2022 Competitive HTC Applications. For all Applications, the Department will consider the amount in the funding request of the pre-application and Application to be the amount of Housing Tax Credits requested and will reduce the Applicant's request to the maximum allowable under this subsection through the underwriting process. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than \$2 million in a single Application Round. (§2306.6711(b)).

(c) Increase in Eligible Basis (30% Boost). Applications will be evaluated for an increase of up to 30% in Eligible Basis provided they meet any one of the criteria identified in paragraphs (1) - (4) of this subsection. Staff will recommend no increase or a partial increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as determined by the Department, in which case a credit amount necessary to fill the gap in financing will be recommended. In no instance will the boost exceed more than the amount of credits required to create the HTC rent-restricted Units. The criteria in paragraph (3) of this subsection are not applicable to Tax-Exempt Bond Developments.

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20% Housing Tax Credit Units per total households in the tract as reflected in the Department's current Site Demographic Characteristics Report. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20% Housing Tax Credit Units per total households are not eligible for a 30% increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code, unless the Application includes a resolution acknowledging the Development is located in a census tract that has more than 20% Housing Tax Credits Units per total households and stating that the Governing Body of the appropriate municipality or county containing the Development has no objection to the Application. Rehabilitation Developments where this rule is triggered are eligible for the boost and are not required to obtain such a resolution from the Governing Body. An acceptable, but not required, form of resolution may be obtained

in the Multifamily Uniform Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines), or Resolutions Delivery Date in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Direct Loan Application Dates and Deadlines), as applicable. The Application must include a census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT.

(2) The Development is located in a Small Area Difficult Development Area (SADDA) (based on Small Area Fair Market Rents as determined by the Secretary of HUD) that has high construction, land and utility costs relative to the AMGI. The Application must include the SADDA map that clearly shows the proposed Development is located within the boundaries of a SADDA.

(3) For Competitive HTC only, Development meets one of the criteria described in subparagraphs (A) - (F) of this paragraph pursuant to Code, §42(d)(5)(B)(v):

(A) The Development is located in a Rural Area;

(B) The Development is entirely Supportive Housing and is in accordance with §11.1(d)(126)(E) related to the definition of Supportive Housing;

(C) The Development meets the criteria for the Opportunity Index as defined in §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria);

(D) The Applicant elects to restrict 10% of the proposed low income Units for households at or below 30% of AMGI. These Units may not be used to meet any scoring criteria, or used to meet any Multifamily Direct Loan program requirement;

(E) The Development is in an area covered by a concerted revitalization plan, is not an Elderly Development, and is not located in a QCT. A Development will be considered to be in an area covered by a concerted revitalization plan if it is eligible for and elects points under §11.9(d)(7) of this chapter; or

(F) The Development is located in a Qualified Opportunity Zone designated under the Bipartisan Budget Act of 2018 (H.R. 1892). Pursuant to Internal Revenue Service Announcement 2021-10, the boundaries of the Opportunity Zone are unaffected by 2020 Decennial Census changes.

(4) For Tax-Exempt Bond Developments, as a general rule, a QCT or SADDA designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30% boost in its underwriting evaluation. The Department acknowledges guidance contained in the Federal Register regarding effective dates of QCT and SADDA designations. Pursuant to the Federal Register Notice, unless federal guidance states otherwise, complete Applications (including all Third Party Reports) with a corresponding Certificate of Reservation that are submitted to the Department in the year the QCT or SADDA designation is effective may be underwritten to include the 30% boost, provided a complete application was submitted to the bond issuer in the year the QCT or SADDA designation is effective. Where this is the case, the Application must contain a certification from the issuer that speaks to the date on which such complete application (as defined in the Notice) was submitted. If the issuer is a member of the organizational structure then such certification must come from the bond counsel to the issuer.

§11.5. Competitive HTC Set-Asides. (§2306.111(d)).

This section identifies the statutorily-mandated Set-asides which the Department is required to administer. An Applicant may elect to compete in each of the Set-asides for which the proposed Development

qualifies. In order to be eligible to compete in the Set-aside, the Application must meet the requirements of the Set-aside as of the Full Application Delivery Date. Election to compete in a Set-aside does not constitute eligibility to compete in the Set-aside, and Applicants who are ultimately deemed not to qualify to compete in the Set-aside will be considered not to be participating in the Set-aside for purposes of qualifying for points under §11.9(e)(3) of this chapter (related to Criteria promoting the efficient use of limited resources and applicant accountability). Commitments of Competitive HTCs issued by the Board in the current program year will be applied to each Set-aside, Rural regional allocation, Urban regional allocation, and USDA Set-aside for the current Application round as appropriate.

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)). At least 10% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of Code, §42(h)(5) and Tex. Gov't Code §2306.6729 and §2306.6706(b). The Supplemental Allocation amount for any Qualified Nonprofit Developments receiving a Supplemental Allocation from the 2022 ceiling will be attributed to the 2022 Nonprofit Set-Aside. Qualified Nonprofit Organizations must have the controlling interest in the Development Owner applying for this Set-aside (i.e., greater than 50% ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the manager of the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the Manager of the controlling Managing Member. Additionally, for Qualified Nonprofit Development in the Nonprofit Set-aside the nonprofit entity or its nonprofit Affiliate or subsidiary must be the Developer or a co-Developer as evidenced in the development agreement. An Applicant that meets the requirements to be in the Qualified Nonprofit Set-aside is deemed to be applying under that Set-aside unless their Application specifically includes an affirmative election to not be treated under that Set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit. The Department reserves the right to request a change in this election or to not recommend credits for those unwilling to change elections if insufficient Applications in the Nonprofit Set-Aside are received. Applicants may not use different organizations to satisfy the state and federal requirements of the Set-aside.

(2) USDA Set-Aside. (§2306.111(d-2)). 5% of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. The Supplemental Allocation amount for any USDA Developments receiving a Supplemental Allocation from the 2022 ceiling will be attributed to the 2022 USDA Set-Aside. If an Application in this Set-aside involves Rehabilitation it will be attributed to and come from the At-Risk Development Set-aside; if an Application in this set-aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region and will compete within the applicable sub-region unless the Application is receiving USDA Section 514 funding. Applications must also meet all requirements of Tex. Gov't Code §2306.111(d-2).

(A) Eligibility of Certain Developments to Participate in the USDA or Rural Set-asides. (§2306.111 (d-4)). A proposed or Existing Residential Development that, before September 1, 2013, has been awarded or has received federal financial assistance provided under §§514, 515, or 516 of the Housing Act of 1949 (42 U.S.C. §§1484, 1485, or 1486) may be attributed to and come from the At-Risk Development Set-aside or the Uniform State Service Region in which the Development is located, regardless of whether the Development is located in a Rural Area.

(B) All Applications that are eligible to participate under the USDA Set-aside will be considered Rural for all scoring items under this chapter. If a Property receiving USDA financing is unable to participate under the USDA Set-aside and it is located in an Urban subregion, it will be scored as Urban.

(3) At-Risk Set-Aside. (§2306.6714; §2306.6702).

(A) At least 15% of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional allocation formula required under §11.6 of this chapter (relating to Competitive HTC Allocation Process). The Supplemental Allocation amount for any At-Risk Developments receiving a Supplemental Allocation from the 2022 ceiling will be attributed to the 2022 At-Risk Set-Aside. Through this Set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified as At-Risk Developments. (§2306.6714) 5% of the State Housing Credit Ceiling associated with this Set-aside will be given as priority to Rehabilitation Developments under the USDA Set-aside; any Applications submitted under the USDA Set-Aside in excess of this 5% priority may compete within the At-Risk Set-Aside only if they meet the definition for an At-Risk Development and have made the selection of the At-Risk Set-Aside in their Application.

(B) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(A) must meet the following requirements:

(i) Pursuant to Tex. Gov't Code §2306.6702(a)(5)(A)(i), a Development must have received the benefit of a subsidy in the form of a qualified below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive from any of the programs provided in subclauses (I) to (VIII) of this clause. Applications participating in the At-Risk Set-Aside must include evidence of the qualifying subsidy.

(I) Sections 221(d)(3) and (5), National Housing Act (12 U.S.C. §1715l);

(II) Section 236, National Housing Act (12 U.S.C. §1715z-1);

(III) Section 202, Housing Act of 1959 (12 U.S.C. §1701q);

(IV) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. §1701s);

(V) the Section 8 Additional Assistance Program for housing developments with HUD-Insured and HUD-Held Mortgages administered by the United States Department of Housing and Urban Development as specified by 24 C.F.R. Part 886, Subpart A;

(VI) the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the United States Department of Housing and Urban Development as specified by 24 C.F.R. Part 886, Subpart C; (VII) §§514, 515, and 516, Housing Act of 1949 (42 U.S.C. §§1484, 1485, and 1486); or

(VIII) §42, Internal Revenue Code of 1986.

(ii) Any stipulation to maintain affordability in the contract granting the subsidy or any HUD-insured or HUD-held mortgage as described in §2306.6702(a)(5)(A)(ii)(a) will be considered to be nearing expiration or nearing the end of its term if the contract expiration will occur or the term will end within two years of July 31 of the year the Application is submitted. Developments

with HUD-insured or HUD-held mortgages qualifying as At-Risk under §2306.6702(a)(5)(A)(ii)(b) will be considered eligible if the HUD-insured or HUD-held mortgage is eligible for prepayment.

(iii) Developments with existing Department LI-HTC LURAs must have completed all applicable Right of First Refusal procedures prior to the pre-application Final Delivery Date.

(C) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(B) must meet one of the requirements under clause (i), (ii) or (iii) of this subparagraph and also meet the stipulations noted in clause (iv) of this subparagraph:

(i) Units to be Rehabilitated or Reconstructed must be owned by a public housing authority or a public facility corporation created by a public housing authority under Chapter 303, Local Government Code and received assistance under §9, United States Housing Act of 1937 (42 U.S.C. §1437g); or

(ii) Units to be Rehabilitated or Reconstructed must have been proposed to be disposed of or demolished, or already disposed or demolished within the two-year period preceding the date the Application is submitted, by a public housing authority or public facility corporation created by a public housing authority under Chapter 303, Local Government Code and received assistance under §9, United States Housing Act of 1937 (42 U.S.C. §1437g); or

(iii) To the extent that an Application is eligible under Tex. Gov't Code §2306.6702(a)(5)(B)(iii), the Development must receive assistance through the Rental Assistance Demonstration (RAD) program administered by the United States Department of Housing and Urban Development (HUD). Applications must include evidence that RAD participation is included in the applicable public housing plan that was most recently approved by HUD, and evidence that HUD has approved the Units proposed for Rehabilitation or Reconstruction for participation in the RAD program; and

(iv) Notwithstanding any other provision of law, an At-Risk Development described by Tex. Gov't Code §2306.6702(a)(5)(B) that was previously allocated housing tax credits set aside under subsection (a) of this section does not lose eligibility for those credits if the portion of Units reserved for public housing as a condition of eligibility for the credits under Tex. Gov't Code §2306.6714 (a-1)(2) are later converted under RAD.

(D) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Tex. Gov't Code §2306.6702(a)(5)(i) will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site. Alternatively, pursuant to Tex. Gov't Code §2306.6702(a)(5)(B), an Applicant may propose relocation of the existing Units in an otherwise qualifying At-Risk Development if:

(i) the affordability restrictions and any At-Risk eligible subsidies are approved to be transferred with the units proposed for Rehabilitation or Reconstruction prior to the tax credit Carryover deadline;

(ii) the Applicant seeking tax credits must propose the same number of restricted Units (the Applicant may, however, add market rate Units); and

(iii) the new Development Site must either:

(I) qualify for points on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria); OR

(II) the local Governing Body of the applicable municipality or county (if completely outside of a municipality) in

which that Development is located must submit a resolution confirming that the proposed Development is supported by the municipality or county in order to carry out a previously adopted plan that meets the requirements of §11.9(d)(7) of this chapter. Development Sites that cross jurisdictional boundaries must provide such resolutions from both local governing bodies.

(E) If Developments at risk of losing affordability from the financial benefits available to the Development are able to retain, renew, or replace the existing financial benefits and affordability they must do so unless regulatory barriers necessitate elimination of all or a portion of that benefit for the Development.

(i) Evidence of the legal requirements that will unambiguously cause the loss of affordability and that this will occur within the two calendar years of July 31 of the year the Application is submitted, and must be included with the application.

(ii) For Developments qualifying under Tex. Gov't Code §2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, but no less than 25% of the proposed Units must be public housing units supported by public housing operating subsidy. (§2306.6714(a-1). If less than 100% of the public housing benefits are transferred to the proposed Development, an explanation of the disposition of the remaining public housing benefits must be included in the Application, as well as a copy of the HUD-approved plan for demolition and disposition.

(F) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a Qualified Contract under Code, §42. Evidence must be provided in the form of a copy of the recorded LURA, the first year's IRS Forms 8609 for all buildings showing Part II of the form completed and, if applicable, documentation from the original application regarding the Right of First Refusal. The Application must also include evidence that any applicable Right of First Refusal procedures have been completed prior to the pre-application Final Delivery Date.

(G) An amendment to any aspect of the existing tax credit property sought to enable the Development to qualify as an At-Risk Development, that is submitted to the Department after the Application has been filed and is under review will not be accepted.

§11.6. *Competitive HTC Allocation Process.*

This section identifies the general allocation process and the methodology by which awards during the Application Round are made.

(1) **Regional Allocation Formula.** The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region (subregion) Housing Tax Credits in an amount not less than \$600,000 in each Rural and Urban subregion, consistent with the Regional Allocation Formula developed in compliance with Tex. Gov't Code §2306.1115. As authorized by Tex. Gov't Code §2306.111(d-3), the Department will reserve \$600,000 in housing tax credits for Applications in rural areas in each uniform state service region. The process of awarding the funds made available within each subregion shall follow the process described in this section. Where a particular situation that is not contemplated and addressed explicitly by the process described herein, Department staff shall formulate a recommendation for the Board's consideration based on the objectives of the regional allocation formula together with other policies and purposes set out in Tex. Gov't Code, Chapter 2306 and the Department shall provide the public the opportunity to comment on and propose alternatives to such a recommendation. In general, such a recommendation shall not involve broad reductions in the funding request amounts solely to accommodate regional allocation and shall not involve rearranging the competitive ranking of Applications within a particular subregion or set-aside except as described herein. If the Department determines that

an allocation recommendation would cause a violation of the \$3 million credit limit per Applicant, the Department will make its recommendation based on the criteria described in §11.4(a) of this chapter (relating to Tax Credit Request, Award Limits and Increase in Eligible Basis). The Department will publish on its website on or before December 1 of each year, initial estimates of Regional Allocation Formula percentages and limits of credits available, and the calculations periodically, if those calculations change, until the credits are fully allocated. Any 2022 credits designated for the purpose of Supplemental Allocations, but not awarded to Supplemental Allocations through the process described in Subchapter F of this chapter, will be added to the appropriate subregion for which those credits had been allocated in the Supplemental regional allocation and the Regional Allocation Formula updated to reflect such increases.

(2) **Credits Returned and National Pool Allocated After January 1.** For any credits returned after January 1 and eligible for reallocation (not including credit returned and reallocated under force majeure provisions), the Department shall first return the credits to the subregion or set-aside from which the original allocation was made. The credits will be treated in a manner consistent with the allocation process described in this section and may ultimately flow from the subregion and be awarded in the collapse process to an Application in another region, subregion or set-aside. For any credit received from the "national pool" after the initial approval of awards in late July, the credits will be added to any remaining credits and awarded to the next Application on the waiting list for the state collapse, if sufficient credits are available to meet the requirements of the Application as may be amended after underwriting review.

(3) **Award Recommendation Methodology.** (§2306.6710(a) - (f); §2306.111) The Department will assign, as described herein, Developments for review by the program and underwriting divisions. In general, Applications reviews will be conducted in the order described in subparagraphs (A) - (F) of this paragraph based upon the Applicant self-score and an initial program review. The procedure identified in subparagraphs (A) - (F) of this paragraph will also be used in making recommendations to the Board.

(A) **USDA Set-Aside Application Selection (Step 1).** The first set of reviews will be those Applications with the highest scores in the USDA Set-Aside until the minimum requirements stated in §11.5(2) of this chapter (relating to Competitive HTC Set-Asides. (§2306.111(d)) are attained. The minimum requirement may be exceeded in order to award the full credit request or underwritten amount of the last Application selected to meet the USDA Set-Aside requirement.

(B) **At-Risk Set-Aside Application Selection (Step 2).** The second set of reviews will be those Applications with the highest scores in the At-Risk Set-Aside statewide until the minimum requirements stated in §11.5(3) of this chapter (relating to At-Risk Set-Aside) are attained. This may require the minimum requirement to be exceeded to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement. This step may leave less than originally anticipated in the 26 subregions to award under the remaining steps.

(C) **Initial Application Selection in Each Subregion (Step 3).** The highest scoring Applications within each of the 26 subregions will then be selected provided there are sufficient funds within the subregion to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the subregions.

(i) In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may

not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code §2306.6711(h), and will publish such percentages on its website. The Supplemental Allocation amount for any Supplemental Allocations made in such a county to an Elderly Development will be attributed to the total of 2022 credits made to Elderly Developments for that Uniform State Service Region.

(ii) In accordance with Tex. Gov't Code, §2306.6711(g), in Uniform State Service Regions containing a county with a population that exceeds 1.7 million, the Board shall allocate competitive tax credits to the highest scoring development, if any, that is part of a concerted revitalization plan that meets the requirements of §11.9(d)(7) (except for §11.9(d)(7)(A)(ii)(III) and §11.9(d)(7)(B)(iii)), is located in an urban subregion, and is within the boundaries of a municipality with a population that exceeds 500,000.

(D) Rural Collapse (Step 4). If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region (Rural subregion) that remain after award under subparagraph (C) of this paragraph, those tax credits shall be combined into one "pool" and then be made available in any other Rural Area in the state to the Application in the most underserved Rural subregion as compared to the subregion's allocation. This rural redistribution will continue until all of the tax credits in the "pool" are allocated to Rural Applications and at least 20% of the funds available to the State are allocated to Applications in Rural Areas. (§2306.111(d)(3)) In the event that more than one subregion is underserved by the same percentage, the priorities described in clauses (i) - (ii) of this subparagraph will be used to select the next most underserved subregion:

(i) the subregion with no recommended At-Risk Applications from the same Application Round; and

(ii) the subregion that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(E) Statewide Collapse (Step 5). Any credits remaining after the Rural Collapse, including those in any subregion in the State, will be combined into one "pool." The funds will be used to award the highest scoring Application (not selected or eliminated in a prior step) in the most underserved subregion in the State compared to the amount originally made available in each subregion. In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available as calculated through the Regional Allocation Formula (RAF) for Elderly Developments, and as reduced by any 2022 Supplemental Allocations made meeting these criteria as provided in §11.4(b) of this subchapter (relating to Maximum Request Limit (Competitive HTC Only)), within an urban subregion of that service region. Therefore, certain Applications for Elderly Developments may be excluded from receiving an award from the collapse. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code §2306.6711(h) and will publish such percentages on its website. This process will continue until the funds remaining are insufficient to award the next highest scoring Application that is not rendered ineligible through application of the elderly cap in the next most underserved subregion. At least seven calendar days prior to the July Board meeting of the Department at which final awards of credits are authorized, the Department will post on its website the most current 2022 State of Texas Competitive Housing Tax Credit Ceiling Accounting Summary which includes the Regional Allocation Formula percentages including the maximum funding request/award limits, the Elderly Development maximum percent-

ages and limits of credits available, and the methodology used for the determination of the award determinations within the State Collapse. In the event that more than one subregion is underserved by the same degree, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved subregion:

(i) the subregion with no recommended At-Risk Applications from the same Application Round; and

(ii) the subregion that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(F) Contingent Qualified Nonprofit Set-aside Step (Step 6). If an insufficient number of Applications participating in the Nonprofit Set-Aside are selected after implementing the criteria described in subparagraphs (A) - (E) of this paragraph to meet the requirements of the 10% Nonprofit Set-Aside, action must be taken to modify the criteria described in subparagraphs (A) - (E) of this paragraph to ensure the Set-aside requirements are met. Therefore, the criteria described in subparagraphs (C) - (E) of this paragraph will be repeated after selection of the highest scoring Application(s) under the Nonprofit Set-aside statewide are selected to meet the minimum requirements of the Nonprofit Set-Aside. This step may cause some lower scoring Applications in a subregion to be selected instead of a higher scoring Application not participating in the Nonprofit Set-aside.

(4) Waiting List. The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. The waiting list is not static. The allocation process will be used in determining the next Application to award. If credits are returned through any process, those credits will first be made available in the set-aside or subregion from which they were originally awarded. The first Application on the waiting list is in part contingent on the nature of the credits that became available for award. The Department shall hold all credit available after the late-July awards until September 30 in order to collect credit that may become available when tax credit Commitments are submitted. Credit confirmed to be available, as of September 30, may be awarded to Applications on the waiting list unless insufficient credits are available to fund the next Application on the waiting list. For credit returned after September 30, awards from the waiting list will be made when the remaining balance is sufficient to award the next Application as may be amended on the waiting list based on the date(s) of returned credit. Notwithstanding the foregoing, if decisions related to any returns or rescissions of tax credits are under appeal or are otherwise contested, the Department may delay awards until resolution of such issues. The Department will evaluate all waiting list awards for compliance with requested Set-asides. This may cause some lower scoring Applications to be selected instead of a higher scoring Application. Where sufficient credit becomes available to award an Application on the waiting list later in the calendar year, staff may allow flexibility in meeting the Carryover Allocation submission deadline and changes to the Application as necessary to ensure to the extent possible that available resources are allocated by December 31. (§2306.6710(a) - (f); §2306.111).

(5) Credit Returns Resulting from Force Majeure Events. In the event that the Department receives a return of Competitive HTCs during the current program year from an Application that received a Competitive Housing Tax Credit award during any of the preceding three years, such returned credit will, if the Board determines that all of the requirements of this paragraph are met to its satisfaction, be allocated separately from the current year's tax credit allocation, and not be subject to the requirements of paragraph (2) of this section. The 2019 and 2020 Applications awarded Supplemental Allocations under Subchapter F of this chapter to address unforeseen cost increases are deemed to have met the requirements of this paragraph. The Board

determination must indicate the year of the Multifamily Rules to be applied to the Development. The Department's Governing Board may impose a deadline that is earlier than the Placed in Service Deadline and may impose conditions that were not placed on the original allocation. Requests to allocate returned credit separately where all of the requirements of this paragraph have not been met or requests for waivers of any part of this paragraph will not be considered. For purposes of this paragraph, credits returned after September 30 of the preceding program year may be considered to have been returned on January 1 of the current year in accordance with the treatment described in §(b)(2)(C)(iii) of Treasury Regulation 1.42-14. The Board may approve the execution of a current program year Carryover Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of "Force Majeure" events that occurred before issuance of Forms 8609. Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; unrelated party litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. If a Force Majeure event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. Force Majeure events must make construction activity impossible or materially impede its progress;

(B) Acts or events caused by the negligent or willful act or omission of the Development Owner, Affiliate or a Related Party shall under no circumstance be considered to be caused by Force Majeure. In order for rainfall, material shortages, or labor shortages to constitute Force Majeure, the Development Owner must clearly explain and document how such events could not have been reasonably foreseen and mitigated through appropriate planning and risk management. Staff may use Construction Status reports for the subject or other Developments in conducting their review and forming a recommendation to the Board;

(C) A Development Owner claiming Force Majeure must provide evidence of the type of event, as described in subparagraph (A) of this paragraph, when the event occurred, and that the loss was a direct result of the event;

(D) The Development Owner must prove that reasonable steps were taken to minimize or mitigate any delay or damages, that the Development Owner substantially fulfilled all obligations not impeded by the event, including timely closing of all financing and start of construction, that the Development and Development Owner was properly insured and that the Department was timely notified of the likelihood or actual occurrence of an event described in subparagraph (A) of this paragraph;

(E) The event prevents the Development Owner from meeting the placement in service requirements of the original allocation;

(F) The requested current year Carryover Agreement allocates the same amount of credit as that which was returned; and

(G) The Department's Real Estate Analysis Division determines that the Development continues to be financially feasible in accordance with the Department's underwriting rules after taking into account any insurance proceeds related to the event.

§11.7. Tie Breaker Factors.

In the event there are Competitive HTC Applications that receive the same number of points in any given set-aside category, rural regional allocation or urban regional allocation, or rural or statewide collapse, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive preference in consideration for an award. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held. The tie breaker factors are not intended to specifically address a tie between equally underserved subregions in the rural or statewide collapse.

(1) Applications proposed to be located in a census tract with a poverty rate below the average poverty rate for all awarded Competitive HTC Applications from the past three years (with Region 11 adding an additional 15% to that value and Region 13 adding an additional 5% to that value). The poverty rate for each census tract will come from the most recent American Community Survey data. If a tie still persists, then the Development in the census tract with the highest percentage of statewide rent burden for renter households at or below 80% Area Median Family Income (AMFI), as determined by the U.S. Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy (CHAS) dataset and as reflected in the Department's current Site Demographic Characteristics Report.

(2) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development that serves the same Target Population and that was awarded less than 15 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph according to the property inventory included in the HTC Site Demographic Characteristics Report. The linear measurement will be performed from closest boundary to closest boundary of the Site presented at Pre-Application, if a pre-application is submitted, or the Site presented at full Application, whichever is closest.

§11.8. Pre-Application Requirements (Competitive HTC Only).

(a) General Submission Requirements. The pre-application process allows Applicants interested in pursuing an Application to assess potential competition across the 13 state service regions, subregions and set-asides. Based on an understanding of the potential competition they can make a more informed decision about whether they wish to proceed to prepare and submit an Application. A complete pre-application is a pre-application that meets all of the Department's criteria, as outlined in subsections (a) and (b) of this section.

(1) The pre-application must be submitted using the URL provided by the Department, as outlined in the Multifamily Programs Procedures Manual, along with the required pre-application fee as described in §11.901 of this chapter (relating to Fee Schedule), not later than the pre-application Final Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines). If the pre-application and corresponding fee is not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.

(2) Only one pre-application may be submitted by an Applicant for each Development Site and for each Site Control document.

(3) Department review at this stage is limited, and not all issues of eligibility and threshold are reviewed or addressed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. While the pre-application is more limited in scope than the Application, pre-applications are subject to the same limitations, restrictions, or causes for disqualification or termination as Ap-

plications, and pre-applications will thus be subject to the same consequences for violation, including but not limited to loss of points and termination of the pre-application.

(4) The pre-application becomes part of the full Application if the full Application claims pre-application points.

(5) Regardless of whether a Full Application is submitted, a pre-application may not be withdrawn after the Full Application Delivery Date described in §11.2(a) of this chapter.

(b) Pre-Application Threshold Criteria. Pursuant to Tex. Gov't Code §2306.6704(c) pre-applications will be terminated unless they meet the threshold criteria described in subsection (a) of this section and paragraphs (1) and (2) of this subsection:

(1) Submission of the Competitive HTC pre-application in the form prescribed by the Department which identifies at a minimum:

(A) Site Control meeting the requirements of §11.204(10) of this title (relating to Required Documentation for Application Submission). For purposes of meeting this specific requirement related to pre-application threshold criteria, proof of consideration and any documentation required for identity of interest transactions is not required at the time of pre-application submission but will be required at the time of full application submission;

(B) Funding request;

(C) Target Population;

(D) Requested set-asides (At-Risk, USDA, Nonprofit, or Rural);

(E) Total Number of Units proposed;

(F) Census tract number in which the Development Site is located, and a map of that census tract with an outline of the proposed Development Site;

(G) Expected score for each of the scoring items identified in the pre-application materials;

(H) Proposed name of ownership entity; and

(I) Disclosure of the following Neighborhood Risk Factors under §11.101(a)(3) of this title (relating to Site and Development Requirements and Restrictions):

(i) The Development Site is located in a census tract (or for any adjacent census tract with a boundary less than 500 feet from the proposed Development Site that is not separated from the Development Site by a natural barrier such as a river or lake, or an intervening restricted area, such as a military installation) in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com; and

(ii) The Development Site is located within the attendance zone of an elementary school, a middle school or a high school that has a TEA Accountability Rating of D for the most recent year available prior to Application and an Improvement Required Rating for the most recent available year preceding or a TEA Accountability Rating of F for the most recent year available prior to Application and a Met Standard Rating by the Texas Education Agency for the most recent available year preceding.

(2) Evidence in the form of a certification provided in the pre-application, that all of the notifications required under this paragraph have been made. (§2306.6704).

(A) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state 30 days prior to the beginning of the Application Acceptance Period whose

boundaries include the entire proposed Development, where a reasonable search for applicable entities has been conducted.

(B) Notification Recipients. Developments located in an ETJ of a municipality are required to notify both municipal and county officials. The notifications may be sent by e-mail, fax or mail with registered return receipt or similar tracking mechanism in the format included in the Public Notification Template provided in the Uniform Multifamily Application Template or in an alternative format that meets the applicable requirements and achieves the intended purpose. The Applicant is required to retain proof of delivery in the event the Department requests proof of notification. Acceptable evidence of such delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of delivery for fax and e-mail. Officials to be notified are those officials in office at the time the pre-application is submitted. Between the time of pre-application (if made) and full Application, the boundaries of an official's jurisdictions may change. If there is a change in jurisdiction between pre-application and the Full Application Delivery Date, additional notifications must be made at full Application to any entity that has not been previously notified by the Applicant. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct entity constitutes notification. No later than the date the pre-application is submitted, notification must be sent to all of the entities prescribed in clauses (i) - (viii) of this subparagraph:

(i) Neighborhood Organizations on record with the state or county 30 days prior to the beginning of the Application Acceptance Period whose boundaries include the entire proposed Development Site;

(ii) Superintendent of the school district in which the Development Site is located;

(iii) Presiding officer of the board of trustees of the school district in which the Development Site is located;

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

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

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

(vii) All elected members of the Governing Body of the county in which the Development Site is located; and

(viii) State Senator and State Representative of the districts whose boundaries include the proposed Development Site.

(C) Contents of Notification.

(i) The notification must include, at a minimum, all of the information described in subclauses (I) - (VIII) of this clause:

(I) The Applicant's name, address, an individual contact name and phone number;

(II) The Development name, address, city, and county;

(III) A statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(IV) Whether the Development proposes New Construction, Reconstruction, Adaptive Reuse, or Rehabilitation;

(V) The physical type of Development being proposed (e.g. single family homes, duplex, apartments, high-rise, etc.);

(VI) The approximate total number of Units and approximate total number of Low-Income Units;

(VII) The residential density of the Development, i.e., the number of Units per acre; and

(VIII) Information on how and when an interested party or Neighborhood Organization can provide input to the Department.

(ii) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve a population exclusively or as a preference unless such targeting or preference is documented in the Application and is in full compliance with all applicable state and federal laws, including state and federal fair housing laws.

(iii) Notifications or any other communications may not contain any statement that violates Department rules, statute, code, or federal requirements.

(c) Pre-Application Results. Only pre-applications which have satisfied all of the pre-application requirements, including those in §11.9(e)(3) of this chapter (relating to Criteria promoting the efficient use of limited resources and applicant accountability), will be eligible for pre-application points. The order and scores of those Developments released on the pre-application Submission Log do not represent a Commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the pre-application Submission Log. Inclusion of a pre-application on the pre-application Submission Log does not ensure that an Applicant will receive points for a pre-application.

(d) Applicants that may be requesting a Multifamily Direct Loan from the Department may submit a Request for Preliminary Determination on or before February 11. 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 chapter. Submission of a Request for Preliminary Determination does not obligate the Applicant to request Multifamily Direct Loan funds with their full Application.

§11.9. *Competitive HTC Selection Criteria.*

(a) General Information. This section identifies the scoring criteria used in evaluating and ranking Applications. The criteria identified in subsections (b) - (e) of this section include those items required under Tex. Gov't Code, Chapter 2306, Code §42, and other criteria established in a manner consistent with Chapter 2306 and Code §42. There is no rounding of numbers in this section for any of the calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. The Application must include one or more maps indicating the location of the Development Site and the related distance to the applicable facility. Distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the facility, unless otherwise noted. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held.

(b) Criteria promoting development of high quality housing.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); 2306.6725(b)(1); §42(m)(1)(C)(iii) and (ix)) An Application may qual-

ify for up to fifteen (15) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (6 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), for Developments receiving funding from USDA, or for Supportive Housing Developments without meeting these square footage minimums only if requested in the Self Scoring Form. If the Development involves both Rehabilitation and Reconstruction or New Construction, the Reconstruction or New Construction Units must meet these requirements:

(i) five-hundred fifty (550) square feet for an Efficiency Unit;

(ii) six-hundred fifty (650) square feet for a one Bedroom Unit;

(iii) eight-hundred fifty (850) square feet for a two Bedroom Unit;

(iv) one-thousand fifty (1,050) square feet for a three Bedroom Unit; and

(v) one-thousand two-hundred fifty (1,250) square feet for a four Bedroom Unit.

(B) Unit, Development Construction, and Energy and Water Efficiency Features (9 points). Applicants that elect in an Application to provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in §11.101(b)(6)(B) of this title (relating to Unit, Development Construction, and Energy and Water Efficiency Features) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments and Supportive Housing Developments will start with a base score of five (5) point.

(2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) An Application may qualify to receive either one (1) or two (2) points if it meets the requirements of either subparagraphs (A), (B), or (C) of this paragraph.

(A) HUB. The ownership structure contains a HUB or HUBs certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date. The HUB or HUBs must have some combination of ownership interest in each of the General Partner of the Applicant, Cash Flow from operations, and Developer Fee which taken together equal at least 50% and no less than 5% for any category. For HUD 202 Rehabilitation projects which prohibit for-profit ownership, ownership will not be required for a HUB or nonprofit, only for Cash Flow or Developer Fee; the total ownership percentage must still equal 50%, even if it is only attributable to one of the two categories. Any Application that includes one or more HUBs must include a narrative description of each of the HUB's experience directly related to the housing industry.

(i) The HUB must materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. Material participation means that the HUB is regularly, continuously, and substantially involved in providing services integral to the Development Team; providing services as an independent contractor is not sufficient.

(ii) A Principal of the HUB cannot be a Related Party to or Affiliate, including the spouse, of any other Principal of the Applicant, Developer or Guarantor (excluding another Principal of said HUB). (2 points).

(iii) The HUB must be involved with the Development Services or in the provision of on-site tenant services during the Development's Affordability Period. A Principal of the HUB or nonprofit Organization cannot be a Related Party to or Affiliate, including the spouse of, any other Principal of the Applicant, Developer or Guarantor (excluding another Principal of said HUB or Nonprofit Organization). (1 point).

(B) Qualified Nonprofit Organization. The ownership structure contains a Qualified Nonprofit Organization provided the Application is submitted in the Nonprofit Set-Aside. The Qualified Nonprofit Organization must have some combination of ownership interest in the General Partner of the Applicant, Cash Flow from operations, and Developer Fee which taken together equal at least 50%, and no less than 5% for any category. For HUD 202 Rehabilitation projects which prohibit for-profit ownership, ownership will not be required for a nonprofit, only for Cash Flow or Developer Fee; the total ownership percentage must still equal 50%, even if it is only attributable to one of the two categories.

(i) The Qualified Nonprofit Organization must materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. Material participation means that the Qualified Nonprofit Organization is regularly, continuously, and substantially involved in providing services integral to the Development Team; providing services as an independent contractor is not sufficient.

(ii) A Principal of the Qualified Nonprofit Organization cannot be a Related Party to or Affiliate, including the spouse, of any other Principal of the Applicant, Developer, or Guarantor (excluding another Principal of said Qualified Nonprofit Organization). (2 points).

(iii) The Qualified Nonprofit Organization must be involved with the Development Services or in the provision of on-site tenant services during the Development's Affordability Period. A Principal of the Qualified Nonprofit Organization cannot be a Related Party to or Affiliate, including the spouse of, any other Principal of the Applicant, Developer, or Guarantor (excluding another Principal of said Qualified Nonprofit Organization). (1 point).

(C) Nonprofit Organization. The ownership structure contains a nonprofit organization that meets the requirements of IRC §42(h)(5)(C) on the Application Delivery Date, with at least 51% ownership in the General Partner of the Applicant. (2 points)

(i) The nonprofit organization must maintain Control of the Development and materially participate in the operation of the Development throughout the Compliance Period.

(ii) The nonprofit organization, or individuals with Control of the nonprofit organization, must provide verifiable documentation of at least 10 years' experience in the continuous operation of a Development that provides services similar to those in the proposed Development.

(iii) The Applicant will provide a minimum of 3 additional points under §11.101(7) of this chapter (related to Resident Supportive Services), in addition to points selected under subsection (c)(3) of this section.

(c) Criteria to serve and support Texans most in need.

(1) Income Levels of Residents. (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42 (m)(1)(B)(ii)(I)) An Application may qualify for up to sixteen (16) points for rent and income

restricting a Development for the entire Affordability Period at the levels identified in subparagraph (A), (B), (C), or (D) of this paragraph.

(A) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs that propose to use either the 20-50 or 40-60 election under §42(g)(1)(A) or §42(g)(1)(B) of the Code, respectively:

(i) At least 60% of all Low-Income Units at 50% or less of AMGI in a Supportive Housing Development proposed by a Qualified Nonprofit (16 points);

(ii) At least 40 % of all Low-Income Units at 50% or less of AMGI (15 points);

(iii) At least 30% of all Low-Income Units at 50% or less of AMGI (13 points); or

(iv) At least 20% of all Low-Income Units at 50% or less of AMGI (11 points).

(B) For Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph and that propose to use either the 20-50 or 40-60 election under §42(g)(1)(A) or §42(g)(1)(B) of the Code, respectively:

(i) At least 60% of all Low-Income Units at 50% or less of AMGI in a Supportive Housing Development proposed by a Qualified Nonprofit (16 points);

(ii) At least 20% of all Low-Income Units at 50% or less of AMGI (15 points);

(iii) At least 15% of all Low-Income Units at 50% or less of AMGI (13 points); or

(iv) At least 10% of all Low-Income Units at 50% or less of AMGI (11 points).

(C) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs that propose to use the Average Income election under §42(g)(1)(C) of the Code:

(i) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 54% or lower (15 points);

(ii) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 55% or lower (13 points); or

(iii) The average income and Rent restriction for all Low-Income Units for the proposed Development will be 56% or lower (11 points).

(D) For Developments proposed to be located in the areas other than those listed in subparagraph (C) of this paragraph and that propose to use the Average Income election under §42(g)(1)(C) of the Code:

(i) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 55% or lower (15 points);

(ii) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 56% or lower (13 points); or

(iii) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 57% or lower (11 points).

(2) Rent Levels of Tenants. (§2306.6710(b)(1)(E)) An Application may qualify to receive up to thirteen (13) points for rent and income restricting a Development for the entire Affordability Period. If selecting points from paragraph(1)(A) or paragraph (1)(B) of this subsection, these levels are in addition to those committed under paragraph (1) of this subsection. If selecting points from paragraph (1)(C) or paragraph (1)(D) of this subsection, these levels are included in the income average calculation under paragraph (1) of this subsection. These units must be maintained at this rent level throughout the Affordability Period regardless of the Average Income calculation. Scoring options include:

(A) At least 20% of all Low-Income Units at 30% or less of AMGI for Supportive Housing Developments proposed by a Qualified Nonprofit (13 points);

(B) At least 10% of all Low-Income Units at 30% or less of AMGI or, for a Development located in a Rural Area, 7.5% of all Low-Income Units at 30% or less of AMGI (11 points); or

(C) At least 5% of all Low-Income Units at 30% or less of AMGI (7 points).

(3) Resident Supportive Services. (§2306.6710(b)(3) and (1)(G), and §2306.6725(a)(1)) A Development may qualify to receive up to eleven (11) points.

(A) The Applicant certifies that the Development will provide a combination of resident supportive services, which are listed in §11.101(b)(7) of this chapter (relating to Development Requirements and Restrictions) and meet the requirements of that section. (10 points).

(B) The Applicant certifies that the Development will contact local nonprofit and governmental providers of services that would support the health and well-being of the Department's residents, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. Applicants may contact service providers on the Department list, or contact other providers that serve the general area in which the Development is located. (1 point).

(4) Opportunity Index. (42(m)(1)(C)(i)) The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials. A Development is eligible for a maximum of seven (7) opportunity index points from subparagraphs (A) and (B) of this paragraph.

(A) A proposed Development is eligible for up to two (2) opportunity index points if it is located entirely within a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in clause (i) or (ii) of this subparagraph:

(i) The Development Site is located entirely within a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and a median household income rate in the two highest quartiles within the uniform service region (2 points); or

(ii) The Development Site is located entirely within a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with a median household income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile for median household income that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, without physical barriers such as (but not limited to) highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts (1 point). For

purposes of this scoring item, a highway is a limited-access road with a speed limit of 50 miles per hour or more; and

(B) An Application that meets one of the foregoing criteria in subparagraph (A) of this paragraph may qualify for additional points for any one or more of the factors in clause (i) or (ii) of this subparagraph. Each amenity may be used only once for scoring purposes, unless allowed within the scoring item, regardless of the number of categories it fits. All members of the Applicant or Affiliates cannot have had an ownership position in the amenity or served on the board or staff of a nonprofit that owned or managed that amenity within the year preceding the Pre-Application Final Delivery Date. All amenities must be operational or have started Site Work at the Pre-Application Final Delivery Date. Any age restrictions associated with an amenity must positively correspond to the Target Population of the proposed Development.

(i) For Developments located in an Urban Area (other than Applicants competing in the USDA Set-Aside), an Application may qualify to receive points through a combination of requirements in subclauses (I) - (XV) of this clause.

(I) The Development Site is located on a route, with sidewalks for pedestrians, that is 1/2 mile or less from the entrance to a public park with a playground or from a multiuse hike-bike trail. The entirety of the sidewalk route must consist of smooth hard surfaces, curb ramps, and marked pedestrian crossings when traversing a street. (1 point).

(II) The Development Site is located on a route, with sidewalks for pedestrians, that is within a specified distance from the entrance of a public transportation stop or station with a route schedule that provides regular service to employment and basic services. The entirety of the sidewalk route must consist of smooth hard surfaces, curb ramps, and marked pedestrian crossings when traversing a street. Only one of the following may be selected:

(-a-) The Development Site is 1/2 mile or less from the stop or station and the scheduled service is beyond 8 a.m. to 5 p.m., plus weekend service (both Saturday and Sunday) (1 point); or

(-b-) The Development Site is 1/2 mile or less from the stop or station and the scheduled service arrives every 15 minutes, on average, between 6 a.m. and 8 p.m., every day of the week (2 points).

(III) The Development Site is located within 2 miles of a full-service grocery store. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed Development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen, canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point).

(IV) The Development Site is located within 2 miles of a pharmacy. For the purposes of this menu item only, the pharmacy may be claimed if it is within the same building as a grocery store. (1 point).

(V) The Development Site is located within 4 miles of a health-related facility, such as a full service hospital, community health center, minor emergency center, emergency room or urgent care facility. Physician offices and physician specialty offices are not considered in this category. (1 point).

(VI) The Development Site is within 3 miles of a center that is licensed by the Department of Family and Protective Services (DFPS) specifically to provide a school-age program or to provide a child care program for infants, toddlers, or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point)

(VII) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less as defined by neighborhoodscout.com, or local law enforcement data sources. If employing the latter source, the formula for determining the crime rate will include only data relevant to the census tract in which the Development Site is located. (1 point)

(VIII) The development Site is located within 2 miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open 50 hours or more per week. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point)

(IX) The Development Site is located within 6 miles of an accredited university or community college, as confirmed by the Texas Higher Education Coordination Board (THECB). To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered community colleges, and to be considered for these purposes must confer at least associate's degrees. The university or community college must have a physical campus, where classes are regularly held for students pursuing their degrees, within the required distance; online-only institutions do not qualify under this item. (1 point)

(X) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher as tabulated by the most recent American Community Survey 5-year Estimate. (1 point)

(XI) Development Site is within 2 miles of an indoor recreation facility available to the public. Examples include, but are not limited to, a gym, health club, a bowling alley, a theater, or a municipal or county community center. A facility that is primarily a restaurant or bar with recreational facilities is not eligible. (1 point)

(XII) Development Site is within 2 miles of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include, but are not limited to, swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point).

(XIII) Development Site is within 2 miles of community, civic or service organizations that provide regular and recurring substantive services, beyond exclusively congregational or member-affiliated activities, available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to affiliation or membership). (1 point).

(XIV) Development Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point).

(XV) Development Site is located in the attendance zone of a general enrollment public school rated A or B by TEA for the most recently available rating. (1 point).

(ii) For Developments located in a Rural Area and any Application qualifying under the USDA set-aside, an Application

may qualify to receive points through a combination of requirements in subclauses (I) - (XIV) of this clause.

(I) The Development Site is located within 5 miles of a full-service grocery store. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed Development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen, canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point).

(II) The Development Site is located within 5 miles of a pharmacy. For the purposes of this menu item only, the pharmacy may be claimed if it is within the same building as a grocery store. (1 point).

(III) The Development Site is located within 5 miles of health-related facility, such as a full service hospital, community health center, minor emergency center, or a doctor with a general practice that takes walk-in patients. Physician specialty offices are not considered in this category. (1 point).

(IV) The Development Site is located within 5 miles of a center that is licensed by the Department of Family and Protective Services (DFPS) specifically to provide a school-age program or to provide a child care program for infants, toddlers, or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point).

(V) The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less, as defined by neighborhoodscout.com, or local law enforcement data sources. If employing the latter source, the formula for determining the crime rate will include only data relevant to the census tract in which the Development Site is located. (1 point).

(VI) The Development Site is located within 5 miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open 40 hours or more per week. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point).

(VII) The Development Site is located within 5 miles of a public park with a playground. (1 point).

(VIII) The Development Site is located within 15 miles of an accredited university or community college, as confirmed by the Texas Higher Education Coordination Board (THECB). To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered community colleges, and to be considered for these purposes must confer at least associate's degrees. The university or community college must have a physical campus, where classes are regularly held for students pursuing their degrees, within the required distance; online-only institutions do not qualify under this item. (1 point).

(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher. (1 point).

(X) Development Site is within 4 miles of an indoor recreation facility available to the public. Examples include, but are not limited to, a gym, health club, a bowling alley, a theater, or a

municipal or county community center. A facility that is primarily a restaurant or bar with recreational facilities is not eligible. (1 point).

(XI) Development Site is within 4 miles of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include, but are not limited to, swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point).

(XII) Development Site is within 4 miles of community, civic or service organizations that provide regular and recurring substantive services, beyond exclusively congregational or member-affiliated activities, available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to affiliation or membership). (1 point).

(XIII) Development Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point).

(XIV) Development Site is located in the attendance zone of a general enrollment public school rated A or B by TEA for the most recently available rating. (1 point).

(5) Underserved Area. (§§2306.6725(a)(4) and (b)(2); 2306.127(3), 42(m)(1)(C)(ii)). Points are not cumulative and an Applicant is therefore limited to selecting one subparagraph. If an Application qualifies for points under paragraph (4) of this subsection, then the Application is not eligible for points under subparagraphs (A) and (B) of this paragraph. Years are measured by deducting the most recent year of award on the property inventory of the Site Demographic Characteristics Report from January 1 of the current year. The Application must include evidence that the Development Site meets the requirements. An Application may qualify to receive up to five (5) points if the Development Site meets any one of the criteria described in subparagraphs (A) - (H) of this paragraph:

(A) The Development Site is located wholly or partially within the boundaries of a colonia as such boundaries are determined by the Office of the Attorney General and within 150 miles of the Rio Grande River border. For purposes of this scoring item, the colonia must lack water, wastewater, or electricity provided to all residents of the colonia at a level commensurate with the quality and quantity expected of a municipality and the proposed Development must make available any such missing water, wastewater, and electricity supply infrastructure physically within the borders of the colonia in a manner that would enable the current dwellings within the colonia to connect to such infrastructure (2 points);

(B) The Development Site is located entirely within the boundaries of an Economically Distressed Area that has been awarded funds by the Texas Water Development Board in the previous five years ending at the beginning of the Application Acceptance Period (1 point);

(C) The Development Site is located entirely within a census tract that does not have another Development that was awarded less than 30 years ago according to the Department's property inventory in the Site Demographic Characteristics Report (4 points);

(D) For areas not scoring points for subparagraph (C), the Development Site is located entirely within a census tract that does not have another Development that was awarded less than 20 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report (3 points);

(E) For areas not scoring points for subparagraphs (C) or (D) of this paragraph, the Development Site is located entirely within a census tract that does not have another Development that was

awarded less than 15 years ago according to the Department's property inventory in the Site Demographic Characteristics Report (2 points);

(F) The Development Site is located entirely within a census tract whose boundaries are wholly within an incorporated area and the census tract itself and all of its contiguous census tracts do not have another Development that was awarded less than 15 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report. This item will apply in Places with a population of 100,000 or more, and will not apply in the At-Risk Set-Aside; (5 points)

(G) The Development Site is located entirely within a census tract where, according to American Community Survey 5-year Estimates, the population share of persons below 200% federal poverty level decreased by 10% or more and where the total number of persons at or above 200% federal poverty level had increased by 15% or more between the years 2012 and 2019. This measure is referred to as the Affordable Housing Needs Indicator in the Site Demographic Characteristics Report. (3 points); or

(H) An At-risk or USDA Development placed in service 25 or more years ago, that is still occupied, and that has not yet received federal funding, or LIHTC equity, for the purposes of Rehabilitation for the Development. If the Application involves multiple sites, the age of all sites will be averaged for the purposes of this scoring item. (3 points).

(6) Residents with Special Housing Needs. (§2306.6710(b)(4); §42(m)(1)(C)(v)) An Application may qualify to receive up to three (3) points by serving Residents with Special Housing Needs by selecting points under any combination of subparagraphs (A), (B), or (C) of this paragraph.

(A) The Development must commit at least 5% of the total Units to Persons with Special Housing Needs. The Units identified for this scoring item may not be the same Units identified previously for the Section 811 PRA Program. For purposes of this subparagraph, Persons with Special Housing Needs is defined as a household where one or more individuals have alcohol or drug addictions, is a Colonia resident, a Person with a Disability, has Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), HIV/AIDS, homeless, veterans, and farmworkers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to specifically market Units to Persons with Special Housing Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Housing Needs or held vacant, unless the Units receive HOME funds from any source. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Housing Needs, but will be required to continue to specifically market Units to Persons with Special Housing Needs. (2 points)

(B) If the Development has committed units under subparagraph (A) of this paragraph, the Development must commit at least an additional 2% of the total Units to Persons referred from the Continuum of Care or local homeless service providers to be made available for those experiencing homelessness. Rejection of an applicant's tenancy for those referred may not be for reasons of credit history or prior rental payment history. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to specifically market the 2% of Units through the Continuum of Care and other homelessness providers local to the Development Site. In addition, the Department will require an initial minimum twelve-month period in Urban subregions, and an initial six-month period in Rural subregions, during which Units must either be occupied by Persons re-

ferred from the Continuum of Care or local homeless service providers, or held vacant, unless the Units receive HOME funds from any source. After the initial twelve-month or six-month period, the Development Owner will no longer be required to hold Units vacant but will be required to continue to provide quarterly notifications to the Continuum of Care and other homeless service providers local to the Development Site on the availability of Units at the Development Site. Developments are not eligible under this paragraph unless points have also been selected under subparagraph (A) of this paragraph. (1 point)

(C) If the Development is located in a county with a population of 1 million or more, but less than 4 million, and is located not more than two miles from a veteran's hospital, veteran's affairs medical center, or veteran's affairs health care center, (which include all providers listed under the Veteran's Health Administration categories, excluding Benefits Administration offices, listed at this link https://www.va.gov/directory/guide/fac_list_by_state.cfm?State=TX&dnum=ALL) and agrees to provide a preference for leasing units in the Development to low income veterans. (1 point)

(7) Proximity to Job Areas. (§42(m)(1)(C)(i)) An Application may qualify to receive up to six (6) points if the Development Site is located in one of the areas described in subparagraphs (A) or (B) of this paragraph, and the Application contains evidence substantiating qualification for the points. The data used will be based solely on that available through US Census' OnTheMap tool. Jobs counted are limited to those based on the work area, all workers, and all primary jobs. Only the 2018 data set will be used, unless a newer data set is posted to the US Census website on or before October 1, 2021. The Development will use OnTheMap's function to import GPS coordinates that clearly fall within the Development Site, and the OnTheMap chart/map report submitted in the Application must include the report date. This scoring item will not apply to Applications under the At-Risk or USDA Set-Aside.

(A) Proximity to Jobs. For Development Sites within the boundaries of a municipality of 500,000 or more, or the unincorporated areas of a county with a population of 1 million or more, A Development may qualify for points under this subparagraph if it meets one of the criteria in clauses (i) - (vi) of this subparagraph.

(i) The Development is located within 2 miles of 16,500 jobs. (6 points)

(ii) The Development is located within 2 miles of 13,500 jobs. (5 points)

(iii) The Development is located within 2 miles of 10,500 jobs. (4 points)

(iv) The Development is located within 2 miles of 7,500 jobs. (3 points)

(v) The Development is located within 2 miles of 4,500 jobs. (2 points)

(vi) The Development is located within 2 miles of 2,000 jobs. (1 point)

(B) Proximity to Jobs. For Development Sites within the boundaries of a municipality of 499,999 or less, or the unincorporated areas of a county with a population of less than 1 million, A Development may qualify for points under this subparagraph if it meets one of the criteria in clauses (i) - (vi) of this subparagraph.

(i) The Development is located within 4 miles of 16,500 jobs. (6 points)

(ii) The Development is located within 4 miles of 13,500 jobs. (5 points)

(iii) The Development is located within 4 miles of 10,500 jobs. (4 points)

(iv) The Development is located within 4 miles of 7,500 jobs. (3 points)

(v) The Development is located within 4 miles of 4,500 jobs. (2 points)

(vi) The Development is located within 4 miles of 2,000 jobs. (1 point)

(8) Readiness to proceed in disaster impacted counties. Due to uncertainty linked to the COVID-19 pandemic, scoring for all Applicants under this item is suspended (no points may be requested, nor will they be awarded) for 2022 HTC Applications. An Application for a proposed Development that is located in a county declared by the Federal Emergency Management Agency to be eligible for individual assistance, within four years preceding December 1, 2021. Federal Emergency Management Agency declarations that apply to the entire state at any point in time prior to Application do not apply. The Applicant must provide a certification that they will close all financing and fully execute the construction contract on or before the last business day of November or as otherwise permitted under subparagraph (C) of this paragraph. For the purposes of this paragraph only, an Application may be designated as "priority." Applications in the At-Risk or USDA Set-asides are not eligible for these points. (5 points)

(A) Applications must include evidence that appropriate zoning will be in place at award and acknowledgement from all lenders and the syndicator of the required closing date.

(B) The Board cannot and will not waive the deadline and will not consider waiver under its general rule regarding waivers. Failure to close all financing and provide evidence of an executed construction contract by the November deadline will result in penalty under subsection (f) of this section, as determined solely by the Board.

(C) Applications seeking points under this paragraph will receive an extension of the November deadline equivalent to the period of time they were not indicated as a priority Application, if they ultimately receive an award. The period of the extension begins on the date the Department publishes a list or log showing an Application without a priority designation, and ends on the earlier of the date a log is posted that shows the Application with a priority designation, or the date of award.

(d) Criteria promoting community support and engagement.

(1) Local Government Support. (§2306.6710(b)(1)(B)) An Application may qualify for up to seventeen (17) points for a resolution or resolutions voted on and adopted by the bodies reflected in subparagraphs (A) - (C) of this paragraph, as applicable. The resolution(s) must be dated prior to Final Input from Elected Officials Delivery Date and must be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2(a) of this chapter, relating to Competitive HTC Deadlines. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. Resolutions received by the Department setting forth that the municipality and/or county objects to or opposes the Application or Development will result in zero points awarded to the Application for that Governing Body. If a Development site is located partially within a municipality and partially within a county or extraterritorial jurisdiction, positive points will only be awarded if a resolution is obtained from both entities. Such resolutions will be added to the Application

posted on the Department's website. Once a resolution is submitted to the Department it may not be changed or withdrawn. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

(A) Within a municipality, the Application will receive points from either:

(i) Seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(ii) Fourteen (14) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

(B) Within the extraterritorial jurisdiction of a municipality, the Application may receive points under clause (i) or (ii) of this subparagraph and under clause (iii) or (iv) of this subparagraph.

(i) Eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development.

(ii) Seven (7) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

(iii) Eight and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development.

(iv) Seven (7) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality, the Application will receive points from either:

(i) Seventeen (17) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(ii) Fourteen (14) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(2) Commitment of Development Funding by Local Political Subdivision. (§2306.6725(a)(5)) The source of the funding cannot be the Applicant, Developer, or an Affiliate of the Applicant. The commitment of Development funding must be reflected in the Application as a financial benefit to the Development, i.e. reported as a source of funds on the Sources and Uses Form or reflected in a lower cost in the Development Cost Schedule, such as notation of a reduction in building permits and related costs. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction over the proposed Development stating they will provide a loan, grant, reduced fees or contribution of other value that equals \$500 or more for Applications located in Urban subregions or \$250 or more for Applications located in Rural subregions for the benefit of the Development. The letter must describe the value of the contribution, the form of the contribution, e.g. reduced fees or gap funding, and any caveats to delivering the contribution. Once a letter is submitted to the Department it may not be changed or withdrawn. (1 point)

(3) Declared Disaster Area. (§2306.6710(b)(1)(H); §42(m)(1)(C)(i)) An Application may receive ten (10) points if at the time of Application submission or at any time within the two-year

period preceding the date of submission, the Development Site is located in an area declared to be a disaster area under the Tex. Gov't Code §418.014.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(I); §2306.6725(a)(2)) An Application may qualify for up to nine (9) points for written statements from a Neighborhood Organization. In order for the statement to qualify for review, the Neighborhood Organization must have been in current, valid existence with boundaries that contain the entire Development Site. In addition, the Neighborhood Organization must be on record 30 days prior to the beginning of the Application Acceptance period with the Secretary of State or county in which the Development Site is located as of the beginning of the Application Acceptance Period. Once a letter is submitted to the Department it may not be changed or withdrawn. The written statement must meet all of the requirements in subparagraph (A) of this paragraph. Letters received by the Department setting forth that the eligible Neighborhood Organization objects to or opposes the Application or Development will be added to the Application posted on the Department's website. Written statements from the Neighborhood Organizations included in an Application and not received by the Department from the Neighborhood Organization will not be scored but will be counted as public comment.

(A) Statement Requirements. If an organization cannot make the following affirmative certifications or statements then the organization will not be considered a Neighborhood Organization for purposes of this paragraph:

(i) the Neighborhood Organization's name, a written description and map of the organization's boundaries, signatures and contact information (phone, email and mailing address) of at least two individual members with authority to sign on behalf of the organization;

(ii) certification that the boundaries of the Neighborhood Organization contain the entire Development Site and that the Neighborhood Organization meets the definition pursuant to Tex. Gov't Code §2306.004(23-a) and includes at least two separate residential households;

(iii) certification that no person required to be listed in accordance with Tex. Gov't Code §2306.6707 with respect to the Development to which the Application requiring their listing relates participated in any way in the deliberations of the Neighborhood Organization, including any votes taken;

(iv) certification that at least 80% of the current membership of the Neighborhood Organization consists of homeowners and/or tenants living within the boundaries of the Neighborhood Organization; and

(v) an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood Organization should be prepared to provide additional information with regard to opposition.

(B) Technical Assistance. For purposes of this paragraph, if and only if there is no Neighborhood Organization already in existence or on record, the Applicant, Development Owner, or Developer is allowed to provide technical assistance in the creation of or placing on record of a Neighborhood Organization. Technical assistance is limited to:

(i) the use of a facsimile, copy machine/copying, email and accommodations at public meetings;

(ii) assistance in completing the QCP Neighborhood Information Packet, providing boundary maps and assisting in the Administrative Deficiency process;

(iii) presentation of information and response to questions at duly held meetings where such matter is considered; and

(iv) notification regarding deadlines for submission of responses to Administrative Deficiencies.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in only one of the clauses (i) - (vi) of this subparagraph. Points will not be cumulative. Where more than one written statement is received for an Application, the average of all statements received in accordance with this subparagraph will be assessed and awarded.

(i) Nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged.

(ii) Eight (8) points for explicitly stated support from a Neighborhood Organization.

(iii) Six (6) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds provided a written statement, that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged.

(iv) Four (4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection.

(v) Four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section.

(vi) Zero (0) points for statements of opposition meeting the requirements of this subsection.

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such statement is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date May 1, 2022. The Neighborhood Organization expressing opposition will be given seven calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed. Should the Neighborhood Organization's statements be found to be contrary to findings or determinations of a local Governmental Entity, or should the Neighborhood Organization not respond in seven calendar days, then

the Application shall be eligible for four (4) points under subparagraph (C)(v) of this subsection.

(5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2); §2306.6710(f) and (g)) Applications may receive up to eight (8) points for express support, zero points for neutral statements, or have deducted up to eight (8) points for express opposition.

(A) Letter from a State Representative. To qualify under this subparagraph, letters must be on the State Representative's letterhead or submitted in such a manner as to verify the sender, be signed by the State Representative, identify the specific Development and express whether the letter conveys support, neutrality, or opposition. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines). Letters received by the Department from State Representatives will be added to the Application posted on the Department's website. Once a letter is submitted to the Department it may not be changed or withdrawn. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. If the office is vacant, the Application will be considered to have received a neutral letter. Neutral letters or letters that do not specifically refer to the Development will receive zero (0) points. A letter from a state representative expressing the level of community support may be expressly based on the representative's understanding or assessments of indications of support by others, such as local government officials, constituents, or other applicable representatives of the community. In providing this letter, pursuant to Tex. Gov't Code §2306.6710(b)(1)(J), a representative may either express their position of support, opposition, or neutrality regarding the Application, which shall be presumed to reflect their assessment of the views of their constituents, or they may provide a statement of the support, opposition, or neutrality of their constituents regarding the Application without expressing their personal views on the matter.

(B) No Letter from a State Representative. To qualify under this subparagraph, no written statement can be received for an Application from the State Representative who represents the geographic area in which the proposed Development is located, unless the sole content of the written statement is to convey to the Department that no written statement will be provided by the State Representative for a particular Development. Points available under this subparagraph will be based on how an Application scores under paragraph (1) of this subsection (relating to Local Government Support). If a Development site is located partially within a municipality and partially within a county or extraterritorial jurisdiction, positive points will only be awarded if a resolution is obtained from both entities. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

(i) Within a municipality, the Application will receive:

(I) Eight (8) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(II) Zero (0) points for no resolution or a resolution from the Governing Body of that municipality expressly setting

forth that the municipality has no objection to the Application or Development; or

(III) Negative eight (-8) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development.

(ii) Within the extraterritorial jurisdiction of a municipality, the Application will receive points under subclause (I) or (II) or (III) of this subparagraph, and under subclause (IV) or (V) or (VI) of this subparagraph.

(I) Four (4) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development.

(II) Zero (0) points for no resolution or a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

(III) Negative four (-4) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development.

(IV) Four (4) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development.

(V) Zero (0) points for no resolution or a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(VI) Negative four (-4) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development.

(iii) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

(I) Eight (8) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(II) Zero (0) points for no resolution or a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development; or

(III) Negative eight (-8) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development.

(6) Input from Community Organizations. (§2306.6725(a)(2)) Where, at the time of Application, the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization or there is a qualifying Neighborhood Organization that has given no statement or a statement of neutrality (as described in clauses (4)(C)(iv) or (v) of this subsection), then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters of support must be submitted within the Application. Once a letter is submitted to the Department it may not be changed or withdrawn. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item. Letters received by the Department setting forth that the community

organization objects to or opposes the Application or Development will be added to the Application posted on the Department's website.

(A) An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The Applicant must provide evidence that the community or civic organization remains in good standing by providing evidence from a federal or state government database confirming that the exempt status continues. An Organization must also provide evidence of its participation in the community in which the Development Site is located including, but not limited to, a listing of services or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts as described in subparagraph C), or taxing entities.

(B) An Application may receive two (2) points for a letter of support from a property owners association created for a master planned community whose boundaries include the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.

(C) An Application may receive two (2) points for a letter of support from a Special Management District formed under Tex. Local Gov't Code chapter 375 whose boundaries, as of the Full Application Delivery Date as identified in §11.2(a) of this chapter, (relating to Competitive HTC Deadlines, Program Calendar for Competitive Housing Tax Credits), include the Development Site.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(7) Concerted Revitalization Plan. (§42(m)(1)(B)(ii)(III) and (C)(iii)). An Application may qualify for up to seven (7) points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

(A) For Developments located in an Urban Area:

(i) An Application may qualify to receive points if the Development Site is geographically located within an area for which a concerted revitalization plan (plan or CRP) has been developed and published by the municipality.

(ii) A plan may consist of one or two complementary local planning documents that together have been approved by the municipality as a plan to revitalize the specific area. The plan and sup-

porting documentation must be submitted using the CRP Application Packet. No more than two local plans may be submitted for each proposed Development. The concerted revitalization plan may be a Tax Increment Reinvestment Zone (TIRZ) or Tax Increment Finance (TIF) or similar plan. A city- or county-wide comprehensive plan, including a consolidated plan or one-year action plan required to receive HUD funds does not equate to a concerted revitalization plan unless evidence is presented that additional efforts have been undertaken to meet the requirements in clause (iii) of this subparagraph.

(iii) The area targeted for revitalization must be larger than the assisted housing footprint.

(iv) The Application must include a copy of the plan or a link to the online plan and a description of where specific information required below can be found in the plan. The plan must meet the criteria described in subclauses (I) and (II) of this clause:

(I) The concerted revitalization plan, or each of the local planning documents that compose the plan, must have been published by the municipality or county in which the Development Site is located.

(II) The plan must be current at the time of Application.

(v) If the Application includes an acceptable Concerted Revitalization Plan, up to seven (7) points will be awarded as follows:

(I) the proposed Development Site is located within a Qualified Census Tract (7 points); or

(II) the proposed Development Site is not located within a Qualified Census Tract and in addition to all requirements for this paragraph has also submitted a letter from the appropriate local official for the municipality (or county if the Development Site is completely outside of a municipality) that explicitly identifies the proposed Development as contributing to the concerted revitalization efforts of the municipality or county (as applicable) (7 points); or

(III) the proposed Development Site is not located within a Qualified Census Tract and does not have a letter described in subclause (II) of this clause (5 points).

(B) For Developments located in a Rural Area the Rehabilitation, or demolition and Reconstruction, of a Development in a rural area that has been leased and occupied at 85% or greater for the six months preceding Application by low income households and which was initially constructed 25 or more years prior to Application submission as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program. The occupancy percentage will not include Units that cannot be occupied due to needed repairs, as confirmed by the SCR or CNA. Demolition and relocation of units must be determined locally to be necessary to comply with the Affirmatively Furthering Fair Housing Rule, or if necessary to create an acceptable distance from Undesirable Site Features or Neighborhood Risk Factors. (7 points)

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) To qualify for points, a 15-year pro forma itemizing all projected income including Unit rental rate assumptions, operating expenses and debt service, and specifying the underlying growth assumptions and reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted. The pro forma must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed Third Party permanent

lender. In addition to the signed pro forma, a lender approval letter must be submitted. An acceptable form of lender approval letter may be obtained in the Uniform Multifamily Application Templates. Scoring will be awarded as follows:

(A) If the letter evidences review of the Development alone it will receive twenty-four (24) points; or

(B) If the letter is from the Third Party permanent lender and evidences review of the Development and the Principals, it will receive twenty-six (26) points; or

(C) If the Development is Supportive Housing and meets the requirements of §11.1(d)(12)(E)(i) of this chapter, it will receive twenty-six (26) points; or

(D) If the Development is part of the USDA set-aside and meets the requirements of §11.5(2) of this chapter and the letter is from the Third Party construction lender, and evidences review of the Development and the Principals, it will receive twenty-six (26) points; or

(E) If the Department is the only permanent lender, and the Application includes the evaluation of the Request for Preliminary Determination submitted under §11.8(d) of this chapter, it will receive twenty-six (26) points.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) For the purposes of this scoring item, Eligible Building Costs will be defined as Building Costs voluntarily included in Eligible Basis for the purposes of determining a Housing Credit Allocation. Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and voluntary Eligible Hard Costs will include general contractor overhead, profit, and general requirements. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule. If the proposed Development is a Supportive Housing Development, the NRA will include Common Area up to 75 square feet per Unit, of which at least 50 square feet will be conditioned.

(A) A high cost development is a Development that meets one or more of the following conditions:

(i) the Development is elevator served, meaning it is either an Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors;

(ii) the Development is more than 75% single family design;

(iii) the Development is Supportive Housing; or

(iv) the Development Site qualifies for a minimum of five (5) points under subsection (c)(4)(A) and (B) of this section, related to Opportunity Index, and is located in an Urban Area.

(B) Applications proposing New Construction or Reconstruction or Adaptive Reuse will be eligible for twelve (12) points if one of the following conditions is met:

(i) the voluntary Eligible Building Cost per square foot is less than \$82.67 per square foot;

(ii) the voluntary Eligible Building Cost per square foot is less than \$88.58 per square foot, and the Development meets the definition of a high cost development;

(iii) the voluntary Eligible Hard Cost per square foot is less than \$106.29 per square foot; or

(iv) the voluntary Eligible Hard Cost per square foot is less than \$118.10 per square foot, and the Development meets the definition of high cost development.

(C) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

(i) the voluntary Eligible Building Cost per square foot is less than \$84.36 per square foot;

(ii) the voluntary Eligible Building Cost per square foot is less than \$94.48 per square foot, and the Development meets the definition of a high cost development;

(iii) the voluntary Eligible Hard Cost per square foot is less than \$112.19 per square foot; or

(iv) the voluntary Eligible Hard Cost per square foot is less than \$124.01 per square foot, and the Development meets the definition of high cost development.

(D) Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:

(i) the voluntary Eligible Building Cost is less than \$106.29 per square foot; or

(ii) the voluntary Eligible Hard Cost is less than \$129.91 per square foot.

(E) Applications proposing Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than \$118.10 per square foot; or

(ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than \$153.53 per square foot, located in an Urban Area, and that qualify for 5 or more points under subsection (c)(4)(A) and (B) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than \$153.53 per square foot.

(3) Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted by the Pre-Application Final Delivery Date. Applications that meet all of the requirements described in subparagraphs (A) - (H) of this paragraph will qualify for six (6) points:

(A) The total number of Units does not increase by more than 10% from pre-application to Application;

(B) The designation of the proposed Development as Rural or Urban remains the same;

(C) The proposed Development serves the same Target Population;

(D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, or Rural);

(E) The Application final score (inclusive of only scoring items reflected on the self-score form) does not vary by more than four (4) points from what was reflected in the pre-application self-score;

(F) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application. The site at full Application may not require notification to any person or entity not required to have been notified at pre-application;

(G) The Development Site does not have the following Neighborhood Risk Factors as described in §11.101(a)(3) that were not disclosed with the pre-application:

(i) the Development Site is located in a census tract (or for any adjacent census tract with a boundary less than 500 feet from the proposed Development Site that is not separated from the Development Site by a natural barrier such as a river or lake, or an intervening restricted area, such as a military installation) in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(ii) The Development Site is located within the attendance zone of an elementary school, a middle school or a high school that has a TEA Accountability Rating of D for the most recent year available prior to Application and an Improvement Required Rating for the most recent available year preceding or a TEA Accountability Rating of F for the most recent year available prior to Application and a Met Standard Rating by the Texas Education Agency for the most recent available year preceding; and

(H) The pre-application met all applicable requirements.

(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A) An Application may qualify to receive up to three (3) points if at least 5% of the total Units are restricted to serve households at or below 30% of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) - (iv) of this subparagraph:

(i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 9% of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

(ii) if the Housing Tax Credit funding request is less than 9% of the Total Housing Development Cost (3 points); or

(iii) if the Housing Tax Credit funding request is less than 10% of the Total Housing Development Cost (2 points); or

(iv) if the Housing Tax Credit funding request is less than 11% of the Total Housing Development Cost (1 point).

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50% of the Developer Fee can be deferred. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

(5) Extended Affordability. (§§2306.6725(a)(5) and (7); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and

42(m)(1)(B)(ii)(II) An Application may qualify to receive up to four (4) points for this item.

(A) Development Owners that agree to extend the Affordability Period for a Development to 45 years total. (4 points)

(B) Development Owners that agree to extend the Affordability Period for a Development to 40 years total. (3 points)

(C) Development Owners that agree to extend the Affordability Period for a Development to 35 years total. (2 points)

(6) Historic Preservation. (§2306.6725(a)(6); §42(m)(1)(C)(x)) An Application may qualify to receive five (5) points if at least 75% of the residential Units shall reside within the Certified Historic Structure. The Development must receive historic tax credits before or by the issuance of Forms 8609. The Application must include either documentation from the Texas Historical Commission that the Property is currently a Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status and evidence that the Texas Historic Commission received the request for determination of preliminary eligibility and supporting information on or before February 1 of the current year (5 points).

(7) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)). An Application may receive points under subparagraphs (A) or (B) of this paragraph.

(A) An Application may qualify to receive (1 point) for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with Tex. Gov't Code, §2306.6726 and the Department's rules including §10.407 of this title (relating to Right of First Refusal) and §10.408 of this title (relating to Qualified Contract Requirements).

(B) The Development at the time of LURA execution is single family detached homes on separate lots or is organized as condominiums under Chapter 81 or 82 of the Texas Property Code and commits to offer a right of first refusal to tenants of the property to purchase the dwelling at the end of the Compliance Period. A de minimus amount of a participating tenant's rent may be attributed to the purchase of a Unit. Such commitment will be reflected in the LURA for the Development. The Applicant must provide a description of how they will implement the 'rent-to-own' activity, how they will make tenants aware of the opportunity, and how they will implement the right at the end of the Compliance Period. Such a Development may not be layered with National Housing Trust Funds. §42(m)(1)(C)(viii). (1 point)

(8) Funding Request Amount. The Application requests no more than 100% of the amount of LIHTC available within the subregion or set-aside as determined by the regional allocation formula on or before December 1, 2021. (1 point)

(f) Factors Affecting Scoring and Eligibility in current and future Application Rounds. Staff may recommend to the Board and the Board may find that an Applicant or Affiliate should be ineligible to compete in the following year's competitive Application Round or that it should be assigned a penalty deduction in the following year's competitive Application Round of no more than two points for each submitted Application (Tex. Gov't Code §2306.6710(b)(2)) because it meets the conditions for any of the items listed in paragraphs (1) - (4) of this subsection. For those items pertaining to non-statutory deadlines, an exception to the penalty may be made if the Board or Executive Director, as applicable, makes an affirmative finding setting forth that the need for an extension of the deadline was beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of deduction

by the Board must include notice from the Department to the affected party not less than 14 days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point deductions. The Executive Director may make a determination that the matter does not warrant point deduction only for paragraph (1) of this subsection. (§2306.6710(b)(2)) Any deductions assessed by the Board for paragraphs (1), (2), (3), or (4) of this subsection based on a Housing Tax Credit Commitment from a preceding Application round will be attributable to the Applicant or Affiliate of an Application submitted in the Application round referenced above.

(1) If the Applicant or Affiliate failed to meet the original Carryover submission or 10% Test deadline(s) or has requested an extension of the Carryover submission deadline or the 10% Test deadline (relating to either submission or expenditure).

(2) If the Applicant or Affiliate failed to meet the federal commitment or expenditure requirements, deadlines to enter into a Contract or close a Direct Loan, or did not meet benchmarks of their Contract with the Department.

(3) If the Applicant or Affiliate, in the Competitive HTC round immediately preceding the current round, failed to meet the deadline to both close financing and provide evidence of an executed construction contract under subsection (c)(8) of this section (related to Readiness to proceed in disaster impacted counties).

(4) If the Developer or Principal of the Applicant has violated or violates the Adherence to Obligations.

§11.10. Third Party Request for Administrative Deficiency for Competitive HTC Applications.

(a) The purpose of the Third Party Request for Administrative Deficiency (RFAD) process is to allow an unrelated person or entity to bring new, material information about an Application to staff's attention. Such Person may request staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency. While an Administrative Deficiency may be issued as the result of an RFAD, not all RFADs will result in an Administrative Deficiency being issued.

(b) Staff will consider each RFAD received and proceed as it deems appropriate under the applicable rules including, if the Application in question has a noncompetitive score relative to other Applications in the same Set-Aside or subregion or will not be eligible for an award through the collapse as outlined in §11.6(3) of this chapter (related to Competitive HTC Allocation Process), not reviewing the matter further.

(c) If the assertion(s) in the RFAD describe matters that are part of the Application review process, and the RFAD does not contain information not present in the Application, staff will not review or act on it.

(d) The RFAD and any testimony presented to the Board regarding the result of an RFAD may not be used to appeal staff decisions regarding competing Applications (§2306.6715(b)). Any RFAD that questions a staff decision regarding staff's scoring of an Application filed by another Applicant will be disregarded.

(e) Requestors must provide, at the time of filing the request all information that the requestor offers in support of the deficiency. A copy of the request and supporting information must be provided by the requestor directly to the Applicant at the same time it is provided to the Department. Requestors must provide sufficient credible evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation

will not be considered. An RFAD that expresses the requestor's opinion will not be considered.

(f) Staff shall provide to the Board a written report summarizing each third party request for administrative deficiency and the manner in which it was addressed. Interested persons may provide testimony on this report before the Board takes any formal action to accept the report. When the Board receives a report on the disposition of RFADs it may, for any staff disposition contained in the report, change the conclusion if it believes the change is necessary to bring the result into compliance with applicable laws and rules as construed by the Board; or if based on public testimony, it believes staff's conclusion should be revisited, it may remand the RFAD to staff for further consideration, which may result in a reaffirmation, reversal, or modification.

(g) The results of a RFAD may not be appealed by the requestor, and testimony to the Board arguing staff's determination will not be considered unless the requestor can show that staff failed to follow the applicable rule.

(h) A scoring notice or termination notice that results from a RFAD may be appealed by the Applicant as further described in §11.902 of this chapter, relating to Appeals Process.

(i) Information received after the RFAD deadline will not be considered by staff or presented to the Board unless the information is of such a matter as to warrant a termination notice.

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 December 3, 2021.

TRD-202104795
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: September 17, 2021
For further information, please call: (512) 475-1762



SUBCHAPTER B. SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS

10 TAC §11.101

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

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

§11.101. Site and Development Requirements and Restrictions.

(a) Site Requirements and Restrictions. The purpose of this section is to identify specific requirements and restrictions related to a Development Site seeking multifamily funding or assistance from the Department.

(1) Floodplain. New Construction or Reconstruction Developments located within a 100 year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site in full compliance with the National Flood Protection Act and all applicable federal and state statutory and

regulatory requirements. The Applicant will have to use floodplain maps and comply with regulation as they exist at the time of commencement of construction. Even if not required by such provisions, the Site must be developed so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain. If there are more stringent federal or local requirements they must also be met. Applicants requesting NHTF funds from the Department must also meet the federal environmental provisions under 24 CFR §93.301(f)(1)(vi). Applicants requesting HOME or NSP1 PI funds from the Department must meet the federal environmental provisions under 24 CFR Part 58, as in effect at the time of execution of the Contract between the Department and the Owner. If no FEMA Flood Insurance Rate Maps are available for the proposed Development Site, flood zone documentation must be provided from the local government with jurisdiction identifying the 100 year floodplain. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from HUD or USDA are exempt from this requirement, to the extent NHTF is not being requested from the Department. All Developments located within a 100 year floodplain must state in the Tenant Rights and Resource Guide that part or all of the Development Site is located in a floodplain, and that it is encouraged that they consider getting appropriate insurance or take necessary precautions. However, where existing and ongoing federal assistance is not applicable such Rehabilitation (excluding Reconstruction) Developments will be allowed in the 100 year floodplain provided the local government has undertaken and can substantiate sufficient mitigation efforts and such documentation is submitted in the Application or the existing structures meet the requirements that are applicable for New Construction or Reconstruction Developments, as certified to by a Third Party engineer.

(2) Undesirable Site Features. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs (VA) may be granted an exemption; however, depending on the undesirable site feature(s) staff may recommend mitigation still be provided as appropriate. Such an exemption must be requested at the time of or prior to the filing of an Application. Historic Developments that would otherwise qualify under §11.9(c)(6) of this chapter (related to Criteria promoting the efficient use of limited resources and applicant accountability) may be granted an exemption, and such exemption must be requested at the time of or prior to the filing of an Application. The distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the undesirable feature, unless otherwise noted below. Where there is a local ordinance that specifies the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distances noted below, then such smaller distances may be used and documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. Pre-existing zoning does not meet the requirement for a local ordinance. If a state or federal cognizant agency would require a new facility under its jurisdiction to have a minimum separation from housing, the Department will defer to that agency and require the same separation for a new housing facility near an existing regulated or registered facility. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (L) of this paragraph, staff may issue a Deficiency. Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Ap-

licant may submit a request for pre-determination at pre-application or for Tax-Exempt Bond Developments utilizing a local issuer a request for a pre-determination may be submitted prior to Application submission. An Applicant should understand that any determination made by staff or the Board at that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the Undesirable Site Features become available while the Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated by staff and may result in deficiency or termination. The following are Undesirable Site Features:

(A) Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Texas Transportation Code §396.001;

(B) Development Sites located within 300 feet of a solid waste facility or sanitary landfill facility or illegal dumping sites (as such dumping sites are identified by the local municipality);

(C) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code §243.002, or as zoned, licensed and regulated as such by the local municipality;

(D) Development Sites in which any of the buildings or designated recreational areas (including pools), excluding parking areas, are to be located within 100 feet of the nearest line or structural element of any overhead high voltage transmission line, support structures for high voltage transmission lines, or other similar structures. This does not apply to local service electric lines and poles;

(E) Development Sites located within 500 feet of active railroad tracks, measured from the closest rail to the boundary of the Development Site, unless:

(i) the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone covering the area within 500 feet of the Development Site;

(ii) the Applicant has engaged a qualified Third Party to perform a noise assessment and the Applicant commits to perform sound mitigation in accordance with HUD standards as if they were directly applicable to the Development; or

(iii) the railroad in question is commuter or light rail;

(F) Development Sites located within 500 feet of heavy industry (i.e. facilities that require extensive use of land and machinery, produce high levels of external noise such as manufacturing plants, or maintains fuel storage facilities (excluding gas stations);

(G) Development Sites located within 10 miles of a nuclear plant;

(H) Development Sites in which the buildings are located within the accident potential zones or the runway clear zones of any airport;

(I) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids or Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance (PIPA);

(J) Development Sites located within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily;

(K) Development Sites that are located in a Clear Zone, any Accident Potential Zone, or within any Noise Contour of 65 decibels or greater, as reflected in a Joint Land Use Study for any military Installation, except that if the Development Site is located in a Noise Contour between 65 and 70 decibels, the Development Site will not be considered to have an Undesirable Site Feature if the Applicant has engaged a qualified Third Party to perform a noise assessment and the Applicant commits to perform sound mitigation in accordance with HUD standards as if they were directly applicable to the Development; or

(L) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents or render the Site inappropriate for housing use and which cannot be adequately mitigated. If staff believe that a Site should be deemed unacceptable under this provision due to information that was not included in the Application, it will provide the Applicant with written notice and an opportunity to respond.

(3) Neighborhood Risk Factors.

(A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. For Competitive HTC Applications, an Applicant must disclose at pre-application as required by §11.8(b) of this chapter (relating to Pre-Application Requirements (Competitive HTC Only)). Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraphs (C) and (D) of this paragraph at pre-application or for Tax-Exempt Bond Developments utilizing a local issuer a request for a pre-determination may be submitted prior to Application submission. An Applicant should understand that any determination made by staff or the Board at that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the Neighborhood Risk Factors become available while the Tax-Exempt Bond Development or Direct Loan only Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated by staff and may result in staff issuing a Deficiency. Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, staff will issue a Material Deficiency. An Applicant's own non-disclosure is not appealable as such appeal is in direct conflict with certifications made in the Application and within the control of the Applicant. The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and include, where applicable, a review as described in subparagraph (C) of this paragraph. Mitigation to be considered by staff, including those allowed in subparagraph (C) of this paragraph, are identified in subparagraph (D) of this paragraph. Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility.

(B) The Neighborhood Risk Factors include those noted in clauses (i) - (iv) of this subparagraph and additional information as applicable to the neighborhood risk factor(s) disclosed as provided in subparagraphs (C) and (D) of this paragraph must be submitted in the Application. In order to be considered an eligible Site despite the presence of Neighborhood Risk Factors, an Applicant must demonstrate actions being taken that would lead staff to conclude that there is a high probability and reasonable expectation the risk

factor will be sufficiently mitigated or significantly improved prior to placement in service and that the risk factor demonstrates a positive trend and continued improvement. Conclusions for such reasonable expectation may need to be affirmed by an industry professional, as appropriate, and may be dependent upon the severity of the Neighborhood Risk Factor disclosed.

(i) The Development Site is located within a census tract that has a poverty rate above 40% for individuals (or 55% for Developments in regions 11 and 13).

(ii) The Development Site is located in a census tract (or for any adjacent census tract with a boundary less than 500 feet from the proposed Development Site that is not separated from the Development Site by a natural barrier such as a river or lake, or an intervening restricted area, such as a military installation) in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(iii) The Development Site is located within 1,000 feet (measured from nearest boundary of the Site to the nearest boundary of blighted structure) of multiple vacant structures that have fallen into such significant disrepair, overgrowth, or vandalism that they would commonly be regarded as blighted or abandoned.

(iv) The Development Site is located within the attendance zone of an elementary school, a middle school or a high school that has a TEA Accountability Rating of D for the most recent year available prior to Application and an Improvement Required Rating for the most recent available year preceding or a TEA Accountability Rating of F for the most recent year available prior to Application and a Met Standard Rating by the Texas Education Agency for the most recent available year preceding. In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. Schools with an application process for admittance, limited enrollment or other requirements that may prevent a child from attending will not be considered as the closest school or the school which attendance zone contains the site. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. Sixth grade centers will be considered as part of the middle school rating. Elderly Developments, Developments encumbered by a TDHCA LURA on the first day of the Application Acceptance Period or date the pre-application is submitted (if applicable), and Supportive Housing SRO Developments or Supportive Housing Developments where all Units are Efficiency Units are exempt and are not required to provide mitigation for this subparagraph, but are still required to provide rating information in the Application and disclose the presence of the Neighborhood Risk Factor.

(C) Should any of the neighborhood risk factors described in clauses (ii) - (iv) of subparagraph (B) of this paragraph exist, the Applicant must submit the Neighborhood Risk Factors Report that contains the information described in clauses (i) - (viii) of this subparagraph, if such information pertains to the Neighborhood Risk

Factor(s) disclosed, and mitigation pursuant to subparagraph (D) of this paragraph so staff may conduct a further Development Site and neighborhood review. The Neighborhood Risk Factors Report cannot be supplemented or modified unless requested by staff through the deficiency process. Due to TEA not releasing Accountability Ratings for the 2020-2021 school year as a result of COVID-19, mitigation for schools as described in subparagraphs (B) - (D) of this paragraph is not required for Applications submitted in 2022. The information required includes:

(i) a determination regarding neighborhood boundaries, which will be based on the review of a combination of natural and manmade physical features (rivers, highways, etc.), apparent changes in land use, the Primary Market Area as defined in the Market Analysis, census tract or municipal boundaries, and information obtained from any Site visits;

(ii) an assessment of general land use in the neighborhood, including comment on the prevalence of residential uses;

(iii) an assessment concerning any of the features reflected in paragraph (2) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (2) of this subsection;

(iv) an assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the Primary Market Area, including comment on concentration based on the size of the Primary Market Area;

(v) an assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located;

(vi) an assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy;

(vii) A copy of the TEA Accountability Rating Report for each of the schools in the attendance zone containing the Development that received a TEA Accountability Rating of D for the most recent year available prior to Application and an Improvement Required Rating for the most recent available year preceding or a TEA Accountability Rating of F for the most recent year available prior to Application and a Met Standard Rating by the Texas Education Agency for the most recent available year preceding, along with a discussion of performance indicators and what progress has been made over the prior year, and progress relating to the goals and objectives identified in the campus improvement plan or turnaround plan pursuant to §39.107 of the Texas Education Code in effect. The actual campus improvement plan does not need to be submitted unless there is an update to the plan or if such update is not available, information from a school official that speaks to progress made under the plan as further indicated under subparagraph (D)(iv) of this paragraph; and

(viii) Any additional information necessary to complete an assessment of the Development Site, as requested by staff.

(D) Information regarding mitigation of neighborhood risk factors should be relevant to the risk factors that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application, and should include the measures described in clauses (i) - (iv) of this subparagraph or such other mitigation as the Applicant determines appropriate to support a finding of eligibility. If staff determines that the Development Site cannot be found eligible and the Applicant appeals that decision to the Board, the Applicant may not present new information at the Board meeting. In addition

to those measures described herein, documentation from the local municipality may also be submitted stating the Development is consistent with their obligation to affirmatively further fair housing. Due to TEA not releasing Accountability Ratings for the 2020-2021 school year as a result of COVID-19, mitigation for schools as described in subparagraphs (C) and (D) of this paragraph is not required for Applications submitted in 2022.

(i) Mitigation for Developments in a census tract that has a poverty rate that exceeds 40% may include a resolution from the Governing Body of the appropriate municipality or county containing the Development, acknowledging the high poverty rate and authorizing the Development to move forward. A Neighborhood Risk Factors Report is not required to be submitted, the resolution alone will suffice. If the Development is located in the ETJ, the resolution would need to come from the county.

(ii) Evidence by the most qualified person that the data and evidence establish that there is a reasonable basis to proceed on the belief that the crime data shows, or will show, a favorable trend such that within the next two years Part I violent crime for that location is expected to be less than 18 per 1,000 persons or the data and evidence reveal that the data reported on neighborhoodscout.com does not accurately reflect the true nature of what is occurring and what is actually occurring does not rise to the level to cause a concern to the Board over the level of Part I violent crime for the location. The data and evidence may be based on violent crime data from the city's police department or county sheriff's department, as applicable based on the location of the Development, for the police beat or patrol area within which the Development Site is located, based on the population of the police beat or patrol area that yields a crime rate below the threshold indicated in this section or that would yield a crime rate below the threshold indicated in this section by the time the Development is placed into service. The instances of violent crimes within the police beat or patrol area that encompass the census tract, calculated based on the population of the census tract, may also be used. The data must include incidents reported during the entire calendar year previous to the year of Application. Violent crimes reported through the date of Application submission may be requested by staff as part of the assessment performed under subparagraph (C) of this paragraph. A written statement from the most qualified person (i.e. Chief of Police or Sheriff (as applicable) or the police officer/detective for the police beat or patrol area containing the proposed Development Site), including a description of efforts by such enforcement agency addressing issues of crime and the results of their efforts must be provided, and depending on the data provided by the Applicant, such written statement may be required, as determined by staff. It is expected that such written statement would also speak to whether there is a reasonable expectation that based on the efforts underway there is crime data that reflects a favorable downward trend in crime rates. For Rehabilitation or Reconstruction Developments, to the extent that the high level of criminal activity is concentrated at the Development Site, documentation may be submitted to indicate such issue(s) could be remedied by the proposed Development. Evidence of such remediation should go beyond what would be considered a typical scope of work and should include a security plan, partnerships with external agencies, or other efforts to be implemented that would deter criminal activity. Information on whether such security features have been successful at any of the Applicant's existing properties should also be submitted, if applicable.

(iii) Evidence of mitigation efforts to address blight or abandonment may include new construction in the area already underway that evidences public or private investment. Acceptable mitigation to address extensive blight should include a plan, whereby it is contemplated such blight or infestation will have been remediated within no more than two years from the date of the award and that a re-

sponsible party will use the blighted property in a manner that complies with local ordinances. In instances where blight exists but may only include a few properties, mitigation efforts could include partnerships with local agencies to engage in community-wide clean-up efforts, or other efforts to address the overall condition of the neighborhood.

(iv) Evidence of mitigation for each of the schools in the attendance zone that has a TEA Accountability Rating of D for the most recent year available prior to Application and an Improvement Required Rating for the most recent available year preceding or a TEA Accountability Rating of F for the most recent year available prior to Application and a Met Standard Rating by the Texas Education Agency for the most recent available year preceding may include satisfying the requirements of subclauses (I) - (III) of this clause.

(I) Documentation from a person authorized to speak on behalf of the school district with oversight of the school in question that indicates the specific plans in place and current progress towards meeting the goals and performance objectives identified in the Campus Improvement Plan and in restoring the school(s) to an acceptable rating status. The documentation should include actual data from progress already made under such plan(s) to date demonstrating favorable trends and should speak to the authorized persons assessment that the plan(s) and the data supports a reasonable conclusion that the school(s) will have an acceptable rating by the time the proposed Development places into service. The letter may, to the extent applicable, identify the efforts that have been undertaken to increase student performance, decrease mobility rate, benchmarks for re-evaluation, increased parental involvement, plans for school expansion, plans to implement early childhood education, and long-term trends that would point toward their achieving an A, B, or C Rating by the time the Development is placed in service. The letter from such education professional should also speak to why they believe the staff tasked with carrying out the plan will be successful at making progress towards acceptable student performance considering that prior Campus Improvement Plans were unable to do so. Such assessment could include whether the team involved has employed similar strategies at prior schools and were successful.

(II) The Applicant provides evidence that it has entered into agreement with the applicable school district or elementary school that has not achieved a rating of A, B, or C, a Head Start provider with capacity in their charter, or a charter school provider to provide suitable and appropriately designed space on-site for the provision of an early childhood pre-K program at no cost to residents of the proposed Development. Suitable and appropriately designed space includes at a minimum a bathroom and large closet in the classroom space, appropriate design considerations made for the safety and security of the students, and satisfaction of the requirements of the applicable building code for school facilities. Such provision must be made available to the school or provider, as applicable, until the later of the elementary school that had not achieved a rating of A, B or C, or the school or provider electing to end the agreement. If a charter school or Head Start provider is the provider in the named agreement and that provider becomes defunct or no longer elects to participate in the agreement prior to the achievement of a rating of A, B or C, the Development Owner must document their attempt to identify an alternate agreement with one of the other acceptable provider choices. However if the contracted provider is the school district or the school who is lacking the A, B or C rating and they elect to end the agreement prior to the achievement of such rating, the Development will not be considered to be in violation of its commitment to the Department.

(III) The Applicant has committed that until such time the school(s) achieves a rating of A, B, or C it will operate an after school learning center that offers at a minimum 15 hours of weekly, or-

ganized, on-site educational services provided middle and high school children by a dedicated service coordinator or Third-Party entity which includes at a minimum: homework assistance, tutoring, test preparation, assessment of skill deficiencies and provision of assistance in remediation of those deficiencies (e.g., if reading below grade level is identified for a student, tutoring in reading skills is provided), research and writing skills, providing a consistent weekly schedule, provides for the ability to tailor assistance to the age and education levels of those in attendance, and other evidence-based approaches and activities that are designed to augment classroom performance. Up to 20% of the activities offered may also include other enrichment activities such as music, art, or technology.

(E) In order for the Development Site to be found eligible, including when mitigation described in subparagraph (D) of this paragraph is not provided in the Application, despite the existence of one or more Neighborhood Risk Factors, the Applicant must explain how the use of Department funds at the Development Site is consistent with the goals in clauses (i) - (iii) of this subparagraph. If the Board grants an Appeal of staff's determination of Site eligibility, the Board shall document the reasons for a determination of eligibility.

(i) Preservation of existing occupied affordable housing units to ensure they are safe and suitable or the new construction of high quality affordable housing units that are subject to federal rent or income restrictions.

(ii) Determination that the risk factor(s) that has been disclosed are not of such a nature or severity that should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph.

(iii) No mitigation was provided, or in staff's determination the mitigation was considered unsatisfactory and the Applicant has requested a waiver of the presence of Neighborhood Risk Factors on the basis that the Development is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order and such documentation is submitted with the disclosure.

(4) Site and Neighborhood Standards (Direct Loan only). A New Construction Development requesting federal funds must meet the Site and Neighborhood Standards in 24 CFR §983.57(e)(2) or (3). A Development requesting NHTF funds that meets the federal definition of reconstruction in 24 CFR §93.2 must also meet these standards.

(b) Development Requirements and Restrictions. The purpose of this subsection is to identify specific restrictions on a proposed Development requesting multifamily funding by the Department.

(1) Ineligible Developments. A Development shall be ineligible if any of the criteria in subparagraphs (A) - (C) of this paragraph apply.

(A) General Ineligibility Criteria include:

(i) Developments such as hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities that are usually classified as transient housing (as provided in Code §42(i)(3)(B)(iii) and (iv));

(ii) any Development with any building(s) with four or more stories that does not include an elevator. Developments where topography or other characteristics of the Site require basement splits such that a tenant will not have to climb more than two stories to fully utilize their Unit and all Development amenities, will not require an elevator;

(iii) a Housing Tax Credit Development that provides on-site continual or frequent nursing, medical, or psychiatric services. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living;

(iv) a Development that proposes population limitations that violate §1.15 of this title (relating to Integrated Housing Rule);

(v) a Development seeking Housing Tax Credits that will not meet the general public use requirement under Treasury Regulation, §1.42-9 or a documented exception thereto; or

(vi) a Development utilizing a Direct Loan that is subject to the Housing and Community Development Act, 104(d) requirements and proposing Rehabilitation or Reconstruction, if the Applicant is not proposing at least the one-for-one replacement of the existing Unit mix. Adding additional units would not violate this provision.

(B) Ineligibility of Elderly Developments include:

(i) any Elderly Development of two stories or more that does not include elevator service for any Units or Common Areas above the ground floor;

(ii) any Elderly Development with any Units having more than two Bedrooms with the exception of up to three employee Units reserved for the use of the manager, maintenance, or security officer. These employee Units must be specifically designated as such; or

(iii) any Elderly Development (including Elderly in a Rural Area) proposing more than 70% two- Bedroom Units.

(C) Ineligibility of Developments within Certain School Attendance Zones. Any Development that falls within the attendance zone of a school that has a TEA Accountability Rating of F for the most recent year available prior to Application and an Improvement Required Rating for the most recent available year preceding is ineligible with no opportunity for mitigation. Developments that are encumbered by a TDHCA LURA on the first day of the Application Acceptance Period or at the time of Pre-application (if applicable), an Elderly Development, or a Supportive Housing SRO Development or Supportive Housing Development where all Units are Efficiency Units are exempt.

(2) Development Size Limitations. The minimum Development size is 16 Units. Competitive Housing Tax Credit or Multifamily Direct Loan-only Developments involving New Construction or Adaptive Reuse in Rural Areas are limited to a maximum of 80 total Units. Tax-Exempt Bond Developments involving New Construction or Adaptive Reuse in a Rural Area must meet the Development size limitation and corresponding capture rate requirements in §11.302(i)(1)(C) of this chapter (related to Feasibility Conclusion). Rehabilitation Developments do not have a limitation as to the maximum number of Units.

(3) Rehabilitation Costs. Developments involving Rehabilitation must establish a scope of work that will substantially improve the interiors of all units and exterior deferred maintenance, and meet the minimum Rehabilitation amounts identified in subparagraphs (A) - (C) of this paragraph. Such amounts must be maintained through the issuance of IRS Forms 8609. For Developments with multiple buildings that have varying placed in service dates, the earliest date will be used for purposes of establishing the minimum Rehabilitation amounts. Applications must meet the Rehabilitation amounts identified in subparagraphs (A), (B) or (C) of this paragraph. For Tax-Exempt Bond Developments that include existing USDA funding that is continuing

or new USDA funding, staff may consider the cost standard under subparagraph (A) of this paragraph on a case-by-case basis.

(A) For Housing Tax Credit Developments under the USDA Set-Aside the Rehabilitation will involve at least \$25,000 per Unit in Building Costs and Site Work.

(B) For Tax-Exempt Bond Developments, less than 20 years old, based on the placed in service date, the Rehabilitation will involve at least \$20,000 per Unit in Building Costs and Site Work. If such Developments are greater than 20 years old, based on the placed in service date, the Rehabilitation will involve at least \$30,000 per Unit in Building Costs and Site Work.

(C) For all other Developments, the Rehabilitation will involve at least \$30,000 per Unit in Building Costs and Site Work.

(4) **Mandatory Development Amenities.** (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must include all of the amenities in subparagraphs (A) - (N) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (D) - (N) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), or (M) of this paragraph; however, access must be provided to a comparable amenity in a Common Area. All amenities listed below must be at no charge to the residents. Residents must be provided written notice of the applicable required amenities for the Development. The Board may waive one or more of the requirements of this paragraph for Developments that will include Historic Tax Credits, with evidence submitted with the request for amendment that the amenity has not been approved by the Texas Historical Commission or National Park Service, as applicable. Applicants for Multifamily Direct Loans should be aware that certain amenities are not eligible for Direct Loan funding, including without limitation, detached community spaces, furnishings, swimming pools, athletic courts, and playgrounds, as more fully described at §13.3 of this title (relating to General Loan Requirements). Amenities include:

(A) All Bedrooms, the dining room and living room in Units must be wired with current cabling technology for data and phone;

(B) Laundry connections;

(C) Exhaust/vent fans (vented to the outside) in the bathrooms;

(D) Screens on all operable windows;

(E) Disposal and Energy-Star or equivalently rated dishwasher (not required for USDA; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit);

(F) Energy-Star or equivalently rated refrigerator;

(G) Oven/Range;

(H) Blinds or window coverings for all windows;

(I) At least one Energy-Star or equivalently rated ceiling fan per Unit;

(J) Energy-Star or equivalently rated lighting in all Units;

(K) All areas of the Unit (excluding exterior storage space on an outdoor patio/balcony) must have heating and air-conditioning;

(L) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be one and a half spaces per Unit for non- Elderly Developments and one

space per Unit for Elderly Developments. The minimum number of required spaces must be available to the tenants at no cost. If parking requirements under local code rely on car sharing or similar arrangements, the LURA will require the Owner to provide the service at no cost to the tenants throughout its term;

(M) Energy-Star or equivalently rated windows (for Rehabilitation Developments, only if windows are planned to be replaced as part of the scope of work); and

(N) Adequate accessible parking spaces consistent with the requirements of the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 FR 29671, the Texas Accessibility Standards, and if covered by the Fair Housing Act, HUD's Fair Housing Act Design Manual.

(5) **Common Amenities.**

(A) All Developments must include sufficient common amenities as described in subparagraph (C) of this paragraph to qualify for at least the minimum number of points required in accordance with clauses (i) - (vi) of this subparagraph:

(i) Developments with 16 to 40 Units must qualify for four (4) points;

(ii) Developments with 41 to 76 Units must qualify for seven (7) points;

(iii) Developments with 77 to 99 Units must qualify for ten (10) points;

(iv) Developments with 100 to 149 Units must qualify for fourteen (14) points;

(v) Developments with 150 to 199 Units must qualify for eighteen (18) points; or

(vi) Developments with 200 or more Units must qualify for twenty-two (22) points.

(B) These points are not associated with any selection criteria points. The amenities must be for the benefit of all residents and made available throughout normal business hours and maintained throughout the Affordability Period. Residents must be provided written notice of the elections made by the Development Owner. If fees or deposits in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the requirement. All amenities must meet all applicable accessibility standards, including those adopted by the Department, and where a specific space or size requirement for a listed amenity is not specified then the amenity must be reasonably adequate based on the Development size. Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the test applied based on the number of Units per individual site and the amenities selected must be distributed proportionately across all sites. A Development composed of non-contiguous single family sites must provide a combination of unit and common amenities to equal the appropriate points under subparagraph (A) of this paragraph for the Development size. In the case of additional phases of a Development any amenities that are anticipated to be shared with the first phase development cannot be claimed for purposes of meeting this requirement for the second phase. The second phase must include enough points to meet this requirement that are provided on the Development Site, regardless of resident access to the amenity in another phase. All amenities must be available to all Units via an accessible route.

(C) The common amenities and respective point values are set out in clauses (i) - (v) of this subparagraph, which are grouped

primarily for organizational purposes. Applicants are not required to select a specific number of amenities from each section. An Applicant can only count an amenity once; therefore combined functions (a library which is part of a community room) will only qualify for points under one category:

(i) Community Space for Resident Supportive Services includes:

(I) Except in Applications where more than 10% of the units in the proposed Development are Supportive Housing SRO Units, an Application may qualify to receive half of the points required under §11.101(b)(5)(A)(i) - (vi) by electing to provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site. To receive the points the Applicant must commit to all of items (-a-) - (-c-) of this subclause.

(-a-) Space and Design. The educational space for the HQ Pre-K program must be provided on the Development Site and must be a suitable and appropriately designed space for educating children that an independent school district or open-enrollment charter school can utilize to establish and operate a HQ Pre-K program. This space includes at a minimum a bathroom and large closet in the classroom space; appropriate design considerations made for the safety and security of the students; including limited and secure ingress and egress to the classroom space; and satisfaction of the requirements of all applicable building codes for school facilities. The Applicant must provide in the Application a copy of the current school facility code requirements applicable to the Development Site and Owner and Architect certifications that they understand the associated space and design requirements reflected in those code requirements. The Application must also include acknowledgement by all lenders, equity providers and partners that the Application includes election of these points.

(-b-) Educational Provider. The Applicant must enter into an agreement, addressing all items as described in subitems (-1-) - (-5-) of this item, and provide evidence of such agreement to the Department on or before submission of the Cost Certification. Lack of evidence of such agreement by the deadline will be cause for rescission of the Carryover Agreement for Competitive HTC Applications.

(-1-) The agreement must be between the Owner and any one of the following: a school district; open-enrollment charter school; or Education Service Center. Private schools and private childcare providers, whether nonprofit or for profit, are not eligible parties, unless the private school or private childcare provider has entered into a partnership with a school district or open-enrollment charter school to provide a HQ Pre-K program in accordance with Texas Education Code Chapter 29, Subchapter E-1.

(-2-) The agreement must reflect that at the Development Site the educational provider will provide a HQ Pre-K program, in accordance with Texas Education Code Chapter 29, Subchapter E-1, at no cost to residents of the proposed Development and that is available for general public use, meaning students other than those residing at the Development may attend.

(-3-) Such agreement must reflect a provision that the option to operate the HQ Pre-K program in the space at the Development Site will continue to be made available to the school or provider until such time as the school or provider wishes to withdraw from the location. This provision will not limit the Owner's right to terminate the agreement for good cause.

(-4-) Such agreement must set forth the responsibility of each party regarding payment of costs to use the space, utility charges, insurance costs, damage to the space or any other

part of the Development, and any other costs that may arise as the result of the operation of the HQ Pre-K program.

(-5-) The agreement must include provision for annual renewal, unless terminated under the provisions of item (-c-) of this subclause.

(-c-) If an education provider who has entered into an agreement becomes defunct or elects to withdraw from the agreement and provision of services at the location, as provided for in subitem (-b-)(-3-) of this subclause, the Owner must notify the Texas Commissioner of Education at least 30 days prior to ending the agreement to seek out any other eligible parties listed in subitem (-b-)(-1-) of this subclause above. If another interested open-enrollment charter school or school district is identified by the Texas Commissioner of Education or the Owner, the Owner must enter into a subsequent agreement with the interested open-enrollment charter school or school district and continue to offer HQ Pre-K services. If another interested provider cannot be identified, and the withdrawing provider certifies to the Department that their reason for ending the agreement is not due to actions of the Owner, the Owner will not be considered to be in violation of its commitment to the Department. If the Owner is not able to find a provider, they must notify the Commissioner annually of the availability of the space.

(II) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for children and selected by the Development Owner. The room(s) devoted to meeting this requirement must equal 15 square feet times the total number of Units, but need not exceed 2,000 square feet in total. This space must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets or cabinetry (4 points).

(III) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for adults and selected by the Development Owner. The room(s) devoted to meeting this requirement must equal 10 square feet times the total number of Units, but need not exceed 1,000 square feet in total. This space must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets or cabinetry (2 points).

(IV) Service provider office in addition to leasing offices (1 point).

(ii) Safety amenities include:

(I) Controlled gate access for entrance and exit areas, intended to provide access that is limited to the Development's tenancy (1 point).

(II) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point).

(III) Twenty-four hour, seven days a week monitored camera/security system in each building. Monitoring may be on-site or off-site (2 points).

(IV) Twenty-four hour, seven days a week recorded camera / security system in each building (1 point).

(V) The provision of a courtesy patrol service that, at a minimum, answers after-hour resident phone calls regarding noise and crime concerns or apartment rules violations and that can dispatch to the apartment community a courtesy patrol officer in a timely manner (3 points).

(iii) Health/Fitness/Play amenities include:

(I) Accessible walking/jogging path, equivalent to the perimeter of the Development or a length that reasonably achieves the same result, separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point).

(II) Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 40 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (1 point).

(III) Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 20 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (2 points).

(IV) One Children's Playscape Equipped for five to 12 year olds, or one Tot Lot (2 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, and provide shade and ultraviolet protection. This item can only be selected if subclause (V) of this clause is not selected.

(V) Two Children's Playscapes Equipped for five to 12 year olds, two Tot Lots, or one of each (4 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, and provide shade and ultraviolet protection. This item can only be selected if subclause (IV) of this clause is not selected.

(VI) Horseshoe pit; putting green; shuffleboard court; pool table; ping pong table; or similar equipment in a dedicated location accessible to all residents to play such games (1 point).

(VII) Swimming pool (3 points).

(VIII) Splash pad/water feature play area (1 point).

(IX) Sport Court or field (including, but not limited to, Tennis, Basketball, Volleyball, Soccer or Baseball Field) (2 points).

(iv) Design / Landscaping amenities include:

(I) Full perimeter fencing that contains the parking areas and all amenities (excludes guest or general public parking areas) (2 points).

(II) Enclosed community sun porch or covered community porch/patio (1 point).

(III) Dog Park area that is fully enclosed (the perimeter fencing may be used for part of the enclosure) and intended for tenant owned dogs to run off leash (requires that the Development allow dogs) (1 point).

(IV) Shaded rooftop or structural viewing deck of at least 500 square feet (2 points).

(V) Porte-cochere (1 point).

(VI) Lighted pathways along all accessible routes (1 point).

(VII) a resident-run community garden with annual soil preparation and mulch provided by the Owner and access to water (which may be subject to local water usage restrictions) (1 point).

(v) Community Resources amenities include:

(I) Gazebo, covered pavilion, or pergola with sitting area (seating must be provided) (1 point).

(II) Community laundry room with at least one washer and dryer for every 40 Units (2 points).

(III) Barbecue grill and picnic table with at least one of each for every 50 Units (1 point). Grill must be permanently installed (no portable grills).

(IV) Business center with workstations and seating internet access, 1 printer and at least one scanner which may be integrated with the printer, and either 2 desktop computers or laptops available to check-out upon request (2 points).

(V) Furnished Community room (2 points).

(VI) Library with an accessible sitting area (separate from the community room) (1 point).

(VII) Activity Room stocked with supplies (Arts and Crafts, board games, etc.) (2 points).

(VIII) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points).

(IX) Community Theater Room equipped with a 52 inch or larger screen or projection with surround sound equipment; DVD player or a streaming service at no cost to residents; and seating (3 points).

(X) High-speed Wi-Fi with advanced telecommunications capacity as determined under 47 U.S.C. 1302 or more with coverage throughout the clubhouse or community building (1 point).

(XI) High-speed Wi-Fi with advanced telecommunications capacity as determined under 47 U.S.C. 1302 with coverage throughout the Development (2 points).

(XII) Bicycle parking that allows for, at a minimum, one bicycle for every five Units, within reasonable proximity to each residential building that allows for bicycles to be secured with lock (lock not required to be provided to tenant) (1 point).

(XIII) Package Lockers or secure package room. Automated Package Lockers or secure package room provided at a location within the complex that can be accessed by residents 24/7 and at no charge to the resident. To qualify, there would need to be at least one locker for every eight residential units (2 points).

(XIV) Recycling Service (includes providing a storage location and service for pick-up) (1 point).

(XV) Community car vacuum station (1 point).

(6) Unit Requirements.

(A) Unit Sizes. Developments proposing New Construction or Reconstruction will be required to meet the minimum sizes of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with any selection criteria. Developments proposing Rehabilitation (excluding Reconstruction) or Supportive Housing Developments will not be subject to the requirements of this subparagraph. If the Development involves both Rehabilitation and Reconstruction or New Construction, the Reconstruction

or New Construction Units must meet these requirements. The requirements are:

- (i) five hundred (500) square feet for an Efficiency Unit;
- (ii) six hundred (600) square feet for a one Bedroom Unit;
- (iii) eight hundred (800) square feet for a two Bedroom Unit;
- (iv) one thousand (1,000) square feet for a three Bedroom Unit; and
- (v) one thousand, two-hundred (1,200) square feet for a four Bedroom Unit.

(B) Unit, Development Construction, and Energy and Water Efficiency Features. Housing Tax Credit Applicants may select amenities for the score of an Application under this section, but must maintain the points associated with those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values. Tax-Exempt Bond Developments must include enough amenities to meet a minimum of nine (9) points. Direct Loan Applications not layered with Housing Tax Credits must include enough amenities to meet a minimum of five (5) points. The amenity shall be for every Unit at no extra charge to the tenant. The points selected at Application and corresponding list of amenities will be required to be identified in the LURA, and the points selected at Application must be maintained throughout the Affordability Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments and Supportive Housing Developments will start with a base score of five (5) points. At least two (2) points must be selected from clause (iii), Energy and Water Efficiency Features, of this subparagraph.

- (i) Unit Features include:
 - (I) Covered entries (0.5 point);
 - (II) Nine foot ceilings in living room and all Bedrooms (at minimum) (1 point);
 - (III) Microwave ovens (0.5 point);
 - (IV) Self-cleaning or continuous cleaning ovens (0.5 point);
 - (V) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to Bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the Property site (0.5 point);
 - (VI) Covered patios or covered balconies (0.5 point);
 - (VII) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);
 - (VIII) Built-in (recessed into the wall) shelving unit (0.5 point);
 - (IX) Breakfast Bar (a space, generally between the kitchen and dining area, that includes an area for seating although actual seating such as bar stools does not have to be provided) (0.5 point);
 - (X) Walk-in closet in at least one Bedroom (0.5 point);
 - (XI) 48-inch upper kitchen cabinets (1 point);

- (XII) Kitchen island (0.5 points);
- (XIII) Kitchen pantry with shelving (may include the washer/dryer unit for Rehabilitation Developments only) (0.5 point);
- (XIV) Natural stone or quartz countertops in kitchen and bath (1 point);
- (XV) Double vanity in at least one bathroom (0.5 point); and
- (XVI) Hard floor surfaces in over 50% of unit NRA (0.5 point).
- (ii) Development Construction Features include:
 - (I) Covered parking (may be garages or carports, attached or freestanding) and include at least one covered space per Unit (1.5 points);
 - (II) Thirty year roof (0.5 point);
 - (III) Greater than 30% stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious and metal siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points);
 - (IV) Electric Vehicle Charging Station (0.5 points);
 - (V) An Impact Isolation Class (IIC) rating of at least 55 and a Sound Transmission Class (STC) rating of 60 or higher in all Units, as certified by the architect or engineer of record (3 points); and
 - (VI) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Four (4) points may be selected from only one of the categories described in items (-a) - (-d) of this subclause. If the Development involves scattered sites, there must be green building features incorporated into each site in order to qualify for these points.
 - (-a-) Enterprise Green Communities. The Development must incorporate all mandatory and optional items applicable to the construction type (i.e. New Construction, Rehabilitation, etc.) as provided in the most recent version of the Enterprise Green Communities Criteria found at <http://www.greencommunitiesonline.org>.
 - (-b-) Leadership in Energy and Environmental Design (LEED). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e., Certified, Silver, Gold or Platinum).
 - (-c-) ICC/ASHRAE - 700 National Green Building Standard (NGBS). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NGBS Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).
 - (-d-) 2018 International Green Construction Code.
- (iii) Energy and Water Efficiency Features include:
 - (I) Energy-Star or equivalently rated refrigerator with icemaker (0.5 point);
 - (II) Energy-Star or equivalently rated laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (2 points);

(III) Recessed LED lighting or LED lighting fixtures in kitchen and living areas (1 point);

(IV) Energy-Star or equivalently rated ceiling fans in all Bedrooms (0.5 point);

(V) EPA WaterSense or equivalent qualified toilets in all bathrooms (0.5 point);

(VI) EPA WaterSense or equivalent qualified showerheads and faucets in all bathrooms (0.5 point);

(VII) 15 SEER HVAC, or in Region 13, an efficient evaporative cooling system. For Rehabilitation (excluding Reconstruction) where such systems are not being replaced as part of the scope of work, a radiant barrier in the attic is provided, (1 point);

(VIII) 16 SEER HVAC, for New Construction or Rehabilitation (1.5 points); and

(IX) A rainwater harvesting/collection system or locally approved greywater collection system (0.5 points).

(7) Resident Supportive Services. The resident supportive services include those listed in subparagraphs (A) - (E) of this paragraph, which are grouped primarily for organizational purposes. Applicants are not required to select a specific number of services from each section. Tax Exempt Bond Developments must select a minimum of eight points; Direct Loan Applications not layered with Housing Tax Credits must include enough services to meet a minimum of four points. The points selected and complete list of supportive services will be included in the LURA and the timeframe by which services are offered must be in accordance with §10.619 of this title (relating to Monitoring for Social Services) and maintained throughout the Affordability Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. A Development Owner may be required to substitute such service(s) if requested by staff. Should the QAP in subsequent years provide different services than those listed in subparagraphs (A) - (E) of this paragraph, the Development Owner may request an Amendment as provided in §10.405(a)(2) of this chapter (relating to Amendments and Extensions). The services provided should be those that will directly benefit the Target Population of the Development. Residents must be provided written notice of the elections made by the Development Owner. No fees may be charged to the residents for any of the services, there must be adequate space for the intended services and services offered should be accessible to all (e.g. exercise classes must be offered in a manner that would enable a person with a disability to participate). Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider. Where applicable, the services must be documented by a written agreement with the provider. Unless otherwise noted in a particular clause, courses and services must be offered by an onsite instructor(s).

(A) Transportation Supportive Services include:

(i) shuttle, at least three days a week, to a grocery store and pharmacy or a major, big-box retailer that includes a grocery store and pharmacy, OR a daily shuttle, during the school year, to and from nearby schools not served by a school bus system for children who live at the Development (3.5 points); and

(ii) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point).

(B) Children Supportive Services include:

(i) provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site meeting the requirements of paragraph (5)(C)(i)(I) of this subsection. (Half of the points required under this paragraph); and

(ii) Twelve hours of weekly, organized, on-site services provided to K-12 children by a dedicated service coordinator or third-party entity. Services include after-school and summer care and tutoring, recreational activities, character building programs, mentee opportunities, test preparation, and similar activities that promote the betterment and growth of children and young adults (3.5 points).

(C) Adult Supportive Services include:

(i) Four hours of weekly, organized, on-site classes provided to an adult audience by persons skilled or trained in the subject matter being presented, such as English as a second language classes, computer training, financial literacy courses, health education courses, certification courses, GED preparation classes, resume and interview preparatory classes, general presentations about community services and resources, and any other course, class, or presentation that may equip residents with new skills that they may wish to develop (3.5 points);

(ii) annual income tax preparation (offered by an income tax prep service) or IRS-certified VITA (Volunteer Income Tax Assistance) program (offered by a qualified individual) that also emphasizes how to claim the Earned Income Tax Credit (1 point);

(iii) contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; may include resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation (2 points); and

(iv) external partnerships for provision of weekly substance abuse meetings at the Development Site (1 point).

(D) Health Supportive Services include:

(i) food pantry consisting of an assortment of non-perishable food items and common household items (i.e. laundry detergent, toiletries, etc.) accessible to residents at least on a monthly basis or upon request by a resident. While it is possible that transportation may be provided to a local food bank to meet the requirement of this resident service, the resident must not be required to pay for the items they receive at the food bank (2 points);

(ii) annual health fair provided by a health care professional (1 point);

(iii) weekly exercise classes (offered at times when most residents would be likely to attend) (2 points); and

(iv) contracted onsite occupational or physical therapy services for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points).

(E) Community Supportive Services include:

(i) partnership with local law enforcement or local first responders to provide quarterly on-site social and interactive activities intended to foster relationships with residents (such activities

could include playing sports, having a cook-out, swimming, card games, etc.) (2 points);

(ii) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);

(iii) twice monthly arts, crafts, and other recreational activities (e.g. Book Clubs and creative writing classes) (1 point);

(iv) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, holiday celebrations, etc.) (1 point);

(v) specific service coordination services offered by a qualified Owner or Developer, qualified provider or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (3 points);

(vi) weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc., and quarterly preventative maintenance including light bulb replacement) for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

(vii) any of the programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601, et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1 point);

(viii) a part-time resident services coordinator with a dedicated office space at the Development or a contract with a third-party to provide the equivalent of 15 hours or more of weekly resident supportive services at the Development (2 points); and

(ix) provision, by either the Development Owner or a community partner, of an education tuition- or savings-match program or scholarships to residents who may attend college (2 points).

(8) Development Accessibility Requirements. All Developments must meet all specifications and accessibility requirements as identified in subparagraphs (A) - (F) of this paragraph and any other applicable state or federal rules and requirements. The accessibility requirements are further identified in the Certification of Development Owner as provided in the Application.

(A) The Development shall comply with the accessibility requirements under Federal law and as further defined in Chapter 1, Subchapter B of this title (relating to Accessibility Requirements). (§§2306.6722; 2306.6730).

(B) Regardless of building type, all Units accessed by the ground floor or by elevator (affected units) must comply with the visitability requirements in clauses (i) - (iii) of this subparagraph. Design specifications for each item must comply with the standards of the Fair Housing Act Design Manual. Buildings occupied for residential use on or before March 13, 1991 are exempt from this requirement. If the townhome Units of a Rehabilitation Development do not have a bathroom on the ground floor, the Applicant will not be required to add a bathroom to meet the requirements of clause (iii) of this subparagraph. Visitability requirements include:

(i) All common use facilities must be in compliance with the Fair Housing Design Act Manual;

(ii) To the extent required by the Fair Housing Design Act Manual, there must be an accessible or exempt route from common use facilities to the affected units; and

(iii) Each affected unit must include the features in subclauses (I) - (V) of this clause:

(I) At least one zero-step, accessible entrance;

(II) At least one bathroom or half-bath with toilet and sink on the entry level. The layout of this bathroom or half-bath must comply with one of the specifications set forth in the Fair Housing Act Design Manual;

(III) The bathroom or half-bath must have the appropriate blocking relative to the toilet for the later installation of a grab bar, if ever requested by the tenant of that Unit;

(IV) There must be an accessible route from the entrance to the bathroom or half-bath, and the entrance and bathroom must provide usable width; and

(V) Light switches, electrical outlets, and thermostats on the entry level must be at accessible heights.

(C) The Development Owner is and will remain in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, and the Texas Accessibility Standards. (§2306.257; §2306.6705(7))

(D) All Applications proposing Rehabilitation (including Reconstruction) will be treated as substantial alteration, in accordance with Chapter 1, Subchapter B of this title (relating to Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act).

(E) For all Developments other than Direct Loan Developments, for the purposes of determining the appropriate distribution of accessible Units across Unit Types, assuming all the Units have similar features only the number of Bedrooms and full bathrooms will be used to define the Unit Type, but accessible Units must have an equal or greater square footage than the square footage offered in the smallest non-accessible Unit with the same number of Bedrooms and full bathrooms. For Direct Loan Developments, for purposes of determining the appropriate distribution of accessible Units across Unit Types, the definition of Unit Type will be used.

(F) Alternative methods of calculating the number of accessible Units required in a Development must be approved by the Department prior to award or allocation.

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. APPLICATION SUBMISSION REQUIREMENTS, INELIGIBILITY CRITERIA, BOARD DECISIONS AND WAIVER OF RULES

10 TAC §§11.201 - 11.207

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

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

§11.201. Procedural Requirements for Application Submission.

This subchapter establishes the procedural requirements for Application submission. Only one Application may be submitted for a Development Site in an Application Round. While the Application Acceptance Period is open or prior to the Application deadline, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original pre-application fee (as applicable) that was paid as long as no substantive evaluation was performed by the Department and the re-submitted Application relates to the same Development Site, consistent with §11.9(e)(3) of this chapter (relating to Criteria promoting the efficient use of limited resources and applicant accountability). Applicants are subject to the schedule of fees as set forth in §11.901 of this chapter (relating to Fee Schedule).

(1) General Requirements.

(A) An Applicant requesting funding from the Department must submit an Application in order to be considered for an award. An Application must be complete (including all required exhibits and supporting materials) and submitted by the required program deadline. If an Application, including the corresponding Application fee as described in §11.901 of this chapter, is not submitted to the Department on or before the applicable deadline, the Applicant will be deemed not to have made an Application; provided, however, that errors in the calculation of applicable fees may be cured via an Administrative Deficiency. The deficiency period for curing fee errors will be 5:00 p.m. on the third business day following the date of the deficiency notice and may not be extended. Failure to cure such an error timely will be grounds for termination.

(B) Applying for multifamily funds from the Department is a technical process that must be followed completely. As a result of the competitive nature of some funding sources, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If checks or original Carryover Allocation Agreements are physically delivered to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. All Applications and all related materials are to be delivered electronically pursuant to the Multifamily Programs Procedures Manual. Applicants are strongly encouraged to submit the required items well in advance

of established deadlines. Applicants must ensure that all documents are legible, properly organized and tabbed, and that materials are fully readable by the Department.

(C) The Applicant must timely upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. The PDF copy and Excel copy of the Application must match, if variations exist between the two copies, an Administrative Deficiency will be issued for the Applicant to identify which document to rely on. Each copy must be in a single file and individually bookmarked as further described in the Multifamily Programs Procedures Manual. Additional files required for Application submission outside the Uniform Application must also be uploaded to the secure web transfer server. It is the responsibility of the Applicant to confirm the upload to the Department's secure web transfer server was successful and to do so in advance of the deadline. Where there are instances of computer problems, mystery glitches, etc. that prevent the Application from being received by the Department prior to the deadline the Application may be terminated.

(D) Applications must include materials addressing each and all of the items enumerated in this chapter and other chapters as applicable. If an Applicant does not believe that a specific item should be applied, the Applicant must include, in its place, a statement identifying the required item, stating that it is not being supplied, and a statement as to why the Applicant does not believe it should be required.

(2) Filing of Application for Tax-Exempt Bond Developments. Applications must be submitted to the Department as described in either subparagraph (A) or (B) of this paragraph. Applications will be required to satisfy the requirements of this chapter and applicable Department rules that coincide with the year the Certificate of Reservation is issued. Those Applications that receive a Traditional Carryforward Designation will be subject to the QAP and applicable Department rules in place at the time the Application is received by the Department, unless determined otherwise by staff.

(A) Lottery Applications. At the option of the bond issuer, an Applicant may participate in the TBRB lottery for private activity bond volume cap. Applicants should refer to the TBRB website or discuss with their issuer or TBRB staff, the deadlines regarding lottery participation and the timing for the issuance of the Certificate of Reservation based on lottery results. Depending on the Priority designation of the application filed with TBRB, the Application submission requirements to the Department under clause (i) or (ii) of this subparagraph must be met. For those that participate in the Lottery but are not successful (i.e. a Certificate of Reservation will not be issued in January, but at some other time), the Application may not be submitted until a Certificate of Reservation has been issued (i.e. Priority 3 applications) or TBRB has sent an email stating the application is next in line (i.e. Priority 1 or 2), but the Certificate of Reservation cannot be issued until the Application is submitted.

(i) Priority 1 or 2 applications: If the Certificate of Reservation will be issued in January, the Applicant may submit the complete Application, including all required Third Party Reports, accompanied by the Application Fee described in §11.901 of this chapter as early as the beginning of December, to be tentatively scheduled for the March Board meeting or March target date for the issuance of the Determination Notice, as applicable. The Application must be submitted using the Draft Uniform Application released by the Department for the upcoming program year. The Applicant may choose to only submit the complete Application (excluding all required Third Party Reports), for purposes of meeting TBRB requirements to have the Certificate of Reservation issued. In this case, the Application will not be scheduled for a Board meeting or target date for the issuance of the Determination

Notice, as applicable, until such time the Third Party Reports have been submitted, which should be on the fifth of the month. The Application may be scheduled for a Board meeting at which the decision to have the Determination Notice issued would be made, or the target date for the issuance of the Determination Notice, as applicable, approximately 90 days following the submission of such Third Party Reports. If the fifth day falls on a weekend or holiday, the submission deadline shall be on the next business day. For Third Party Reports that are submitted after the fifth of the month, it will be staff's discretion as to which Board meeting the Application will be presented, or target date for the issuance of the Determination Notice, as applicable.

(ii) Priority 3 applications: Once the Certificate of Reservation has been issued, the same Application submission requirements as indicated in clause (i) of this subparagraph apply. Specifically, an Applicant may submit the Application including or excluding the Third Party Reports, however, only after the Application is considered complete (i.e. Application Fee and all Third Party Reports) will staff schedule the Application for a Board meeting or target date for the issuance of the Determination Notice. The timing of when a Priority 3 Application is submitted to the Department is up to the Applicant and if not submitted on the fifth of the month, it will be staff's discretion as to which Board meeting the Application will be presented, or target date for the administrative issuance of the Determination Notice, as applicable.

(B) Non-Lottery Applications.

(i) Applications designated as Priority 1 or 2 by the TBRB must submit the Application Fee described in §11.901 of this chapter and the complete Application, with the exception of the Third Party Reports, before the Certificate of Reservation can be issued by the TBRB. The Third Party Reports, if not submitted with the Application to meet the TBRB submission requirement, must then be submitted on the fifth day of the month and the Application may be scheduled for a Board meeting at which the decision to have the Determination Notice issued would be made, or the target date for the administrative issuance of the Determination Notice, as applicable, approximately 90 days following such submission deadline. If the fifth day falls on a weekend or holiday, the submission deadline shall be on the next business day. Applicants may not submit the Application until staff receives notice from TBRB that the application is next in line to receive a Certificate of Reservation; or

(ii) An Application designated as Priority 3 will not be accepted until after the TBRB has issued a Certificate of Reservation and may be submitted on the fifth day of the month. Priority 3 Application submissions must be complete, including all Third Party Reports and the required Application Fee described in §11.901 of this chapter, before they will be considered accepted by the Department and meeting the submission deadline for the applicable Board meeting date or administrative issuance of the Determination Notice, as applicable.

(iii) If, as of November, an Applicant is unable to obtain a Certificate of Reservation from the current program year because there is no private activity bond volume cap, an Applicant may submit a complete Application without a bond reservation, provided that, a copy of the inducement resolution is included in the Application, and a Certificate of Reservation is issued as soon as possible by BRB staff in January 2023. The determination as to whether a 2022 Application can be submitted and supplemented with 2023 forms and certifications, will be at the discretion of staff. Applicants are encouraged to communicate with staff any issues and timing considerations unique to a Development as early in the process as possible. This process is only applicable to those applications that have also been submitted as part of the 2023 PAB Lottery and receive a favorable lottery number such that a Certificate of Reservation will be issued in January 2023.

If a Certificate of Reservation is not issued in January 2023, whether part of the PAB Lottery or not, then the submitted Application will be considered withdrawn by staff and will not continue to be processed.

(C) The Department will require at least 90 days to review an Application unless staff can complete its evaluation in sufficient time for earlier consideration. An Applicant should expect this timeline to apply regardless of whether the Board will need to approve the issuance of the Determination Notice or it is determined that staff can issue the Determination Notice administratively for a particular Application. Applicants should be aware that unusual financing structures, portfolio transactions, the need to resolve Administrative Deficiencies and changes made by an Applicant after the Application has been reviewed by staff may require additional time to review. Moreover, such review period may be longer depending on the volume of Applications under review and statutory program timing constraints associated with such Applications. The prioritization of Applications will be subject to the review priority established in paragraph (5) of this section.

(D) Withdrawal of Certificate of Reservation. Applicants are required to notify the Department before 5:00 p.m. on the business day after the Certificate of Reservation is withdrawn if the Application is still under review by the Department. If, by the fifth business day following the withdrawal, a new Certificate of Reservation is not issued, the Application will be suspended. If a new Certificate of Reservation is not issued by 5:00 p.m. on the fifth business day following the date of the suspension, the Application will be terminated. Applicants must ensure once a Certificate of Reservation is issued, the Application as submitted is complete and all respective parts of the Development are in process such that closing under the Certificate of Reservation is achievable. Once a new Certificate of Reservation is issued, it will be at the Department's discretion to determine whether the existing Application can still be utilized for purposes of review or if a new Application, including payment of another Application Fee, must be submitted due to material changes. The Department will not prioritize the processing of the new Application over other Applications under review once a new Certificate of Reservation is issued, regardless of the stage of review the Application was in prior to termination, or that it maintain the originally selected Board meeting or targeted administrative issuance date for the Determination Notice, as applicable.

(E) Direct Loan Applications must be submitted in accordance with the requirements in this chapter, §13.5 (relating to the Application and Award Process), and the applicable Notice of Funding Availability (NOFA).

(3) Withdrawal of Application. An Applicant may withdraw an Application prior to or after receiving an award of funding by submitting to the Department written notice of the withdrawal. To the extent a Direct Loan award is returned after Board approval, penalties may be imposed on the Applicant and Affiliates in accordance with §13.11(a) of this title (relating to Post Award Requirements).

(4) Evaluation Process. Applications believed likely to be competitive will undergo a program review for compliance with submission requirements and selection criteria, as applicable. In general, Application reviews by the Department shall be conducted based upon the likelihood that an Application will be competitive for an award based upon the region, set-aside, self score, received date, or other ranking factors. Thus, non-competitive or lower scoring Applications may never be reviewed. The Director of Multifamily Finance will identify those Applications that will receive a full program review based upon a reasonable assessment of each Application and its relative position to other Applications, but no Application with a competitive ranking shall be skipped or otherwise overlooked. This initial assessment may be a high level assessment, not a full assessment. The Real Estate

Analysis division shall underwrite Applications that received a full program review and remain competitive to determine financial feasibility and an appropriate funding amount. In making this determination, the Department will use §11.302 of this chapter (relating to Underwriting Rules and Guidelines) and §13.6 of this title (relating to Multifamily Direct Loan Rule) as applicable. The Department may have an external party perform all or part of the underwriting evaluation and components thereof to the extent it determines appropriate. The expense of any external underwriting shall be paid by the Applicant prior to the commencement of the aforementioned evaluation pursuant to §11.901(5) of this chapter (relating to Fee Schedule, Appeals and other Provisions). The reviews by the Multifamily Finance Division and the Real Estate Analysis Division will be conducted to meet the requirements of the Program or NOFA under which the Application was submitted. Applications will undergo a previous participation review in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation) and a Development Site may be evaluated by the Department or its agents through a physical site inspection or site visit, (which may include neighboring areas), independent of or concurrent with a site visit that may be performed in conjunction with §11.101(a)(3) (relating to Neighborhood Risk Factors). The Department may provide a scoring notice reflecting such score to the Applicant which will trigger appeal rights and corresponding deadlines pursuant to Tex. Gov't Code §2306.6715 and §11.902 of this chapter (relating to Appeals Process). For an Application for which the selection criteria are reviewed, the scoring notice for the Application will be sent to the Applicant no later than 21 days prior to the final Board approval of awards.

(5) Order of review of Applications under various Programs. This paragraph identifies how ties or other matters will be handled when dealing with de-concentration requirements, capture rate calculations, and general order of review of Applications submitted under different programs.

(A) De-concentration and Capture Rate. Priority will be established based on the earlier date associated with an Application. The dates that will be used to establish priority are as follows:

(i) for Tax-Exempt Bond Developments, the issuance date of the Certificate of Reservation issued by the TBRB; or in instances where there is a Traditional Carryforward Designation associated with an Application the Department will utilize the date the complete HTC Application associated with the Traditional Carryforward Designation is submitted to the Department;

(ii) for all other Developments, the date the Application is considered received by the Department; and

(iii) notwithstanding the foregoing, after July 31 of the current program year, a Tax-Exempt Bond Development with a Certificate of Reservation from the TBRB will take precedence over any Housing Tax Credit Application from the current Application Round on the waiting list.

(B) General Review Priority. Order of reviews of Applications under various multifamily programs will be established based on Department staff's consideration of any statutory timeframes associated with a program or Application in relation to the volume of Applications being processed.

(6) Deficiency Process. The purpose of the deficiency process is to allow an Applicant to provide clarification, explanation, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in an efficient and effective review of the Application. Deficiencies may be Administrative or Material, in either case they will be treated similarly in that Applicants may receive a deficiency notice and have an opportunity to respond. Applicants are encouraged to utilize manuals or other materials

produced by staff, as additional guidance in conjunction with the rules to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, or meeting of threshold and eligibility requirements. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the deficiency process. Because the review of an Application occurs in several phases, deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail to the Applicant and one other contact party if identified in the Application. It is the Applicant's responsibility to ensure that e-mails sent from TDHCA staff to the Applicant or contact are not electronically blocked or redirected by a security feature as they will be considered to be received once they are sent. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period and may also be sent in response to reviews on post-award submissions. Responses are required to be submitted electronically as a PDF or multiple PDF files and must be uploaded to the Application's ServU http file. Emailed responses will not be accepted. A review of the response provided by the Applicant may reveal that issues initially identified as an Administrative Deficiency are actually determined to be beyond the scope of an Administrative Deficiency process, meaning they are Material Deficiencies not susceptible to being resolved. Department staff may in good faith provide an Applicant confirmation that an Administrative Deficiency response has been received or that such response is satisfactory. Communications from staff that the response was satisfactory do not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determinations regarding the sufficiency of documentation submitted to cure a Deficiency as well as the distinction between material and non-material missing information are reserved for the Director of Multifamily Finance, Executive Director, and Board.

(A) It is critical that the use of the deficiency process not unduly slow the review process, and since the process is intended to clarify or explain matters or obtain at the Department's request missing information, there is an expectation that a party responding to an Administrative Deficiency will be able to respond immediately. It is the responsibility of a person who receives a deficiency to address the matter in a timely manner so that staff has the ability to review the response by the close of business on the date by which resolution must be complete and the deficiency fully resolved. Merely submitting materials prior to that time places the responsibility on the responding party that if the materials do not fully resolve the matter there may be adverse consequences such as point deductions or termination. Extensions relating to Administrative Deficiency deadlines may only be extended up to five days if documentation needed to resolve the item is needed from a Third Party, the documentation involves Third Party signatures needed on certifications in the Application, or an extension is requested as a reasonable accommodation. A Deficiency response may not contain documentation that did not exist prior to submission of the pre-application or Full Application, as applicable.

(B) Deficiencies for Competitive HTC Applications. Unless an extension has been timely requested and granted prior to the deadline, if a deficiency is not fully resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then five (5) points shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. Points deducted for failure to timely respond to a deficiency will not impact the Pre-Application score. If deficiencies are not resolved by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be termi-

nated, subject to the Applicant's right to appeal. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline or while the Application is under consideration for an award, and may not add any set-asides, increase the requested credit amount, revise the Unit mix (both income levels and Bedroom mixes), or adjust their self-score except in response to a direct request from the Department to do so as a result of an Administrative Deficiency. (§2306.6708(b); §2306.6708) Applicants may not use the Deficiency Process to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application. To the extent that the review of deficiency documentation or the imposing of point reductions for late responses alters the score assigned to the Application, such score will be reflected in the updated application log published on the Department's website or a Scoring Notice may be issued.

(C) Deficiencies for Tax-Exempt Bond Developments. Unless an extension has been requested prior to the deadline, deficiencies must be resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice. Applications with unresolved deficiencies after 5:00 p.m. on the fifth business day following the date of the deficiency notice will be suspended from further processing and the Applicant will be provided with notice to that effect. If, on the fifth business day following the date of the suspension notice, there are deficiencies that remain unresolved, the Application will be terminated and the Applicant will be provided notice to that effect. Should an Applicant still desire to move forward with the Development, staff will require a completely new Application be submitted, along with a new Application Fee pursuant to §11.901 of this chapter. All of the deficiencies noted in the original deficiency notice must be incorporated into the re-submitted Application. Staff will proceed with a new review of the Application, but it will not be prioritized over other Applications that are under review or were submitted prior to its re- submission.

(D) Deficiencies for Direct Loan-only Applications. Deficiencies must be resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice. Applications with unresolved deficiencies after 5:00 p.m. on the fifth business day following the date of the deficiency notice will be suspended from further processing and the Applicant will be provided with notice to that effect. If, on the fifth business day following the date of the suspension notice, there are deficiencies that remain unresolved, the Application may be terminated and the Applicant will be provided notice to that effect. For purposes of priority under the Direct Loan set-asides, if the outstanding item(s) are resolved during the suspension period, the date by which the final deficient item is submitted shall be the new received date pursuant to §13.5(c) of this title (relating to Multifamily Direct Loan Rule). Applicants should be prepared for additional time needed for completion of staff reviews as described in paragraph (2)(B) of this section. Should an Applicant still desire to move forward with the Development after Termination, a completely new Application must be submitted, along with a new Application Fee, as applicable, pursuant to rule. All of the deficiencies noted in the original deficiency notice must be incorporated into the re-submitted Application, which will have a new Application Acceptance Date.

(7) Limited Reviews. If, after the submission of the Application, an Applicant identifies an error in the Application that could likely be the subject of a Deficiency, the Applicant may request a limited review of the specific and limited issues in need of clarification or correction. The issue may not relate to the score of an Application. This limited review may only cover the specific issue and not the entire Application. If the limited review results in the identification of an issue that requires correction or clarification, staff will request such

through the Deficiency process as stated in paragraph (6) of this section, if deemed appropriate. A limited review is intended to address:

(A) Clarification of issues that Department staff would have difficulty identifying due to the omission of information that the Department may have access to only through Applicant disclosure, such as a prior removal from a tax credit transaction or participation in a Development that is not identified in the previous participation portion of the Application; or

(B) Technical correction of non-material information that would cause an Application deemed non- competitive to be deemed competitive and, therefore, subject to a staff review. For example, failure to mark the Nonprofit Set-Aside in an Application that otherwise included complete submission of documentation for participation in the Nonprofit Set-Aside.

(8) Challenges to Opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such comment is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date as identified in §11.2 of this chapter and no later than May 1 of the current year for Competitive HTC Applications. The Neighborhood Organization expressing opposition will be given seven calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis by staff will be provided to a fact finder, chosen by the Department, for review and a determination. The fact finder will not make determinations as to the accuracy of the statements presented, but only regarding whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

§11.202. Ineligible Applicants and Applications.

The purpose of this section is to identify those situations in which an Application or Applicant may be considered ineligible for Department funding and subsequently terminated. Such matters may be brought to the attention of staff by anyone, including members of the general public. The items listed in this section include those requirements in Code, §42, Tex. Gov't Code, Chapter 2306, and other criteria considered important by the Department, and does not represent an exhaustive list of ineligibility criteria that may otherwise be identified in applicable rules, federal statutes or regulations, or a specific program NOFA. The Application may include, or Department staff may request, documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Development Site, or Development. One or more of the matters enumerated in paragraph (1) of this section may also serve as a basis for debarment, or the assessment of administrative penalties, and nothing herein shall limit the Department's ability to pursue any such matter. Failure to provide disclosure may be cause for termination.

(1) Applicants. An Applicant may be considered ineligible if any of the criteria in subparagraphs (A) - (N) of this paragraph apply to those identified on the organizational chart for the Applicant, Developer and Guarantor. An Applicant is ineligible if the Applicant, Developer, or Guarantor:

(A) Has been or is barred, suspended, or terminated from participation in a state or Federal program, including those listed in the U.S. government's System for Award Management (SAM); (§2306.0504)

(B) Has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within 15 years preceding the received date of Application or Pre-Application submission (if applicable);

(C) Is, at the time of Application, subject to an order in connection with an enforcement or disciplinary action under state or federal securities law or by the NASD; subject to a federal tax lien (other than a contested lien for which provision has been made); or the subject of a proceeding in which a Governmental Entity has issued an order to impose penalties, suspend funding, or take adverse action based on an allegation of financial misconduct or uncured violation of material laws, rules, or other legal requirements governing activities considered relevant by the Governmental Entity;

(D) Has materially breached a contract with a public agency, and, if such breach is permitted to be cured under the contract, has been given notice of the breach and a reasonable opportunity to cure, and failed to cure that breach within the time specified in the notice of breach;

(E) Has misrepresented to a subcontractor the extent to which the Developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Developer's participation in contracts with the agency, and the amount of financial assistance awarded to the Developer by the agency;

(F) Has been found by the Board to be ineligible based on a previous participation review performed in accordance with Chapter 1 Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee);

(G) Is delinquent in any loan, fee, or escrow payments to the Department in accordance with the terms of the loan, as amended, or is otherwise in default with any provisions of such loans, and for which no repayment plan has been approved by the Department;

(H) Has failed to cure any past due fees owed to the Department within the time frame provided by notice from the Department and at least 10 days prior to the Board meeting at which the decision for an award is to be made;

(I) Would be prohibited by a state or federal revolving door or other standard of conduct or conflict of interest statute, including Tex. Gov't Code §2306.6733, or a provision of Tex. Gov't Code, Chapter 572, from participating in the Application in the manner and capacity they are participating;

(J) Has, without prior approval from the Department, had previous Contracts or Commitments that have been partially or fully Deobligated during the 12 months prior to the submission of the Application, and through the date of final allocation due to a failure to meet contractual obligations, and the Person is on notice that such Deobligation results in ineligibility under this chapter;

(K) Has provided false or misleading documentation or made other intentional or negligent material misrepresentations or omissions in or in connection with an Application (and certifications contained therein), Commitment, or Determination Notice for a Development;

(L) Was the Owner or Affiliate of the Owner of a Department assisted rental Development for which the federal affordability requirements were prematurely terminated and the affordability requirements have not been re-affirmed or Department funds repaid;

(M) Fails to disclose, in the Application, any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing trans-

action, that has terminated voluntarily or involuntarily within the past 10 years, or plans to or is negotiating to terminate, their relationship with any other affordable housing development. The disclosure must identify the person or persons and development involved, the identity of each other development, and contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the termination or proposed termination, and any appropriate supporting documents. An Application may be referred to the Board for a determination of a person's fitness to be involved as a Principal with respect to an Application, which may include a staff recommendation, using the factors described in clauses (i) - (v) of this subparagraph as considerations:

(i) the amount of resources in a Development and the amount of the benefit received from the Development;

(ii) the legal and practical ability to address issues that may have precipitated the termination or proposed termination of the relationship;

(iii) the role of the person in causing or materially contributing to any problems with the success of the development;

(iv) the person's compliance history, including compliance history on other developments; and

(v) any other facts or circumstances that have a material bearing on the question of the person's ability to be a compliant and effective participant in their proposed role as described in the Application; or

(N) Fails to disclose in the Application any voluntary compliance agreement or similar agreement with any governmental agency that is the result of negotiation regarding noncompliance of any affordable housing Development with any requirements. Any such agreement impacting the proposed Development or any other affordable housing Development controlled by the Applicant must be disclosed.

(2) Applications. An Application shall be ineligible if any of the criteria in subparagraphs (A) - (C) of this paragraph apply to the Application:

(A) A violation of Tex. Gov't Code §2306.1113, exists relating to Ex Parte Communication. An ex parte communication occurs when an Applicant or Person representing an Applicant initiates substantive contact (other than permitted social contact) with a board member, or vice versa, in a setting other than a duly posted and convened public meeting, in any manner not specifically permitted by Tex. Gov't Code §2306.1113(b). Such action is prohibited. For Applicants seeking funding after initial awards have been made, such as waiting list Applicants, the ex parte communication prohibition remains in effect so long as the Application remains eligible for funding. The ex parte provision does not prohibit the Board from participating in social events at which a Person with whom communications are prohibited may, or will be present; provided that no matters related to any Application being considered by the Board may be discussed;

(B) The Application is submitted after the Application submission deadline (time or date); is missing multiple parts of the Application; or has a Material Deficiency; or

(C) For any Development utilizing Housing Tax Credits or Tax-Exempt Bonds:

(i) at the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Depart-

ment), the Applicant or a Related Party is or has been a person covered by Tex. Gov't Code §2306.6703(a)(1);

(ii) if the Application is represented or communicated about by a Person that would prompt the violations covered by Tex. Gov't Code §2306.6733; or

(iii) the Applicant proposes to replace in less than 15 years any private activity bond financing of the Development described by the Application, unless the exceptions in Tex. Gov't Code §2306.6703(a)(2) are met.

§11.203. *Public Notifications.* (§2306.6705(9)).

A certification, as provided in the Application, that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be submitted with the Application. For Applications utilizing Competitive Housing Tax Credits, notifications must not be older than three months from the first day of the Application Acceptance Period. For Tax-Exempt Bond Developments and Direct Loan Applications, notifications must not be older than three months prior to the date the complete Application is submitted. If notifications were made in order to satisfy requirements of pre-application submission (if applicable to the program) for the same Application, then no additional notification is required at Application. However, re-notification is required by all Applicants who have submitted a change from pre-application to Application that reflects a total Unit increase of greater than 10% or a 5% increase in density (calculated as units per acre) as a result of a change in the size of the Development Site. In addition, should the jurisdiction of the official holding any position or role described in paragraph (2) of this section change between the submission of a pre-application and the submission of an Application, Applicants are required to notify the new entity no later than the Full Application Delivery Date.

(1) Neighborhood Organization Notifications.

(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the beginning of the Application Acceptance Period and whose boundaries include the entire proposed Development Site. As used in this section, "on record with the state" means on record with the Secretary of State.

(B) The Applicant must list, in the certification form provided in the pre-application and Application, all Neighborhood Organizations on record with the county or state as of 30 days prior to the beginning of the Application Acceptance Period and whose boundaries include the proposed Development Site.

(2) Notification Recipients. No later than the date the Application is submitted, notification must be sent to all of the entities identified in subparagraphs (A) - (H) of this paragraph. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with return receipt requested or similar tracking mechanism. A template for the notification is included in the Application Notification Template provided in the Application. Evidence of notification is required in the form of a certification provided in the Application. The Applicant is required to retain proof of delivery in the event it is requested by the Department. Evidence of proof of delivery is demonstrated by a signed receipt for mail or courier delivery and confirmation of receipt by recipient for fax and e-mail. Officials to be notified are those in office at the time the Application is submitted. Note that between the time of pre-application (if made) and full Application, the boundaries of their jurisdictions may change. Meetings and discussions do not constitute notification. Recipients include:

(A) Neighborhood Organizations on record with the state or county as of 30 days prior to the beginning of the Application Acceptance Period whose boundaries include the entire Development Site;

(B) Superintendent of the school district in which the Development Site is located;

(C) Presiding officer of the board of trustees of the school district in which the Development Site is located;

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

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

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

(G) All elected members of the Governing Body of the county in which the Development Site is located; and

(H) State Senator and State Representative of the districts whose boundaries include the Development Site.

(3) Contents of Notification.

(A) The notification must include, at a minimum, all information described in clauses (i) - (viii) of this subparagraph:

(i) the Applicant's name, address, individual contact name, and phone number;

(ii) the Development name, address, city and county;

(iii) a statement indicating the program(s) to which the Applicant is applying with the Texas Department of Housing and Community Affairs;

(iv) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse or Rehabilitation;

(v) the physical type of Development being proposed (e.g. single family homes, duplex, apartments, high-rise etc.);

(vi) the total number of Units proposed and total number of Low-Income Units proposed;

(vii) the residential density of the Development, i.e., the number of Units per acre; and

(viii) information on how and when an interested party or Neighborhood Organization can provide input to the Department.

(B) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will target, provide a preference, or serve a Target Population exclusively, unless such population limitation, targeting, or preference is documented in the Application, and is or will be in full compliance with all applicable state and federal laws, including state and federal fair housing laws; and

(C) Notifications or any other communications may not contain any statement that violates Department rules, statute, code, or federal requirements.

§11.204. *Required Documentation for Application Submission.*

The purpose of this section is to identify the threshold documentation that is required at the time of Application submission, unless specifi-

cally indicated or otherwise required by Department rule. Unless stated otherwise, all documentation identified in this section must not be dated more than six (6) months prior to the close of the Application Acceptance Period or the date of Application submission as applicable to the program.

(1) Certification, Acknowledgement and Consent of Development Owner. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by the Development Owner and addresses the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification and that they have given it with all required authority and with actual knowledge of the matters certified.

(A) The Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or, if no local building codes are in place, then to the most recent version of the International Building Code.

(B) This Application and all materials submitted to the Department constitute records of the Department subject to Tex. Gov't Code, Chapter 552. Any person signing the Certification acknowledges that they have the authority to release all materials for publication on the Department's website, that the Department may publish them on the Department's website and release them in response to a request for public information, and make other use of the information as authorized by law.

(C) All representations, undertakings and commitments made by Applicant in the Application process expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development which the Department may issue or award, and the violation of any such condition shall be sufficient cause for the cancellation and rescission of such Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment by the Department. If any such representations, undertakings and commitments concern or relate to the ongoing features or operation of the Development, they shall be enforceable even if not reflected in the Land Use Restriction Agreement. All such representations, undertakings and commitments are also enforceable by the Department and the residents of the Development, including enforcement by administrative penalties for failure to perform (consistent with Chapter 2, Subchapter C of this title, relating to Administrative Penalties), in accordance with the Land Use Restriction Agreement.

(D) The Development Owner has read and understands the Department's fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period.

(E) The Development Owner agrees to implement a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Development Owner will be required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609 or, if the Development does not have Housing Tax Credits, release of retainage.

(F) The Applicant will 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 further described in Tex. Gov't Code §2306.6734.

(G) The Development Owner will specifically market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will specifically market to veterans and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved by the Department.

(H) The Development Owner will comply with any and all notices required by the Department.

(I) If the Development has an existing LURA with the Department, the Development Owner will comply with the existing restrictions.

(2) Applicant Eligibility Certification. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by any individuals required to be listed on the organizational chart and also meeting the definition of Control. The certification must identify the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under §11.202 of this chapter (relating to Ineligible Applicants and Applications).

(3) Engineer/Architect Certification Form. The certification, addressing all of the accessibility requirements applicable to the Development Site, must be executed by the Development engineer or accredited architect after careful review of the Department's accessibility requirements, and including Tex. Gov't Code §2306.6722 and §2306.6730.

(4) Notice, Hearing, and Resolution for Tax-Exempt Bond Developments. In accordance with Tex. Gov't Code, §2306.67071, the following actions must take place with respect to the filing of an Application and any Department consideration for a Tax-Exempt Bond Development.

(A) Prior to submission of an Application to the Department, an Applicant must provide notice of the intent to file the Application in accordance with §11.203 of this chapter (relating to Public Notifications) (§2306.6705(9)).

(B) The Governing Body of a municipality must hold a hearing if the Development Site is located within a municipality or the extra territorial jurisdiction (ETJ) of a municipality. The Governing Body of a county must hold a hearing unless the Development Site is located within a municipality. For Development Sites located in an ETJ the county and municipality must hold hearings; however, the county and municipality may arrange for a joint hearing. The purpose of the hearing(s) must be to solicit public input concerning the Application or Development and the hearing(s) must provide the public with such an opportunity. The Applicant may be asked to substantively address the concerns of the public or local government officials.

(C) An Applicant must submit to the Department a resolution of no objection from the applicable Governing Body. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. For an Application with a Development Site that is:

(i) within a municipality, the Applicant must submit a resolution from the Governing Body of that municipality;

(ii) within the ETJ of a municipality, the Applicant must submit both:

(I) A resolution from the Governing Body of that municipality; and

(II) A resolution from the Governing Body of the county; or

(iii) within a county and not within a municipality or the ETJ of a municipality, a resolution from the Governing Body of the county.

(D) For purposes of meeting the requirements of subparagraph (C) of this paragraph, the resolution(s) must be submitted no later than the Resolutions Delivery Date described in §11.2(b) of this chapter (relating to Tax-Exempt Bond Dates and Deadlines). An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Applicants should ensure that the resolutions all have the appropriate references and certifications or the resolution may be determined by staff to be invalid. The resolution(s) must certify that:

(i) notice has been provided to the Governing Body in accordance with Tex. Gov't Code §2306.67071(a);

(ii) the Governing Body has had sufficient opportunity to obtain a response from the Applicant regarding any questions or concerns about the proposed Development;

(iii) the Governing Body has held a hearing at which public comment may be made on the proposed Development in accordance with Tex. Gov't Code §2306.67071(b); and

(iv) after due consideration of the information provided by the Applicant and public comment, the Governing Body does not object to the proposed Application.

(5) Designation as Rural or Urban.

(A) Each Application must identify whether the Development Site is located in an Urban Area or Rural Area of a Uniform State Service Region. The Department shall make available a list of Places meeting the requirements of Tex. Gov't Code §2306.004(28-a)(A) and (B), for designation as a Rural Area and those that are an Urban Area in the Site Demographics Characteristics Report. Some Places are municipalities. For any Development Site located in the ETJ of a municipality and not in a Place, the Application shall have the Rural Area or Urban Area designation of the municipality whose ETJ within which the Development Site is located. For any Development Site not located within the boundaries of a Place or the ETJ of a municipality, the applicable designation is that of the closest Place.

(B) Certain areas located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area can request a Rural designation from the Department for purposes of receiving an allocation Housing Tax Credits (§2306.6740). In order to apply for such a designation, a letter must be submitted from a duly authorized official of the political subdivision or census designated place addressing the factors outlined in clauses (i) - (vi) of this subparagraph. Photographs and other supporting documentation are strongly encouraged. In order for the area to be designated Rural by the Department for the current Application Round, such requests must be made no later than December 15 of the previous year. If staff is able to confirm the findings outlined in the request, the Rural designation will be granted without further action and will remain in effect until such time that the population as described in clause (i) of this subparagraph exceeds 25,000. In the event that staff is unable to confirm the information contained in the request, the Applicant will be given an opportunity to supplement their case. If, after receiving any supplemental information, staff still cannot confirm the rural nature of the Application, a recommendation for denial will be presented to the Board. The factors include:

(i) the population of the political subdivision or census designated place does not exceed 25,000;

(ii) the characteristics of the political subdivision or census designated place and how those differ from the characteristics of the area(s) with which it shares a contiguous boundary;

(iii) the percentage of the total border of the political subdivision or census designated place that is contiguous with other political subdivisions or census designated places designated as urban. For purposes of this assessment, less than 50% contiguity with urban designated places is presumptively rural in nature;

(iv) the political subdivision or census designated place contains a significant number of unimproved roads or relies on unimproved roads to connect it to other places;

(v) the political subdivision or census designated place lacks major amenities commonly associated with urban or suburban areas; and

(vi) the boundaries of the political subdivision or census designated place contain, or are surrounded by, significant areas of undeveloped or agricultural land. For purposes of this assessment, significant being more than one-third of the total surface area of political subdivision/census designated place, or a minimum of 1,000 acres immediately contiguous to the border.

(6) Experience Requirement. Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application, unless an experience certificate was issued by the Department in the years 2014-2021, which may be submitted as acceptable evidence of this requirement. Experience of multiple parties may not be aggregated to meet this requirement.

(A) A natural Person, with control of the Development who intends and has the ability to remain in control through placement in service, who is also a Principal of the Developer, Development Owner, or General Partner must establish that they have experience that has included the development and placement in service of 150 units or more. Applicants requesting Multifamily Direct Loan funds only may meet the alternative requirement at §13.5(h)(1) of this title (relating to Experience). An agreement between a HUB listed as a participant on a previous Application and the person in control of that same Application does not meet this requirement. Acceptable documentation to meet this requirement shall include any of the items in clauses (i) - (ix) of this subparagraph:

(i) American Institute of Architects (AIA) Document (A102) or (A103) 2007 - Standard Form of Agreement between Owner and Contractor;

(ii) AIA Document G704--Certificate of Substantial Completion;

(iii) AIA Document G702--Application and Certificate for Payment;

(iv) Certificate of Occupancy;

(v) IRS Form 8609 (only one per development is required);

(vi) HUD Form 9822;

(vii) Development agreements;

(viii) partnership agreements; or

(ix) other documentation satisfactory to the Department verifying that a Principal of the Development Owner, General Partner, or Developer has the required experience.

(B) The names on the forms and agreements in subparagraph (A)(i) - (ix) of this paragraph must reflect that the individual seeking to provide experience is a Principal of the Development Owner, General Partner, or Developer as listed in the Application. For purposes of this requirement any individual attempting to use the experience of another individual or entity must demonstrate they had the authority to act on their behalf that substantiates the minimum 150 unit requirement.

(C) For competitive HTC Applications, if a Principal is determined by the Department to not have the required experience, a replacement Principal will not be allowed.

(D) Notwithstanding the foregoing, no person may be used to establish such required experience if that Person or an Affiliate of that Person would not be eligible to be an Applicant themselves.

(7) Financing Requirements.

(A) Non-Department Debt Financing. Interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department must be included in the Application. For any Development that is a part of a larger development plan on the same site, the Department may request and evaluate information related to the other components of the development plan in instances in which the financial viability of the Development is in whole or in part dependent upon the other portions of the development plan. Any local, state or federal financing identified in this section which restricts household incomes at any level that is lower than restrictions required or elected in accordance with this Chapter or Chapter 13 of this title (relating to Multifamily Direct Loan) must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with Code §42(g) if the Development will receive housing tax credits. The income and corresponding rent restrictions that impact the Units also restricted by the Department will be reflected in the LURA. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) - (iv) of this subparagraph.

(i) Financing is in place as evidenced by:

(I) a valid and binding loan agreement; and

(II) a valid recorded deed(s) of trust lien on the Development in the name of the Development Owner as grantor in favor of the party providing such financing.

(ii) Term sheets for interim and permanent loans issued by a lending institution or mortgage company must:

(I) have been signed or otherwise acknowledged by the lender;

(II) be addressed to the Development Owner or Affiliate;

(III) for a permanent loan, include a minimum loan term of 15 years with at least a 30 year amortization or for non-amortizing loan structures a term of not less than 30 years;

(IV) include either a committed and locked interest rate, or the estimated interest rate;

(V) include all required Guarantors, if known;

(VI) include the principal amount of the loan;

(VII) include an acknowledgement of the amounts and terms of all other anticipated sources of funds and if the Application reflects an intent to elect income averaging there must be an acknowledgement to that effect in the term sheet; and

(VIII) include and address any other material terms and conditions applicable to the financing. The term sheet may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits, if applicable;

(iii) For Developments proposing to refinance an existing USDA Section 514, 515, or 516 loan, a letter from the USDA confirming the outstanding loan balance on a specified date and confirming that the Preliminary Assessment Tool has been submitted by the Applicant to USDA. The loan amount that is reported on the Schedule of Sources (tab 31 in the MF Uniform Application) and that is used to determine the acquisition cost must be the Applicant's estimate of the projected outstanding loan balance at the time of closing as calculated on the USDA Principal Balance Amortization exhibit.

(iv) For Direct Loan Applications or Tax-Exempt Bond Developments with TDHCA as the issuer that utilize FHA financing, the Application shall include the applicable pages from the HUD Application for Multifamily Housing Project. If the HUD Application has not been submitted at the time the Application is submitted then a statement to that effect should be included in the Application along with an estimated date for submission. Applicants should be aware that staff's underwriting of an Application will not be finalized and presented to the Board until staff has evaluated the HUD Application relative to the Application.

(B) Gap Financing. Any anticipated federal, state, local or private gap financing, whether soft or hard debt, must be identified and described in the Application. Applicants must provide evidence that an application for such gap financing has been made to an available fund source. Acceptable documentation may include a letter from the funding entity confirming receipt of an application or a term sheet from the lending agency which clearly describes the amount and terms of the financing. Other Department funding requested with Housing Tax Credit Applications must be on a concurrent funding period with the Housing Tax Credit Application, and no term sheet is required for such a request. A term loan request must comply with the applicable terms of the NOFA under which an Applicant is applying.

(C) Owner Contributions. If the Development will be financed in part with a capital contribution or debt by the General Partner, Managing General Partner, any other partner or investor that is not a partner providing the syndication equity, a Guarantor or a Principal in an amount that exceeds 5% of the Total Housing Development Cost, a letter from a Third Party CPA must be submitted that verifies the capacity of the contributor to provide the capital from funds that are not otherwise committed or pledged. Additionally, a letter from the contributor's bank(s) or depository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The contributor must certify that the funds are and will remain readily available at Commitment and until the required investment is completed. Regardless of the amount, all capital contributions other than syndication equity will be deemed to be a part of, and therefore added to, the Deferred Developer Fee for feasibility purposes under §11.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned, unless the contribution is a seller note equal to or less than the acquisition price of the subject Development, the Development is a Supportive Housing Development, the Development is not supported with Housing Tax Credits, or the ownership structure includes a non-profit organization with a documented history of fundraising sufficient to support the development of affordable housing.

(D) Equity Financing. (§2306.6705(2) and (3)) If applicable to the program, the Application must include a term sheet from a syndicator that, at a minimum, includes:

(i) an estimate of the amount of equity dollars expected to be raised for the Development;

(ii) the amount of Housing Tax Credits requested for allocation to the Development Owner;

(iii) pay-in schedules;

(iv) syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis; and

(v) include an acknowledgement of the amounts and terms of all other anticipated sources of funds and if the Application reflects an intent to elect income averaging there must be an acknowledgement to that effect in the term sheet.

(E) Financing Narrative. (§2306.6705(1)) A narrative must be submitted that describes all aspects of the financing plan for the Development, including as applicable the sources and uses of funds; construction, permanent and bridge loans, rents, operating subsidies, project-based assistance, and replacement reserves; and the status (dates and deadlines) for applications, approvals and closings, etc. associated with the term sheets for all funding sources. For Applicants requesting Direct Loan funds, Match, as applicable, must be documented with a letter from the anticipated provider of Match indicating the provider's willingness and ability to make a financial commitment should the Development receive an award of Direct Loan funds. The information provided must be consistent with all other documentation in the Application.

(8) Operating and Development Cost Documentation.

(A) Fifteen-year Pro forma. All Applications must include a 15-year pro forma estimate of operating expenses, in the form provided by the Department. Any "other" debt service included in the pro forma must include a description.

(B) Utility Allowances. This exhibit, as provided in the Application, must be submitted along with documentation from the source of the utility allowance estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate and must comply with the requirements of §10.614 of this title (relating to Utility Allowances), including deadlines for submission. Where the Applicant uses any method that requires Department review, documentation indicating that the requested method has been granted by the Department must be included in the Application.

(C) Operating Expenses. This exhibit, as provided in the Application, must be submitted indicating the anticipated operating expenses associated with the Development. Any expenses noted as "other" in any of the categories must include a description. "Miscellaneous" or other nondescript designations are not acceptable.

(D) Rent Schedule. This exhibit, as provided in the Application, must meet the requirements of clauses (i) - (vi) of this subparagraph. The income and corresponding rent restrictions will be reflected in the LURA. The requirements are:

(i) indicate the type of Unit restriction based on the Unit's rent and income restrictions;

(ii) reflect the rent and utility limits available at the time the Application is submitted;

(iii) reflect gross rents that cannot exceed the maximum rent limits unless documentation of project-based rental assistance is provided and rents are consistent with such assistance and applicable legal requirements;

(iv) have a Unit mix and net rentable square footages that are consistent with the site plan and architectural drawings;

(v) if applying for Direct Loan funds:

(I) Direct Loan-restricted Units will generally be designated "floating" unless specifically disallowed under the program specific rules;

(II) if HOME, TCAP RF, and/or NSP PI are the anticipated fund source, the Application must have at least 90% of the Direct Loan-restricted Units be available to households or families whose incomes do not exceed 60% of the Area Median Income;

(III) in which HOME or TCAP RF are the anticipated fund source have at least 20% of the Direct Loan-restricted Units available to households or families whose incomes do not exceed 50% of the Area Median Income;

(IV) in which NHTF is the anticipated fund source, have 100% of the Direct Loan-restricted Units available to households or families whose incomes do not exceed the greater of 30% of the Area Median Income or whose income is at or below the poverty line; and

(V) in which NSP PI is the anticipated fund source, have at least 25% of the Direct Loan-restricted Units available to households or families whose incomes do not exceed 50% of the Area Median Income; and

(vi) if proposing to elect income averaging, Units restricted by any fund source other than housing tax credits must be specifically identified, and all restricted Units, regardless of fund source, must be included in the average calculation.

(E) Development Costs. This exhibit, as provided in the Application, must include the contact information for the person providing the cost estimate and must meet the requirements of clauses (i) and (ii) of this subparagraph.

(i) Applicants must provide a detailed cost breakdown of projected Site Work costs (excluding site amenities), if any, prepared by a Third Party engineer. If Site Work costs (excluding site amenities) exceed \$15,000 per Unit and are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis.

(ii) If costs for Off-Site Construction are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then an Off-Site Cost Breakdown prepared by a Third Party engineer must be provided. The certification from a Third Party engineer must describe the necessity of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes and the source of their cost estimate. If any Off-Site Construction costs are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those costs should be included in Eligible Basis. If off-site costs are included in Eligible Basis based on PLR 200916007, a statement of findings from a CPA must be provided which describes the facts relevant to the Development and affirmatively certifies that the fact pattern of the Development matches the fact pattern in PLR 200916007.

(F) Rental Assistance/Subsidy. (§2306.6705(4)) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds. Such documentation shall, at a minimum, identify the source and annual amount of the funds, the number of units receiving the funds, and the term and expiration date of the contract or other agreement.

(G) Occupied Developments. The items identified in clauses (i) - (vi) of this subparagraph must be submitted with any Application where any structure on the Development Site is occupied at any time after the Application Acceptance Period begins or if the Application proposes the demolition of any housing occupied at any time after the Application Acceptance Period begins. If the Application includes a request for Direct Loan funds, Applicants must follow the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and other HUD requirements including Section 104(d) of the Housing and Community Development Act. HUD Handbook 1378 provides guidance and template documents. Failure to follow URA or 104(d) requirements will make the proposed Development ineligible for Direct Loan funds and may lead to penalty under §13.11(b) of this title (relating to Multifamily Direct Loan Rule). If one or more of the items described in clauses (i) - (vi) of this subparagraph is not applicable based upon the type of occupied structures on the Development Site, the Applicant must provide an explanation of such non- applicability. Applicant must submit:

(i) at least one of the items identified in subclauses (I) - (IV) of this clause:

(I) Historical monthly operating statements of the Existing Residential Development for 12 consecutive months ending not more than three months from the first day of the Application Acceptance Period; or

(II) The two most recent consecutive annual operating statement summaries; or

(III) The most recent consecutive six months of operating statements and the most recent available annual operating summary; or

(IV) All monthly or annual operating summaries available; and

(ii) a rent roll not more than six months old as of the first day the Application Acceptance Period that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, and any vacant units;

(iii) a written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))

(iv) a relocation plan outlining relocation requirements and a budget with an identified funding source; (§2306.6705(6))

(v) any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or to ensure compliance with the Uniform Relocation Act and any other relocation laws or regulations as may be applicable; and

(vi) if applicable, evidence that the relocation plan has been submitted to all appropriate legal or governmental agencies or bodies. (§2306.6705(6))

(9) Architectural Drawings. All Applications must include the items identified in subparagraphs (A) - (D) of this paragraph, unless specifically stated otherwise, and must be consistent with all applicable exhibits throughout the Application. The drawings must have a legible scale and show the dimensions of each perimeter wall and floor heights.

(A) For all Developments a site plan must be submitted that includes the items identified in clauses (i) - (xii) of this subparagraph:

(i) states the size of the site on its face;

(ii) includes a Unit and building type table matrix that is consistent with the Rent Schedule and Building/Unit Configuration forms provided in the Application;

(iii) includes a table matrix specifying the square footage of Common Area space on a building by building basis;

(iv) identifies all residential and common buildings in place on the Development Site and labels them consistently with the Rent Schedule and Building/Unit Type Configuration forms provided in the Application;

(v) shows the locations (by Unit and floor) of mobility and hearing/visual accessible Units (unless included in residential building floor plans);

(vi) clearly delineates the flood plain boundary lines or states there is no floodplain;

(vii) indicates placement of detention/retention pond(s) or states there are no detention ponds;

(viii) describes, if applicable, how flood mitigation or other required mitigation will be accomplished;

(ix) indicates the location and number of parking spaces, garages, and carports;

(x) indicates the location and number of accessible parking spaces, garages, and carports, including van accessible spaces;

(xi) includes information regarding local parking requirements; and

(xii) indicates compliant accessible routes or if a route is not accessible a cite to the provision in the Fair Housing Design Manual providing for its exemption.

(B) Building floor plans must be submitted for each building type. Building floor plans must include the locations of the accessible Units and must also include square footage calculations for balconies, breezeways, corridors and any other areas not included in net rentable area.

(C) Unit floor plans for each Unit Type must be included in the Application and must include the square footage. Unit floor plans must be submitted for the accessible Units. Applications for Adaptive Reuse are only required to include Unit floor plans for each distinct floor plan such as one-Bedroom, or two-Bedroom, and for all floor plans that vary in Net Rentable Area by 10% from the typical floor plan.

(D) Elevations must be submitted for each side of each building type (or include a statement that all other sides are of similar composition as the front) and include a percentage estimate of the exterior composition and proposed roof pitch. Applications for Rehabilitation and Adaptive Reuse may submit photographs if the Unit configurations are not being altered and post-renovation drawings must be submitted if Unit configurations are proposed to be altered.

(10) Site Control.

(A) Evidence that the Development Owner has Site Control must be submitted. If the evidence is not in the name of the Development Owner, then an Affiliate of the Development Owner must have Site Control that allows for an ability to assign the Site Control to the Development Owner. All of the sellers of the proposed Property for the 36 month period prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development Team must be identified at the time of Application. The Department may request documentation at any time after submission of an Application of the Development Owner's ability to compel title

of any Affiliated property acquisition(s) and the Development Owner must be able to promptly provide such documentation or the Application, award, or Commitment may be terminated. The Department acknowledges and understands that the Property may have one or more encumbrances at the time of Application submission and the Department will take into account whether any such encumbrance is reasonable within the legal and financial ability of the Development Owner to address without delaying development on the timeline contemplated in the Application. To meet the requirements of subparagraph (B) of this paragraph, Tax-Exempt Bond Developments that do not include a request for Direct Loan or include the Department as the bond issuer, must certify in the Application that the Site Control submitted with the TBRB application for the Certificate of Reservation to be issued is still valid.

(B) In order to establish Site Control, one of the items described in clauses (i) - (iii) of this subparagraph must be provided. In the case of land donations, Applicants must demonstrate that the entity donating the land has Site Control as evidenced through one of the items described in clauses (i) - (iii) of this subparagraph or other documentation acceptable to the Department. Site Control items include:

(i) a recorded warranty deed vesting indefeasible title in the Development Owner or, if transferrable to the Development Owner, an Affiliate of the Owner, with corresponding executed settlement statement (or functional equivalent for an existing lease with at least 45 years remaining); or

(ii) a contract or option for lease with a minimum term of 45 years that includes a price; address or legal description; proof of consideration in the form specified in the contract; and expiration date; or

(iii) a contract for sale or an option to purchase that includes a price; address or legal description; proof of consideration in the form specified in the contract; and expiration date.

(C) If the acquisition can be characterized as an identity of interest transaction, as described in §11.302 of this chapter (relating to Underwriting Rules and Guidelines), then the documentation required as further described therein must be submitted in addition to that of subparagraph (B) of this paragraph.

(D) If ingress and egress to a public right of way are not part of the Property described in the site control documentation, the Applicant must provide evidence of an easement, leasehold, or similar documented access, along with evidence that the fee title owner of the property agrees that the LURA may extend to the access easement by the time of Commitment, Determination Notice or Contract (as applicable).

(E) If control of the entire proposed Development Site requires that a plat or right of way be vacated to remove a right of way or similar dedication, evidence that the vacation/re-platting process has started must be included in the Application, and evidence of control of the entire Development Site must be provided by the time of Commitment or Contract (as applicable).

(11) Zoning. (§2306.6705(5)) Acceptable evidence of zoning for all Developments must include one of subparagraphs (A) - (D) of this paragraph. In instances where annexation of a Development Site occurs while the Application is under review, the Applicant must submit evidence of appropriate zoning with the Commitment or Determination Notice. Letters evidencing zoning status must be no more than 6 months old at Application submission, except where such evidence is for an area where there is no zoning and such letters must be updated annually by the political subdivision.

(A) No Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision that has no zoning.

(B) Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating the Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development.

(C) Requesting a Zoning Change. The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate has made formal application for a required zoning change and that the jurisdiction has received a release whereby the Applicant has agreed to hold the political subdivision and all other parties harmless in the event the appropriate zoning is not granted. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice.

(D) Zoning for Rehabilitation Developments. In an area with zoning, the Application must include documentation of current zoning. If the Property is currently conforming but with an overlay that would make it a non-conforming use as presently zoned, the Application must include a letter from a local government official with appropriate jurisdiction which addresses the items in clauses (i) - (v) of this subparagraph:

(i) a detailed narrative of the nature of non-conformance;

(ii) the applicable destruction threshold;

(iii) that it will allow the non-conformance;

(iv) Owner's rights to reconstruct in the event of damage; and

(v) penalties for noncompliance.

(12) Title Commitment/Policy. A title commitment or title policy must be submitted that includes a legal description that is consistent with the Site Control. If the title commitment or policy is dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, then a letter from the title company indicating that nothing further has transpired during the six-month period on the commitment or policy must be submitted. Tax-Exempt Bond Developments that do not include a request for Direct Loan or include the Department as the bond issuer are exempt from this requirement.

(A) The title commitment must list the name of the Development Owner as the proposed insured and list the seller or lessor as the current owner of the Development Site.

(B) The title policy must show that the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner.

(13) Ownership Structure and Previous Participation.

(A) The Department assumes that the Applicant will be able to form any one or more business entities, such as a limited partnership, that are to be engaged in the ownership of a Development as represented in the Application, and that all necessary rights, powers, and privileges including, but not limited to, Site Control will be transferable to that entity. The formation of the ownership entity, qualification to do business (if needed), and transfer of any such rights, powers, and privileges must be accomplished as required in this chapter and Chapters 12 and 13, as applicable.

(B) **Organizational Charts.** A chart must be submitted that clearly illustrates the organizational structure of the proposed Development Owner and of any Developer and Guarantor, identifying all Principals thereof and providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner, Developer and Guarantor, as applicable, whether directly or through one or more subsidiaries, whether or not they have Control. Persons having Control should be specifically identified on the chart. Individual board members and executive directors of nonprofit entities, governmental bodies, and corporations, as applicable, must be included in this exhibit and trusts must list all beneficiaries that have the legal ability to control or direct activities of the trust and are not just financial beneficiaries. In the case of Housing Tax Credit Applications only in which private equity fund investors are passive investors in the sponsorship entity, the fund manager, managing member or authorized representative of the fund who has the ability to Control, should be identified on the organizational chart, and a full list of investors is not required. The List of Organizations form, as provided in the Application, must include all Persons identified on the organizational charts, and further identify which of those Persons listed exercise Control of the Development.

(C) **Previous Participation.** Evidence must be submitted that each individual and entity shown on the organizational charts described in subparagraph (B) of this paragraph has provided a copy of the completed previous participation information to the Department. Individual Principals of such entities identified on the organizational chart and on the List of Organizations form, must provide the previous participation information, unless excluded from such requirement pursuant to Chapter 1 Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee). The information must include a list of all Developments that are, or were, previously under ownership or Control of the Applicant or each Principal, including any Person providing the required experience. All participation in any Department funded or monitored activity, including non-housing activities, as well as Housing Tax Credit developments or other programs administered by other states using state or federal programs must be disclosed. The individuals providing previous participation information must authorize the parties overseeing such assistance to release compliance histories to the Department.

(D) **Direct Loan.** In addition to the information required in (B) and (C) of this subparagraph, if the Applicant is applying for Direct Loan funds then the Applicant must also include the definitions of Person, Affiliate, Principal, and Control found in 2 CFR Part 180 and 2424, when completing the organizational chart and the Previous Participation information.

(14) **Nonprofit Ownership.** Applications that involve a §501(c)(3) or (4) nonprofit, housing finance corporation or public facility corporation as the General Partner or Owner shall submit the documentation identified in subparagraph (A) or (B) of this paragraph, as applicable. Additionally, a resolution approved at a regular meeting of the majority of the board of directors of the nonprofit, indicating their awareness of the organization's participation in each specific Application, and naming all members of the board and employees who may act on its behalf, must be provided. For Tax-Exempt Bond Developments, a copy of the executed inducement resolution will meet the resolution requirement in this paragraph.

(A) **Competitive HTC Applications for the Nonprofit Set-Aside.** Applications for Competitive Housing Tax Credits involving a §501(c)(3) or (4) nonprofit General Partner and which meet the Nonprofit Set-Aside requirements, must submit all of the documents described in clauses (i) to (v) of this subparagraph and indicate the nonprofit status on the carryover documentation and IRS Forms 8609.

(§2306.6706) Applications that include an affirmative election to not be treated under the Nonprofit Set-Aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being Affiliated with a nonprofit, only need to submit the documentation in subparagraph (B) of this paragraph. Required documents include:

(i) An IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code;

(ii) The Nonprofit Participation exhibit as provided in the Application, including a list of the names and contact information for all board members, directors, and officers;

(iii) A Third Party legal opinion stating:

(I) That the nonprofit organization is not Affiliated with or Controlled by a for-profit organization and the basis for that opinion;

(II) That the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside pursuant to Code, §42(h)(5) and the basis for that opinion;

(III) That one of the exempt purposes of the nonprofit organization is to provide low-income housing;

(IV) That the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board. If the Application includes a request for Community Housing Development Corporation (CHDO) funds, no member of the board may receive compensation, including the chief staff member;

(V) That the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement; and

(VI) That the nonprofit organization has the ability to do business as a nonprofit in Texas;

(iv) a copy of the nonprofit organization's most recent financial statement as prepared by a Certified Public Accountant; and

(v) evidence in the form of a certification that a majority of the members of the nonprofit organization's board of directors principally reside:

(I) in this state, if the Development is located in a Rural Area; or

(II) not more than ninety (90) miles from the Development, if the Development is not located in a Rural Area.

(B) **All Other Applications.** Applications that involve a §501(c)(3) or (4) nonprofit, housing finance corporation or public facility corporation as the General Partner or Owner must submit an IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code; and the Nonprofit Participation exhibit as provided in the Application. If the Application involves a nonprofit that is not exempt from taxation under §501(c)(3) or (4) of the Code, then they must disclose in the Application the basis of their nonprofit status. Housing finance corporations or public facility corporations that do not have such IRS determination letter shall submit documentation evidencing creation under their respective chapters of

the Texas Local Government Code and corresponding citation for an exemption from taxation.

(15) Feasibility Report. This report, compiled by the Applicant or Third Party Consultant, and prepared in accordance with this paragraph, which reviews site conditions and development requirements of the Development and Development Site, is required and must meet all of the criteria provided in subparagraphs (A) to (F) of this paragraph. Acquisition and Rehabilitation Applications are exempt from this requirement. If an Application involves Acquisition and Rehabilitation along with other activities, the Feasibility Report is required for the entire Development. Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, only subparagraph (D) of this paragraph is required to be submitted.

(A) For all Applications, careful focus and attention should be made regarding any atypical items materially impacting costs or the successful and timely execution of the Development plan. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(B) An Executive Summary must provide a narrative overview of the Development in sufficient detail that would help a reviewer of the Application better understand the site, the site plan, off site requirements (including discussion of any seller contributions or reimbursements), any other unique development requirements, and their impact on Site Work and Off- Site Construction costs. It should specifically describe any atypical or unusual factors that will impact site design or costs, including but not limited to: Critical Water Quality Zones, habitat protection requirements, construction for environmental conditions (wind, hurricane, flood), and local design restrictions.

(C) The Report should contain a general statement regarding the level of due diligence that has been done relating to site development (including discussions with local government development offices). Where ordinances or similar information is required, provide website links rather than copies of the ordinance. Additionally, it should contain:

- (i) a summary of zoning requirements;
- (ii) subdivision requirements;
- (iii) property identification number(s) and millage rates for all taxing jurisdictions;
- (iv) development ordinances;
- (v) fire department requirements;
- (vi) site ingress and egress requirements; and
- (vii) building codes, and local design requirements impacting the Development.

(D) Survey as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey or Category 1B - Standard Land Boundary Survey). Surveys (excluding those for Rehabilitation Developments) may not be older than 24 months from the beginning of the Application Acceptance Period.

(E) Preliminary site plan for New Construction or Adaptive Reuse Developments prepared by the civil engineer with a statement that the plan materially adheres to all applicable zoning, site development, and building code ordinances. The site plan must identify all structures, site amenities, parking spaces and driveways,

topography (using either existing seller topographic survey or U.S. Geological Survey (USGS)/other database topography), site drainage and detention, water and waste water utility tie-ins, general placement of retaining walls, set-back requirements, and any other typical or locally required items. Off-site improvements required for utilities, detention, access or other requirement must be shown on the site plan or ancillary drawings.

(F) Architect or civil engineer prepared statement describing the entitlement, site development permitting process and timing, building permitting process and timing, and an itemization specific to the Development of total anticipated impact, site development permit, building permit, and other required fees.

§11.205. Required Third Party Reports.

The Environmental Site Assessment, Scope and Cost Review, Appraisal (if applicable), and the Market Analysis must be submitted no later than the Third Party Report Delivery Date as identified in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Direct Loan Development Dates and Deadlines). For Competitive HTC Applications, the Environmental Site Assessment, Scope and Cost Review, Appraisal (if applicable), and the Primary Market Area map (with definition based on census tracts, and site coordinates in decimal degrees, area of PMA in square miles, and list of census tracts included) must be submitted no later than the Full Application Delivery Date as identified in §11.2(a) of this title (relating to Competitive HTC Deadlines Program Calendar) and the Market Analysis must be submitted no later than the Market Analysis Delivery Date as identified in §11.2(a) of this chapter. For Competitive HTC Applications, if the reports, in their entirety, are not received by the deadline, the Application will be terminated. An electronic copy of the report in the format of a single file containing all information and exhibits clearly labeled with the report type, Development name and Development location are required. All Third Party reports must be prepared in accordance with Subchapter D of this chapter (relating to Underwriting and Loan Policy). The Department may request additional information from the report provider or revisions to the report as needed. In instances of non-response by the report provider, the Department may substitute in-house analysis. The Department is not bound by any opinions expressed in the report.

(1) Environmental Site Assessment. This report, required for all Developments and prepared in accordance with the requirements of §11.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines), must not be dated more than 12 months prior to the date of Application submission for non-Competitive Applications, or the first day of the Application Acceptance Period for Competitive HTC Applications. If this timeframe is exceeded, then a letter or updated report must be submitted, dated not more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report.

(A) Existing Developments funded by USDA will not be required to supply this information; however, it is the Applicant's responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(B) If the report includes a recommendation that an additional assessment be performed, then a statement from the Applicant must be submitted with the Application indicating that those additional assessments and recommendations will be performed prior to closing. If the assessments require further mitigating recommendations, then evidence indicating that the mitigating recommendations have been carried out must be submitted at cost certification.

(2) Market Analysis. The Market Analysis, required for all Developments and prepared in accordance with the requirements of §11.303 of this chapter (relating to Market Analysis Rules and Guidelines), must not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications. If the report is older than six months, but not more than 12 months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, the Qualified Market Analyst that prepared the report may provide a statement that reaffirms the findings of the original Market Analysis. The statement may not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications and must be accompanied by the original Market Analysis.

(A) The report must be prepared by a disinterested Qualified Market Analyst approved by the Department in accordance with the approval process outlined in §11.303 of this chapter.

(B) Applications in the USDA Set-Aside proposing Rehabilitation with residential structures at or above 80% occupancy at the time of Application submission, the appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §11.304 of this chapter (relating to Appraisal Rules and Guidelines), will satisfy the requirement for a Market Analysis; however, the Department may request additional information as needed. (§2306.67055; §42(m)(1)(A)(iii))

(C) It is the responsibility of the Applicant to ensure that this analysis forms a sufficient basis for the Applicant to be able to use the information obtained to ensure that the Development will comply with fair housing laws.

(3) Scope and Cost Review (SCR). This report, required for Rehabilitation (excluding Reconstruction) and Adaptive Reuse Developments and prepared in accordance with the requirements of §11.306 of this chapter (relating to Scope and Cost Review Guidelines), must not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications. If the report is older than six months, but not more than 12 months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, the report provider may provide a statement that reaffirms the findings of the original SCR. The statement may not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications and must be accompanied by the original SCR. For Developments which require a capital needs assessment from USDA the capital needs assessment may be substituted for the SCR and may be more than six months old, as long as USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §11.306 of this chapter. All Rehabilitation Developments financed with Direct Loans must also submit a capital needs assessment estimating the useful life of each major system. This assessment must include a comparison between the local building code and the International Existing Building Code of the International Code Council. The report must be accompanied by the Department's SCR Supplement in the form of an excel workbook as published on the Department's website. For Rehabilitation (excluding Reconstruction) and Adaptive Reuse Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, a Scope and Cost Review prepared by a Third Party is not required. The application must include a Scope of Work Narrative as described in §11.306(k) of this chapter (relating to Scope and Cost Review Guidelines).

(4) Appraisal. This report, required for all Rehabilitation and Adaptive Reuse Developments and prepared in accordance with the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines), is required for any Application claiming any portion of the building acquisition in Eligible Basis, and Identity of Interest transactions pursuant to Subchapter D of this chapter, must not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications. For Developments that require an appraisal from USDA, the appraisal may be more than six months old, as long as USDA has confirmed in writing that the existing appraisal is still acceptable. Notwithstanding the foregoing, if the Application contains a Market Analysis and the appraisal is not required to fulfill purposes other than establishing the value of land or buildings, an appraisal is not required if no acquisition costs are entered in the development cost schedule.

§11.206. Board Decisions (§§2306.6725(c);2306.6731; and 42(m)(1)(A)(iv)).

The Board's decisions regarding awards or the issuance of Determination Notices, if applicable, shall be based upon the Department's staff and the Board's evaluation of the proposed Developments' consistency with, and fulfillment of, the criteria and requirements set forth in this chapter, Chapter 13 of this title (relating to the Multifamily Direct Loan Rule) and other applicable Department rules and other applicable state, federal and local legal requirements, whether established in statute, rule, ordinance, NOFA, official finding, or court order. The Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, including good cause, and the reasons for any decision that conflicts with the recommendations made by Department staff. Good cause includes the Board's decision to apply discretionary factors where authorized. The Department reserves the right to reduce the amount of funds requested in an Application, condition the Housing Tax Credit or Direct Loan recommendation or terminate the Application based on the Applicant's inability to demonstrate compliance with program requirements.

§11.207. Waiver of Rules.

An Applicant may request a waiver from the Board in writing at or prior to the submission of the pre-application (if applicable) or the Application or subsequent to an award. Waiver requests on Competitive HTC Applications will not be accepted between submission of the Application and any award for the Application. Staff may identify and initiate a waiver request to remedy an error in the QAP or other Multifamily rules, provide necessary relief in response to a natural disaster, or address facets of an Application or Development that have not been contemplated. The Applicant must submit plans for mitigation or alternative solutions with the waiver request. Any such request for waiver submitted by an Applicant must be specific to an actual proposed Development and must be submitted to the Department in the format required in the Multifamily Programs Procedures Manual. Any waiver, if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved. All waiver requests must meet the requirements of paragraphs (1) and (2) of this subsection.

(1) A waiver request made at or prior to pre-application or Application must establish that the need for the waiver is not within the control of the Applicant or is due to an overwhelming need. A recommendation for a waiver may be subject to the Applicant's provision of alternative design elements or amenities of a similar nature or that serve a similar purpose. Waiver requests for items that were elected to meet scoring criteria or where the Applicant was provided a menu of options to meet the requirement will not be considered to satisfy this paragraph, unless the Applicant demonstrates that all potential options have been exhausted.

(2) The waiver request must establish how, by granting the waiver, it better serves the policies and purposes articulated in Tex. Gov't Code §§2306.001, 2306.002, 2306.359, and 2306.6701, (which are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program) than not granting the waiver.

(3) The Board may not grant a waiver to provide directly or implicitly any Forward Commitments, unless due to extenuating and unforeseen circumstances as determined by the Board. The Board may not waive any requirement contained in statute. The Board may grant a waiver that is in response to a natural, federally declared disaster that occurs after the adoption of the Qualified Allocation Plan to the extent authorized by a governor declared disaster proclamation suspending statutory or regulatory 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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Texas Department of Housing and Community Affairs

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



SUBCHAPTER D. UNDERWRITING AND LOAN POLICY

10 TAC §§11.301 - 11.306

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

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

§11.301. General Provisions.

This subchapter applies to the underwriting, Market Analysis, appraisal, Environmental Site Assessment, Direct Loan, and Scope and Cost Review standards employed by the Department. This subchapter provides rules for the underwriting review of an affordable housing Development's financial feasibility and economic viability that ensures the most efficient allocation of resources while promoting and preserving the public interest in ensuring the long-term health of an awarded Application and the Department's portfolio. In addition, this subchapter guides staff in making recommendations to the Executive Award and Review Advisory Committee (EARAC or the Committee), Executive Director, and the Board to help ensure procedural consistency in the determination of Development feasibility (Texas Government Code §§2306.081(c), 2306.185, and 2306.6710(d)). Due to the unique characteristics of each Development, the interpretation of the rules and guidelines described in this subchapter is subject to the discretion of the Department and final determination by the Board.

§11.302. Underwriting Rules and Guidelines.

(a) General Provisions.

(1) Pursuant to Tex. Gov't Code §2306.148 and §2306.185(b), the Board is authorized to adopt underwriting standards

as set forth in this section. Furthermore, for Housing Credit Allocation, Code §42(m)(2), requires the tax credits allocated to a Development not to exceed the amount necessary to assure feasibility. Additionally, 24 CFR Parts 92 and 93, as further described in CPD Notice 15-11 require the Department to adopt rules and standards to determine the appropriate Multifamily Direct Loan feasibility. The rules adopted pursuant to the Tex. Gov't Code and the Code are developed to result in an Underwriting Report (Report) used by the Board in decision making with the goal of assisting as many Texans as possible by providing no more financing than necessary based on an independent analysis of Development feasibility. The Report generated in no way guarantees or purports to warrant the actual performance, feasibility, or viability of the Development.

(2) **Oversourcing of Funds.** The total amount of Department-allocated funds combined with any additional soft funds provided by other units of government may not exceed the total cost of all non-market Units at the development, calculated on a per-unit basis. For purposes of this subsection, soft funds include any grants, below-market interest rate loans, or similar funds with a total cost to the Applicant that is below commercial-rate financing, but does not include payable loans provided at commercial rates with deferred payments. If the Department determines that a development is oversourced in accordance with this subsection, the Applicant will be required to reduce the soft funds provided by other units of government so as to no longer be oversourced.

(b) **Report Contents.** The Report provides a synopsis and reconciliation of the Application information submitted by the Applicant. For the purpose of this subchapter the term Application includes additional documentation submitted after the initial award of funds that is relevant to any subsequent reevaluation. The Report contents will be based upon information that is provided in accordance with and within the timeframes set forth in this chapter, Chapters 11, 12, or 13, or in a Notice of Funds Availability (NOFA), as applicable.

(c) **Recommendations in the Report.** The conclusion of the Report, if being recommended, includes a recommended award of funds or Housing Credit Allocation Amount and states any feasibility or other conditions to be placed on the award. The award amount is based on the lesser of the amounts determined using the methods in paragraphs (1) - (3) of this subsection:

(1) **Program Limit Method.** For Housing Credit Allocations, this method is based upon calculation of Eligible Basis after applying all cost verification measures and program limits as described in this section. The Applicable Percentage used is defined in §11.1(d) of this chapter (relating to Definitions). For Department programs other than Housing Tax Credits, this method is based upon calculation of the funding limit in current program rules or NOFA at the time of underwriting.

(2) **Gap Method.** This method evaluates the amount of funds needed to fill the gap created by Total Housing Development Cost less total non-Department-sourced funds or Housing Tax Credits. In making this determination, the Underwriter resizes any anticipated Deferred Developer Fee downward (but not less than zero) before reducing the amount of Department funds or Housing Tax Credits. In the case of Housing Tax Credits, the syndication proceeds needed to fill the gap in permanent funds are divided by the syndication rate to determine the amount of Housing Tax Credits. In making this determination and based upon specific conditions set forth in the Report, the Underwriter may assume adjustments to the financing structure (including treatment of a Cash Flow loan as if fully amortizing over its term) or make adjustments to any Department financing, such that the cumulative Debt Coverage Ratio (DCR) conforms to the standards described in this section. For Housing Tax Credit Developments at cost certification, timing

adjusters may be considered as a reduction to equity proceeds for this purpose. Timing adjusters must be consistent with and documented in the original partnership agreement (at admission of the equity partner) but relating to causes outside of the Developer's or Owner's control. The equity partner must provide a calculation of the amount of the adjuster to be used by the Underwriter.

(3) The Amount Requested. The amount of funds that is requested by the Applicant. For Housing Tax Credit Developments (exclusive of Tax-Exempt Bond Developments) this amount is limited to the amount requested in the original Application documentation.

(d) Operating Feasibility. The operating feasibility of a Development funded by the Department is tested by analyzing its Net Operating Income (NOI) to determine the Development's ability to pay debt service and meet other financial obligations throughout the Affordability Period. NOI is determined by subtracting operating expenses, including replacement reserves and taxes, from rental and other income sources.

(1) Income. In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's income pro forma by determining the appropriate rental rate per unit based on subsidy contracts, program limitations including but not limited to Utility Allowances, actual rents supported by rent rolls and Market Rents and other market conditions. Miscellaneous income, vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are used unless well-documented support is provided and independently verified by the Underwriter.

(A) Rental Income. The Underwriter will review the Applicant's proposed rent schedule and determine if it is consistent with the representations made throughout the Application. The Underwriter will independently calculate a Pro Forma Rent for comparison to the Applicant's estimate in the Application.

(i) Market Rents. The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §11.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst and other market data sources. For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Gross Program Rent at 60% AMI, or 80% if the Applicant will make the Income Average election. As an alternative, if the Applicant submits Market Rents that are up to 30% higher than the Gross Program Rent at 60% AMGI gross rent, or Gross Program Rent at 80% AMGI gross rent and the Applicant will make the Income Average election, and the Applicant submits an investor commissioned market study with the application, the Underwriter has the discretion to use the market rents supported by the investor commissioned market study in consideration of the independently determined rents. The Applicant must also provide a statement by the investor indicating that they have reviewed the market study and agree with its conclusions.

(ii) Gross Program Rent. The Underwriter will use the Gross Program Rents for the year that is most current at the time the underwriting begins. When underwriting for a simultaneously funded competitive round, all Applications are underwritten with the Gross Program Rents for the same year. If Gross Program Rents are adjusted by the Department after the close of the Application Acceptance Period, but prior to publication of the Report, the Underwriter may adjust the Effective Gross Income (EGI) to account for any increase or

decrease in Gross Program Rents for the purposes of determining the reasonableness of the Applicant's EGI.

(iii) Contract Rents. The Underwriter will review rental assistance contracts to determine the Contract Rents currently applicable to the Development. Documentation supporting the likelihood of continued rental assistance is also reviewed. The Underwriter will take into consideration the Applicant's intent to request a Contract Rent increase. At the discretion of the Underwriter, the Applicant's proposed rents may be used as the Pro Forma Rent, with the recommendations of the Report conditioned upon receipt of final approval of such an increase. Tenant-based vouchers or tenant-based rental assistance are not included as Income.

(iv) Utility Allowances. The Utility Allowances used in underwriting must be in compliance with all applicable federal guidance, and §10.614 of this title (relating to Utility Allowances). Utility Allowances must be calculated for individually metered tenant paid utilities.

(v) Net Program Rents. Gross Program Rent less Utility Allowance.

(vi) Actual Rents for existing Developments will be reviewed as supported by a current rent roll. For Unstabilized Developments, actual rents will be based on the most recent units leased with occupancy and leasing velocity considered. Actual rents may be adjusted by the Underwriter to reflect lease-up concessions and other market considerations.

(vii) Collected Rent. Represents the monthly rent amount collected for each Unit Type. For rent-assisted units, the Contract Rent is used. In absence of a Contract Rent, the lesser of the Net Program Rent, Market Rent or actual rent is used.

(B) Miscellaneous Income. All ancillary fees and miscellaneous secondary income, including but not limited to, late fees, storage fees, laundry income, interest on deposits, carport and garage rent, washer and dryer rent, telecommunications fees, and other miscellaneous income, are anticipated to be included in a \$5 to \$30 per Unit per month range. Projected income from tenant-based rental assistance will not be considered. Exceptions may be made at the discretion of the Underwriter and must be supported by either the normalized operating history of the Development or other existing comparable properties within the same market area.

(i) The Applicant must show that a tenant will not be required to pay the additional fee or charge as a condition of renting a Unit and must show that the tenant has a reasonable alternative.

(ii) The Applicant's operating expense schedule should reflect an itemized offsetting line-item associated with miscellaneous income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.

(iii) Collection rates of exceptional fee items will generally be heavily discounted.

(iv) If an additional fee is charged for the optional use of an amenity, any cost associated with the construction, acquisition, or development of the hard assets needed to produce the amenity must be excluded from Eligible Basis.

(C) Vacancy and Collection Loss. The Underwriter generally uses a normalized vacancy rate of 7.5% (5% vacancy plus 2.5% for collection loss). The Underwriter may use other assumptions based on conditions in the immediate market area. 100% project-based rental subsidy developments and other well documented cases may be underwritten at a combined 5% vacancy rate at the discretion of the Underwriter if the immediate market area's historical performance

reflected in the Market Analysis is consistently higher than a 95% occupancy rate.

(D) Effective Gross Income (EGI). EGI is the total of Collected Rent for all Units plus Miscellaneous Income less Vacancy and Collection Loss. If the Applicant's pro forma EGI is within 5% of the EGI independently calculated by the Underwriter, the Applicant's EGI is characterized as reasonable in the Report; however, for purposes of calculating the underwritten DCR the Underwriter's pro forma will be used unless the Applicant's pro forma meets the requirements of paragraph (3) of this subsection.

(2) Expenses. In determining the first year stabilized operating expense pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate based upon the characteristics of each Development, including the location, utility structure, type, the size and number of Units, and the Applicant's management plan. Historical, stabilized and certified financial statements of an existing Development or Third Party quotes specific to a Development will reflect the strongest data points to predict future performance. The Underwriter may review actual operations on the Applicant's other properties monitored by the Department, if any, or review the proposed management company's comparable properties. The Department's database of properties located in the same market area or region as the proposed Development also provides data points; expense data from the Department's database is available on the Department's website. Data from the Institute of Real Estate Management's (IREM) most recent Conventional Apartments-Income/Expense Analysis book for the proposed Development's property type and specific location or region may be referenced. In some cases local or project-specific data such as PHA Utility Allowances and property tax rates are also given significant weight in determining the appropriate line item expense estimate. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.

(A) General and Administrative Expense. (G&A)--Accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses. G&A does not include partnership related expenses such as asset management, accounting or audit fees. Costs of tenant services are not included in G&A.

(B) Management Fee. Fee paid to the property management company to oversee the operation of the Property and is most often based upon a percentage of EGI as documented in an existing property management agreement or proposal. The Underwriter will use the Applicant's proposed Management Fee if it is within the range of 4% to 6% of EGI. A proposed fee outside of this range must be documented.

(C) Payroll Expense. Compensation, insurance benefits, and payroll taxes for on-site office, leasing and maintenance staff. Payroll does not include Third-Party security or tenant services contracts. Staffing specific to tenant services, security or other staffing not related to customary property operations should be itemized and included in other expenses or tenant services expense.

(D) Repairs and Maintenance Expense. Materials and supplies for the repairs and maintenance of the Development including Third-Party maintenance contracts. This line-item does not include costs that are customarily capitalized that would result from major replacements or renovations.

(E) Utilities Expense. Gas and electric energy expenses paid by the Development. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.

(F) Water, Sewer, and Trash Expense (WST). Includes all water, sewer and trash expenses paid by the Development.

(G) Insurance Expense. Cost of Insurance coverage for the buildings, contents, and general liability, but not health or workman's compensation insurance.

(H) Property Tax. Includes real property and personal property taxes but not payroll taxes.

(i) An assessed value will be calculated based on the capitalization rate published by the county taxing authority. If the county taxing authority does not publish a capitalization rate, a capitalization rate of 10% or a comparable assessed value may be used.

(ii) Other assessed values or property tax estimates may be used based on development specific factors as determined by the Underwriter.

(iii) If the Applicant proposes a property tax exemption or Payment in Lieu of Taxes (PILOT) agreement the Applicant must provide documentation in accordance with §10.402(d) of this title (relating to Documentation Submission Requirements at Commitment of Funds). At the underwriter's discretion, such documentation may be required prior to Commitment or Determination Notice if deemed necessary.

(I) Replacement Reserves. Periodic deposits to a reserve account to pay for the future replacement or major repair of building systems and components (generally items considered capitalized costs). The Underwriter will use a minimum reserve of \$250 per Unit for New Construction and Reconstruction Developments and \$300 per Unit for all other Developments. The Underwriter may require an amount above \$300 for the Development based on information provided in the Scope and Cost Review (SCR) or, for existing USDA developments, an amount approved by USDA. The Applicant's assumption for reserves may be adjusted by the Underwriter if the amount provided by the Applicant is insufficient to fund capital needs as documented by the SCR during the first fifteen (15) years of the long term pro forma. Higher reserves may be used if documented by a primary lender or syndicator.

(J) Other Operating Expenses. The Underwriter will include other reasonable, customary and documented property-level operating expenses such as audit fees, security expense, telecommunication expenses (tenant reimbursements must be reflected in EGI) and TDHCA's compliance fees. For Developments financed by USDA, a Return to Owner (RTO) may be included as an operating expense in an amount consistent with the maximum approved by USDA or an amount determined by the Underwriter. This category does not include depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees.

(K) Resident Services. Resident services are not included as an operating expense or included in the DCR calculation unless:

(i) There is a documented financial obligation on behalf of the Owner with a unit of state or local government to provide resident supportive services at a specified dollar amount. The financial obligation must be identified by the permanent lender in their term sheet and the dollar amount of the financial obligation must be included in the DCR calculation on the permanent lender's 15-year pro forma at Application. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred; or

(ii) The Applicant demonstrates a history of providing comparable supportive services and expenses at existing affiliated

properties within the local area. Except for Supportive Housing Developments, the estimated expense of supportive services must be identified by the permanent lender in their term sheet and included in the DCR calculation on the 15-year pro forma. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred; and

(iii) On-site staffing or pro ration of staffing for coordination of services only, and not the provision of services, can be included as a supportive services expense without permanent lender documentation.

(L) Total Operating Expenses. The total of expense items described in subparagraphs (A) - (K) of this paragraph (relating to Operating Feasibility). If the Applicant's total expense estimate is within 5% of the final total expense figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating DCR, the Underwriter's independent calculation will be used unless the Applicant's first year stabilized pro forma meets the requirements of paragraph (3) of this subsection.

(3) Net Operating Income (NOI). The difference between the EGI and total operating expenses. If the Applicant's first year stabilized NOI figure is within 5% of the NOI calculated by the Underwriter, the Applicant's NOI is characterized as reasonable in the Report; however, for purposes of calculating the first year stabilized pro forma DCR, the Underwriter's calculation of NOI will be used unless the Applicant's first year stabilized EGI, total operating expenses, and NOI are each within 5% of the Underwriter's estimates. For Housing Tax Credit Developments at cost certification, actual NOI will be used as adjusted for stabilization of rents and extraordinary lease-up expenses. Permanent lender and equity partner stabilization requirements documented in the loan and partnership agreements will be considered in determining the appropriate adjustments and the NOI used by the Underwriter. For Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, the Underwriter will not develop independent estimates of EGI, Total Operating Expenses, or NOI. The Applicant's NOI will generally be characterized as reasonable, subject to review for compliance with Underwriting Rules and Guidelines.

(4) Debt Coverage Ratio. DCR is calculated by dividing NOI by the sum of the debt service payments on all permanent or foreclosable lien(s) with scheduled and periodic payment requirements, including any required debt service on a Direct Loan subject to the applicable Notice of Funding Availability (NOFA) or other program requirements, and any on-going loan related fees such as credit enhancement fees or loan servicing fees. If executed loan documents do not exist, loan terms including principal and interest payments are calculated based on the terms indicated in the most current term sheet(s). Otherwise, actual terms indicated in the executed loan documents will be used. Term sheet(s) must indicate the minimum DCR required by the lender for initial underwriting as well as for stabilization purposes. Unusual or non-traditional financing structures may also be considered.

(A) Interest Rate. The rate documented in the term sheet(s) or loan document(s) will be used for debt service calculations. Term sheets indicating a variable interest rate must provide the base rate index or methodology for determining the variable rate index and any component rates comprising an all-in interest rate. The term sheet(s) must state the lender's underwriting interest rate assumption, or the Applicant must submit a separate statement from the lender with an estimate of the interest rate as of the date of such statement. At initial underwriting, the Underwriter may adjust the underwritten interest rate assumption based on market data collected on similarly structured transactions or rate index history. Private Mortgage Insur-

ance premiums and similar fees are not included in the interest rate but calculated on outstanding principal balance and added to the total debt service payment.

(B) Amortization Period. For purposes of calculating DCR, the permanent lender's amortization period will be used if not less than 30 years and not more than 40 years. Up to 50 years may be used for federally sourced or insured loans. For permanent lender debt with amortization periods less than 30 years, 30 years will be used. For permanent lender debt with amortization periods greater than 40 years, 40 years will be used. For non-Housing Tax Credit transactions a lesser amortization period may be used if the Direct Loans will be fully amortized over the same period as the permanent lender debt.

(C) Repayment Period. For purposes of projecting the DCR over a 30 year period for Developments with permanent financing structures with balloon payments in less than 30 years, the Underwriter will carry forward debt service based on a full amortization at the interest rate stated in the term sheet(s).

(D) Acceptable Debt Coverage Ratio Range. Except as set forth in clauses (i) or (ii) of this subparagraph, the acceptable first year stabilized pro forma DCR must be between a minimum of 1.15 and a maximum of 1.35 (maximum of 1.50 for Housing Tax Credit Developments at cost certification).

(i) If the DCR is less than the minimum, the recommendations of the Report may be based on a reduction to debt service and the Underwriter will make adjustments to the financing structure in the priority order presented in subclauses (I) - (IV) of this clause subject to Direct Loan NOFA requirements and program rules:

(I) A reduction to the interest rate of a Direct Loan;

(II) An increase in the amortization period of a Direct Loan;

(III) A reduction in the principal amount of a Direct Loan; and

(IV) An assumed reduction in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet(s) as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(ii) Except for Developments financed with a Direct Loan as the senior debt and the DCR is greater than the maximum, the recommendations of the Report may be based on an increase to debt service and the Underwriter will make adjustments to the assumed financing structure in the priority order presented in subclauses (I) - (III) of this clause subject to Direct Loan NOFA requirements and program rules:

(I) an increase to the interest rate of a Direct Loan up to the lesser of the maximum interest rate pursuant to a Direct Loan NOFA or the interest rate on any senior permanent debt or if no senior permanent debt a market rate determined by the Underwriter based on current market interest rates;

(II) or a decrease in the amortization period on a Direct Loan but not less than 30 years; and

(III) an assumed increase in the permanent loan amount for non-Department proposed financing based upon the rates and terms in the permanent loan term sheet as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(iii) For Housing Tax Credit Developments, a reduction in the recommended Housing Credit Allocation Amount may be

made based on the Gap Method described in subsection (c)(2) of this section as a result of an increased debt assumption, if any.

(iv) For Developments financed with a Direct Loan subordinate to FHA financing, DCR on the Direct Loan will be calculated using 75% of the Surplus Cash (or other amount if identified in a Direct Loan NOFA).

(v) The Underwriter may limit total debt service that is senior to a Direct Loan to produce an acceptable DCR on the Direct Loan and may limit total debt service if the Direct Loan is the senior primary debt.

(5) Long Term Pro forma. The Underwriter will create a 30-year operating pro forma using the criteria provided in subparagraphs (A) to (C) of this paragraph:

(A) The Underwriter's or Applicant's first year stabilized pro forma as determined by paragraph (3) of this subsection.

(B) A 2% annual growth factor is utilized for income and a 3% annual growth factor is utilized for operating expenses except for management fees that are calculated based on a percentage of each year's EGI.

(C) Adjustments may be made to the long term pro forma if satisfactory support documentation is provided by the Applicant or as independently determined by the Underwriter.

(e) Total Housing Development Costs. The Department's estimate of the Total Housing Development Cost will be based on the Applicant's Development cost schedule to the extent that costs can be verified to a reasonable degree of certainty with documentation from the Applicant and tools available to the Underwriter. For New Construction Developments, the Underwriter's total cost estimate will be used unless the Applicant's Total Housing Development Cost is within 5% of the Underwriter's estimate. The Department's estimate of the Total Housing Development Cost for Rehabilitation Developments or Adaptive Reuse Developments will be based on the estimated cost provided in the SCR for the scope of work as defined by the Applicant and §11.306(a)(5) of this chapter (relating to SCR Guidelines); the Underwriter may make adjustments to the SCR estimated costs. If the Applicant's cost estimate is utilized and the Applicant's line item costs are inconsistent with documentation provided in the Application or program rules, the Underwriter may make adjustments to the Applicant's Total Housing Development Cost. For Competitive Housing Tax Credit Applications, the Underwriter will adjust an Applicant's cost schedule line item to meet program rules. Underwriter will not make subsequent adjustments to the application to meet feasibility requirements as a result of the initial adjustment required to meet program rules.

(1) Acquisition Costs.

(A) Land, Reconstruction, and Adaptive Reuse Acquisition.

(i) For a non-identity of interest acquisition of land, or a Reconstruction or Adaptive Reuse Development, the underwritten acquisition cost will be the amount(s) reflected in the Site Control document(s) for the Property. At Cost Certification, the acquisition cost used will be the actual amount paid as verified by the settlement statement.

(ii) For an identity of interest acquisition of land, or a Reconstruction or Adaptive Reuse Development, the underwritten acquisition cost will be the lesser of the amount reflected in the Site Control documents for the property or the appraised value as determined by an appraisal that meets the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines). An appraisal is not required if the land or building are donated to the proposed Development, and no

costs of acquisition appear on the Development Cost Schedule. An acquisition will be considered an identity of interest transaction when an Affiliate of the seller is an Affiliate of, or a Related Party to, any Owner at any level of the Development Team or a Related Party lender; and

(I) is the current owner in whole or in part of the Property; or

(II) has or had within the prior 36 months the legal or beneficial ownership of the property or any portion thereof or interest therein regardless of ownership percentage, control or profit participation prior to the first day of the Application Acceptance Period or in the case of a tax-exempt bond or 4% tax credit application the Application Date.

(iii) For all identity of interest acquisitions, the cost used at cost certification will be limited to the acquisition cost underwritten in the initial Underwriting of the Application.

(iv) In cases where more land will be acquired (by the Applicant or a Related Party) than will be utilized as the Development Site and the remainder acreage is not accessible for use by tenants or dedicated as permanent and maintained green space, the acquisition cost that will be allocated to the proposed Development Site will be based on an appraisal containing segregated values for the total acreage to be acquired, the acreage for the Development Site and the remainder acreage. The Underwriter will not utilize a prorated value greater than the total amount in the Site Control document(s).

(B) Acquisition and Rehabilitation. The underwritten acquisition cost for an Acquisition and Rehabilitation Development will be the appraised value as determined by an appraisal that meets the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines).

(C) USDA Rehabilitation Developments. The underwritten acquisition cost for developments financed by USDA will be the transfer value approved by USDA.

(D) Eligible Basis on Acquisition of Buildings. Building acquisition cost included in Eligible Basis is limited to the appraised value of the buildings, exclusive of land value, as determined by the appraisal.

(2) Off-Site Costs. The Underwriter will only consider costs of Off-Site Construction that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(3) Site Work Costs. The Underwriter will only consider costs of Site Work, including site amenities, that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(4) Building Costs.

(A) New Construction and Reconstruction. The Underwriter will use the Marshall and Swift Residential Cost Handbook, other comparable published Third-Party cost estimating data sources, historical final cost certifications of previous Housing Tax Credit developments and other acceptable cost data available to the Underwriter to estimate Building Cost. Generally, the "Average Quality" multiple, townhouse, or single family costs, as appropriate, from the Marshall and Swift Residential Cost Handbook or other comparable published Third-Party data source, will be used based upon details provided in the Application and particularly building plans and elevations. Costs for multi-level parking structures must be supported by a cost estimate from a Third Party contractor with demonstrated experience in structured parking construction. The Underwriter will consider amenities, specifications and development types not included in the Average

Quality standard. The Underwriter may consider a sales tax exemption for nonprofit General Contractors.

(B) Rehabilitation and Adaptive Reuse.

(i) The Applicant must provide a scope of work and narrative description of the work to be completed. The narrative should speak to all Off-Site Construction, Site Work, and building components including finishes and equipment, and development amenities. The narrative should be in sufficient detail so that the reader can understand the work and it must generally be arranged consistent with the line-items on the SCR Supplement and must also be consistent with the Development Cost Schedule of the Application.

(ii) The Underwriter will use cost data provided on the SCR Supplement if adequately described and substantiated in the SCR report as the basis for estimating Total Housing Development Costs.

(5) Contingency. Total contingency, including any soft cost contingency, will be limited to a maximum of 7% of Building Cost plus Site Work and Off-Site Construction for New Construction and Reconstruction Developments, and 10% of Building Cost plus Site Work and Off-Site Construction for Rehabilitation and Adaptive Reuse Developments. For Housing Tax Credit Developments, the percentage is applied to the sum of the eligible Building Cost, eligible Site Work costs and eligible Off-Site Construction costs in calculating the eligible contingency cost.

(6) General Contractor Fee. General Contractor fees include general requirements, contractor overhead, and contractor profit. General requirements include, but are not limited to, on-site supervision or construction management, off-site supervision and overhead, jobsite security, equipment rental, storage, temporary utilities, and other indirect costs. General Contractor fees are limited to a total of 14% on Developments with Hard Costs of \$3 million or greater, the lesser of \$420,000 or 16% on Developments with Hard Costs less than \$3 million and greater than \$2 million, and the lesser of \$320,000 or 18% on Developments with Hard Costs at \$2 million or less. Any contractor fees to Affiliates or Related Party subcontractors regardless of the percentage of the contract sum in the construction contract (s) will be treated collectively with the General Contractor Fee limitations. For Housing Tax Credit Developments, the percentages are applied to the sum of the Eligible Hard Costs in calculating the eligible contractor fees. For Developments also receiving financing from USDA, the combination of builder's general requirements, builder's overhead, and builder's profit should not exceed the lower of TDHCA or USDA requirements. Additional fees for ineligible costs will be limited to the same percentage of ineligible Hard Costs but will not be included in Eligible Basis.

(7) Developer Fee.

(A) For Housing Tax Credit Developments, the Developer Fee included in Eligible Basis cannot exceed 15% of the project's eligible costs, less Developer Fee, for Developments proposing 50 Units or more and 20% of the project's eligible costs, less Developer Fee, for Developments proposing 49 Units or less. If the Development is an additional phase, proposed by any Principal of the existing tax credit Development, the Developer Fee may not exceed 15%, regardless of the number of Units.

(B) For Housing Tax Credit Developments, any additional Developer Fee claimed for ineligible costs will be limited to the same percentage but applied only to ineligible Hard Costs. Any Developer Fee above this limit will be excluded from Total Housing Development Costs. All fees to Affiliates or Related Parties for work or guarantees determined by the Underwriter to be typically completed

or provided by the Developer or Principal(s) of the Developer will be considered part of Developer Fee.

(C) For Housing Tax Credit Developments, Eligible Developer Fee is multiplied by the appropriate Applicable Percentage depending on whether it is attributable to acquisition or rehabilitation basis.

(D) For non-Housing Tax Credit Developments, the percentage can be up to 7.5%, but is based upon Total Housing Development Cost less the sum of the fee itself, land costs, the costs of permanent financing, excessive construction period financing described in paragraph (8) of this subsection, reserves, and any identity of interest acquisition cost.

(8) Financing Costs. All fees required by the construction lender, permanent lender and equity partner must be indicated in the term sheets. Eligible construction period interest is limited to the lesser of actual eligible construction period interest, or the interest on one year's fully drawn construction period loan funds at the construction period interest rate indicated in the term sheet(s). For tax-exempt bond transactions up to 24 months of interest may be included. Any excess over this amount will not be included in Eligible Basis. Construction period interest on Related Party or Affiliate construction loans is only included in Eligible Basis with documentation satisfactory to the Underwriter that the loan will be at a market interest rate, fees and loan terms and the Related Party lender can demonstrate that it is routinely engaged in construction financing to unrelated parties.

(9) Reserves. Except for the underwriting of a Housing Tax Credit Development at cost certification, the Underwriter will utilize the amount presented in the Applicant's Development Cost Schedule up to twelve months of stabilized operating expenses plus debt service (up to twenty-four months for USDA or HUD-financed rehabilitation transactions). Reserve amounts exceeding these limits will be excluded from Total Housing Development Costs. Pursuant to §10.404(c) of this title (relating to Operative Reserve Accounts), and for the underwriting of a Housing Tax Credit Development at cost certification, operating reserves that will be maintained for a minimum period of five years and documented in the Owner's partnership agreement or the permanent lender's loan documents will be included as a development cost.

(10) Soft Costs. Eligible soft costs are generally costs that can be capitalized in the basis of the Development for tax purposes. The Underwriter will evaluate and apply the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Code. Generally the Applicant's costs are used however the Underwriter will use comparative data and Third Party CPA certification as to the capitalization of the costs to determine the reasonableness of all soft costs. For Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, the Underwriter will not develop independent estimates for Building Cost or Soft Costs. The Applicant's Total Housing Development Cost and Total Eligible Cost will generally be characterized as reasonable, subject to review for compliance with Underwriting Rules and Guidelines.

(11) Additional Tenant Amenities. For Housing Tax Credit Developments and after submission of the cost certification package, the Underwriter may consider costs of additional building and site amenities (suitable for the Target Population being served) proposed by the Owner in an amount not to exceed 1.5% of the originally underwritten Hard Costs. The additional amenities must be included in the LURA.

(12) Special Reserve Account. For Housing Tax Credit Developments at cost certification, the Underwriter may include a de-

posit of up to \$2,500 per Unit into a Special Reserve Account as a Development Cost.

(f) Development Team Capacity and Development Plan.

(1) The Underwriter will evaluate and report on the overall capacity of the Development Team by reviewing aspects, including but not limited to those identified in subparagraphs (A) - (D) of this paragraph:

(A) Personal credit reports for development sponsors, Developer Fee recipients and those individuals anticipated to provide guarantee(s) in cases when warranted. The Underwriter may evaluate the credit report and identify any bankruptcy, state or federal tax liens or other relevant credit risks for compliance with eligibility and debarment requirements as found in Chapter 2 of this title (relating to Enforcement);

(B) Quality of construction, Rehabilitation, and ongoing maintenance of previously awarded housing developments by review of construction inspection reports, compliance on-site visits, findings of UPCS violations and other information available to the Underwriter;

(C) For Housing Tax Credit Developments, repeated or ongoing failure to timely submit cost certifications, requests for and clearance of final inspections, and timely response to deficiencies in the cost certification process; and

(D) Adherence to obligations on existing or prior Department funded developments with respect to program rules and documentation.

(2) While all components of the Development plan may technically meet the other individual requirements of this section, a confluence of serious concerns and unmitigated risks identified during the underwriting process may result in an Application being determined to be infeasible by the Underwriter. Any recommendation made under this subsection to deny an Application for a Grant, Direct Loan or Housing Credit Allocation is subject to Appeal as further provided for in §11.902 of this chapter (relating to Appeals).

(g) Other Underwriting Considerations. The Underwriter will evaluate additional feasibility elements as described in paragraphs (1) - (4) of this subsection.

(1) Interim Operating Income. Interim operating income listed as a source of funds must be supported by a detailed lease-up schedule and analysis.

(2) Floodplains. The Underwriter evaluates the site plan, floodplain map, survey and other information provided to determine if any of the buildings, drives, or parking areas reside within the 100-year floodplain. If such a determination is made by the Underwriter, the Report will include a condition that:

(A) The Applicant must pursue and receive a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR-F); or

(B) The Applicant must identify the cost of flood insurance for the buildings within the 100-year floodplain and certify that the flood insurance will be obtained; and

(C) The Development must be proposed to be designed to comply with the QAP, Program Rules and NOFA, and applicable Federal or state requirements.

(3) Proximity to Other Developments. The Underwriter will identify in the Report any Developments funded or known and anticipated to be eligible for funding within one linear mile of the subject.

Distance is measured in a straight line from nearest boundary point to nearest boundary point.

(4) Direct Loans. In accordance with the requirements of 24 CFR §§92.250 and 93.300(b), a request for a Direct Loan will not be recommended for approval if the first year stabilized pro forma Cash Flow, after deducting any payment due to the Developer on a deferred developer fee loan and scheduled payments on cash flow loans, divided by the Development Owner's equity exceeds 10%, or a higher amount not to exceed 12% may be approved by the underwriter for unique ownership capital structures or as allowed by a federally insured loan program. For this purpose, Cash Flow may be adjusted downward by the Applicant electing to commit any Cash Flow in excess of the limitation to a special reserve account, in accordance with §10.404(d) of this title. For capital structures without Development Owner equity, a maximum of 75% of on-going Cash Flow, after deducting any payment due to the Developer on a deferred developer fee loan and scheduled payments on cash flow loans, may be distributed to the Development Owner and the remaining 25% must be deposited to a special reserve account, in accordance with §10.404(d) of this title. If the Direct Loan is not recommended for approval, the remaining feasibility considerations under this section will be based on a revised sources schedule that does not contain the Direct Loan. This standard will also be used when the Development Owner is seeking approval for a request for a subordination agreement or a refinance.

(h) Work Out Development. Developments that are underwritten subsequent to Board approval in order to refinance or gain relief from restrictions may be considered infeasible based on the guidelines in this section, but may be characterized as "the best available option" or "acceptable available option" depending on the circumstances and subject to the discretion of the Underwriter as long as the option analyzed and recommended is more likely to achieve a better financial outcome for the property and the Department than the status quo.

(i) Feasibility Conclusion. A Development will be characterized as infeasible if paragraph (1) or (2) of this subsection applies. The Development will be characterized as infeasible if one or more of paragraphs (3) or (4) of this subsection applies unless paragraph (5)(B) of this subsection also applies.

(1) Gross Capture Rate, AMGI Band Capture Rates, and Individual Unit Capture Rate. The method for determining capture rates for a Development is defined in §11.303 of this chapter (relating to Market Analysis Rules and Guidelines). The Underwriter will independently verify all components and conclusions of the capture rates and may, at their discretion, use independently acquired demographic data to calculate demand and may make a determination of the capture rates based upon an analysis of the Sub-market. The Development:

(A) Is characterized as an Elderly Development and the Gross Capture Rate or any AMGI bad capture rate exceeds 10%; or

(B) Is outside a Rural Area and targets the general population, and the Gross Capture Rate or any AMGI band capture rate exceeds 10% (or 15% for Tax-Exempt Bond Developments located in an MSA (as defined in the HTC Site Demographics Characteristics Report) with a population greater than one million if the average physical occupancy is 92.5% or greater for all stabilized affordable housing developments located within a 20 minute drive time, as supported by the Market Analyst, from the subject Development); or

(C) Is in a Rural Area and targets the general population, and:

(i) contains total Units of 120 or less, and the Gross Capture Rate or any AMGI band capture rate exceeds 30%; or

(ii) contains more than 120 total Units, and the Gross Capture Rate or any AMGI band capture rate exceeds 10%; or

(D) Is Supportive Housing and the Gross Capture Rate or any AMGI band capture rate exceeds 30%; or

(E) Has an Individual Unit Capture Rate for any Unit Type greater than 65%; and

(F) Developments meeting the requirements of subparagraph (A), (B), (C), (D) or (E) of this paragraph may avoid being characterized as infeasible if clause (i) or (ii) of this subparagraph apply:

(i) Replacement Housing. The proposed Development is comprised of affordable housing which replaces previously existing affordable housing within the Primary Market Area as defined in §11.303 of this chapter (relating to Market Analysis Rules and Guidelines) on a Unit for Unit basis, and gives the displaced tenants of the previously existing affordable housing a leasing preference; or

(ii) Existing Housing. The proposed Development is comprised of existing affordable housing, whether defined by an existing land use and rent restriction agreement or if the subject rents are at or below 50% AMGI rents, which is at least 50% occupied and gives displaced existing tenants a leasing preference as stated in a relocation plan.

(2) Deferred Developer Fee. Applicants requesting an allocation of tax credits where the estimated Deferred Developer Fee, based on the underwritten capitalization structure, is not repayable from Cash Flow within the first 15 years of the long term pro forma as described in subsection (d)(5) of this section.

(3) Initial Feasibility.

(A) Except when underwritten at cost certification, the first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68% for Rural Developments 36 Units or less, and 65% for all other Developments.

(B) The first year DCR is below 1.15 (1.00 for USDA Developments).

(4) Long Term Feasibility. The Long Term Pro forma reflects:

(A) A Debt Coverage Ratio below 1.15 at any time during years two through fifteen; or

(B) Negative Cash Flow at any time throughout the term of a Direct Loan, or at any time during years two through fifteen for applications that do not include a request for a Direct Loan.

(5) Exceptions. The infeasibility conclusions will not apply if:

(A) The Executive Director of the Department finds that documentation submitted by the Applicant at the request of the Underwriter will support unique circumstances that will provide mitigation.

(B) Developments not meeting the requirements of one or more of paragraphs (3)(A) or (4) of this subsection will be re-characterized as feasible if one or more of clauses (i) - (v) of this subparagraph apply. A Development financed with a Direct Loan will not be re-characterized as feasible with respect to paragraph (4)(B) of this subsection. The Development:

(i) will receive Project-based Section 8 Rental Assistance or the HUD Rental Assistance Demonstration Program for at

least 50% of the Units and a firm commitment, with terms including Contract Rent and number of Units, is submitted at Application;

(ii) will receive rental assistance for at least 50% of the Units in association with USDA financing;

(iii) will be characterized as public housing as defined by HUD for at least 50% of the Units;

(iv) meets the requirements under §11.1(d)(126)(E)(i) of this chapter (relating to Supportive Housing Developments) as Supportive Housing and there is an irrevocable commitment, as evidenced by resolution from the sponsor's governing board, to fund operating deficits over the entire Affordability Period; or

(v) has other long term project based restrictions on rents for at least 50% of the Units that allow rents to increase based upon expenses and the Applicant's proposed rents are at least 10% lower than both the Net Program Rent and Market Rent.

§11.303. Market Analysis Rules and Guidelines.

(a) General Provision. A Market Analysis prepared for the Department must evaluate the need for decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford. The analysis must determine the feasibility of the subject Development rental rates or sales price, and state conclusions as to the impact of the Development with respect to the determined housing needs. The Market Analysis must include a statement that the report preparer has read and understood the requirements of this section. The Market Analysis must also include a statement that the person or company preparing the Market Analysis is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the Market Analysis, and that the fee is in no way contingent upon the outcome of the Market Analysis. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(b) Self-Contained. A Market Analysis prepared for the Department must allow the reader to understand the market data presented, the analysis of the data, and the conclusions derived from such data. All data presented should reflect the most current information available and the report must provide a parenthetical (in-text) citation or footnote describing the data source. The analysis must clearly lead the reader to the same or similar conclusions reached by the Market Analyst. All steps leading to a calculated figure must be presented in the body of the report.

(c) Market Analyst Qualifications. A Market Analysis submitted to the Department must be prepared and certified by an approved Qualified Market Analyst. (§2306.67055) The Department will maintain an approved Market Analyst list based on the guidelines set forth in paragraphs (1) - (2) of this subsection.

(1) The approved Qualified Market Analyst list will be updated and published annually on or about November 1st. If not listed as an approved Qualified Market Analyst by the Department, a Market Analyst may request approval by submitting items in subparagraphs (A) - (F) of this paragraph at least 30 calendar days prior to the first day of the competitive tax credit Application Acceptance Period or 30 calendar days prior to submission of any other application for funding for which the Market Analyst must be approved. An already approved Qualified Market Analyst will remain on the list so long as at least one (1) Market Analysis has been submitted to the Department in the previous 12 months or items (A), (B), (C) and (E) are submitted prior to

October 1st. Otherwise, the Market Analyst will automatically be removed from the list. Submission items include:

(A) Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships);

(B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis. A firm with multiple offices or locations must indicate all members expected to be providing Market Analysis;

(C) Resumes for all members of the firm or subcontractors who may author or sign the Market Analysis;

(D) General information regarding the firm's experience including references, the number of previous similar assignments and timeframes in which previous assignments were completed;

(E) Certification from an authorized representative of the firm that the services to be provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the Application Round in which each Market Analysis is submitted; and

(F) A sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the sample Market Analysis is submitted.

(2) During the underwriting process each Market Analysis will be reviewed and any discrepancies with the rules and guidelines set forth in this section may be identified and require timely correction. Subsequent to the completion of the Application Round and as time permits, staff or a review appraiser will re-review a sample set of submitted market analyses to ensure that the Department's Market Analysis Rules and Guidelines are met. If it is found that a Market Analyst has not conformed to the Department's Market Analysis Rules and Guidelines, as certified to, the Market Analyst will be notified of the discrepancies in the Market Analysis and will be removed from the approved Qualified Market Analyst list.

(A) In and of itself, removal from the list of approved Market Analysts will not invalidate a Market Analysis commissioned prior to the removal date and at least 90 days prior to the first day of the applicable Application Acceptance Period.

(B) To be reinstated as an approved Qualified Market Analyst, the Market Analyst must amend the previous report to remove all discrepancies or submit a new sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the updated or new sample Market Analysis is submitted.

(d) Market Analysis Contents. A Market Analysis for a rental Development prepared for the Department must be organized in a format that follows a logical progression and must include, at minimum, items addressed in paragraphs (1) - (13) of this subsection.

(1) Title Page. Include Development address or location, effective date of analysis, date report completed, name and address of person authorizing report, and name and address of Market Analyst.

(2) Letter of Transmittal. The date of the letter must be the date the report was completed. Include Development's address or location, description of Development, statement as to purpose and scope of analysis, reference to accompanying Market Analysis report with effective date of analysis and summary of conclusions, date of Property inspection, name of persons inspecting subject Property, and signatures of all Market Analysts authorized to work on the assignment. Include a

statement that the report preparer has read and understood the requirements of this section.

(3) Table of Contents. Number the exhibits included with the report for easy reference.

(4) Market Analysis Summary. Include the Department's Market Analysis Summary exhibit.

(5) Assumptions and Limiting Conditions. Include a description of all assumptions, both general and specific, made by the Market Analyst concerning the Property.

(6) Identification of the Real Estate. Provide a statement to acquaint the reader with the Development. Such information includes street address, tax assessor's parcel number(s), and Development characteristics.

(7) Statement of Ownership. Disclose the current owners of record and provide a three year history of ownership for the subject Development.

(8) Primary Market Area. A limited geographic area from which the Development is expected to draw most of its demand. The size and shape of the PMA should be reflective of proximity to employment centers, services and amenities and contain the most significant areas from which to draw demand. All of the Market Analyst's conclusions specific to the subject Development must be based on only one PMA definition. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area. (§2306.67055)

(A) The PMA will be defined by the Market Analyst as:

(i) geographic size based on a base year population no larger than necessary to provide sufficient demand but no more than 100,000 people;

(ii) boundaries based on U.S. census tracts; and

(iii) the population of the PMA may exceed 100,000 if the amount over the limit is contained within a single census tract.

(B) The Market Analyst's definition of the PMA must include:

(i) a detailed narrative specific to the PMA explaining:

(I) How the boundaries of the PMA were determined with respect to census tracts chosen and factors for including or excluding certain census tracts in proximity to the Development;

(II) Whether a more logical market area within the PMA exists but is not definable by census tracts and how this subsection of the PMA supports the rationale for the defined PMA;

(III) What are the specific attributes of the Development's location within the PMA that would draw prospective tenants from other areas of the PMA to relocate to the Development;

(IV) What are the specific attributes, if known, of the Development itself that would draw prospective tenants currently residing in other areas of the PMA to relocate to the Development;

(V) If the PMA crosses county lines, discuss the different income and rent limits in each county and how these differing amounts would affect the demand for the Development;

(VI) For rural Developments, discuss the relative draw (services, jobs, medical facilities, recreation, schools, etc.) of the Development's immediate local area (city or populous area if no city) in comparison to its neighboring local areas (cities, or populous

areas if no cities), in and around the PMA. A rural PMA should not include significantly larger more populous areas unless the analyst can provide substantiation and rationale that the tenants would migrate to the Development's location from the larger cities;

(VII) Discuss and quantify current and planned single-family and non-residential construction (include permit data if available); and

(VIII) Other housing issues in general, if pertinent;

(ii) a complete demographic report for the defined PMA;

(iii) a scaled distance map indicating the PMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order with labels as well as the location of the subject Development and all comparable Developments. The map must indicate the total square miles of PMA; and

(iv) a proximity table indicating distance from the Development to employment centers, medical facilities, schools, entertainment and any other amenities relevant to the potential residents and include drive time estimates.

(C) Comparable Units. Identify developments in the PMA with Comparable Units. In PMAs lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect data from markets with similar characteristics and make quantifiable and qualitative location adjustments. Provide a data sheet for each comparable development consisting of:

- (i) development name;
- (ii) address;
- (iii) year of construction and year of Rehabilitation, if applicable;
- (iv) property condition;
- (v) Target Population;
- (vi) unit mix specifying number of Bedrooms, number of baths, Net Rentable Area including:

- (I) monthly rent and Utility Allowance; or
- (II) sales price with terms, marketing period and

date of sale;

- (vii) description of concessions;
- (viii) list of unit amenities;
- (ix) utility structure;
- (x) list of common amenities;
- (xi) narrative comparison of its proximity to employment centers and services relative to targeted tenant population of the subject property; and

(xii) for rental developments only, the occupancy and turnover.

(9) Market Information.

(A) Identify the number of units for each of the categories in clauses (i) - (vi) of this subparagraph, if applicable:

- (i) total housing;

(ii) all multi-family rental developments, including unrestricted and market-rate developments, whether existing, under construction or proposed;

- (iii) Affordable housing;
- (iv) Comparable Units;
- (v) Unstabilized Comparable Units; and
- (vi) proposed Comparable Units.

(B) Occupancy. The occupancy rate indicated in the Market Analysis may be used to support both the overall demand conclusion for the proposed Development and the vacancy rate assumption used in underwriting the Development described in §11.302(d)(1)(C) of this chapter (relating to Operating Feasibility). State the overall physical occupancy rate for the proposed housing tenure (renter or owner) within the defined market areas by:

- (i) number of Bedrooms;
- (ii) quality of construction (class);
- (iii) Target Population; and
- (iv) Comparable Units.

(C) Absorption. State the absorption trends by quality of construction (class) and absorption rates for Comparable Units.

(D) Demographic Reports must include:

(i) All demographic reports must include population and household data for a five year period with the year of Application submission as the base year;

(ii) All demographic reports must provide sufficient data to enable calculation of income-eligible, age-, size-, and tenure-appropriate household populations;

(iii) For Elderly Developments, all demographic reports must provide a detailed breakdown of households by age and by income; and

(iv) A complete copy of all demographic reports relied upon for the demand analysis, including the reference index that indicates the census tracts on which the report is based.

(E) Demand. Provide a comprehensive evaluation of the need for the proposed housing for the Development as a whole and each Unit Type by number of Bedrooms proposed and rent restriction category within the defined market areas using the most current census and demographic data available. A complete demand and capture rate analysis is required in every Market Study, regardless of the current occupancy level of an existing Development.

(i) Demographics. The Market Analyst should use demographic data specific to the characteristics of the households that will be living in the proposed Development. For example, the Market Analyst should use demographic data specific to the elderly populations (and any other qualifying residents for Elderly Developments) to be served by an Elderly Development, if available, and should avoid making adjustments from more general demographic data. If adjustment rates are used based on more general data for any of the criteria described in subclauses (I) - (V) of this clause, they should be clearly identified and documented as to their source in the report.

(I) Population. Provide population and household figures, supported by actual demographics, for a five year period with the year of Application submission as the base year.

(II) Target. If applicable, adjust the household projections for the qualifying demographic characteristics such as the

minimum age of the population to be served by the proposed Development.

(III) Household Size-Appropriate. Adjust the household projections or target household projections, as applicable, for the appropriate household size for the proposed Unit Type by number of Bedrooms proposed and rent restriction category based on 2 persons per Bedroom or one person for Efficiency Units.

(IV) Income Eligible. Adjust the household size appropriate projections for income eligibility based on the income bands for the proposed Unit Type by number of Bedrooms proposed and rent restriction category with:

(-a-) the lower end of each income band calculated based on the lowest gross rent proposed divided by 40% for the general population and 50% for elderly households; and

(-b-) the upper end of each income band equal to the applicable gross median income limit for the largest appropriate household size based on 2 persons per Bedroom (round up) or one person for Efficiency Units.

(V) Tenure-Appropriate. Adjust the income-eligible household projections for tenure (renter or owner). If tenure appropriate income eligible target household data is available, a tenure appropriate adjustment is not necessary.

(ii) Gross Demand. Gross Demand is defined as the sum of Potential Demand from the PMA, Demand from Other Sources, and External Demand.

(iii) Potential Demand. Potential Demand is defined as the number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placed in service date.

(I) Maximum eligible income is equal to the applicable gross median income limit for the largest appropriate household size.

(II) For Developments targeting the general population:

(-a-) minimum eligible income is based on a 40% rent to income ratio;

(-b-) appropriate household size is defined as two persons per Bedroom (rounded up); and

(-c-) the tenure-appropriate population for a rental Development is limited to the population of renter households.

(III) For Developments consisting solely of single family residences on separate lots with all Units having three or more Bedrooms:

(-a-) minimum eligible income is based on a 40% rent to income ratio;

(-b-) appropriate household size is defined as two persons per Bedroom (rounded up); and

(-c-) Gross Demand includes both renter and owner households.

(IV) For Elderly Developments:

(-a-) minimum eligible income is based on a 50% rent to income ratio; and

(-b-) Gross Demand includes all household sizes and both renter and owner households within the age range (and any other qualifying characteristics) to be served by the Elderly Development.

(V) For Supportive Housing:

(-a-) minimum eligible income is \$1; and

(-b-) households meeting the occupancy qualifications of the Development (data to quantify this demand may be based on statistics beyond the defined PMA but not outside the historical service area of the Applicant).

(VI) For Developments with rent assisted units (Project Based Vouchers, Project-Based Rental Assistance, Public Housing Units):

(-a-) minimum eligible income for the assisted units is \$1; and

(-b-) maximum eligible income for the assisted units is the minimum eligible income of the corresponding affordable unit.

(iv) For External Demand, assume an additional 10% of Potential Demand from the PMA to represent demand coming from outside the PMA.

(v) For Demand from Other Sources:

(I) the source of additional demand and the methodology used to calculate the additional demand must be clearly stated;

(II) consideration of Demand from Other Sources is at the discretion of the Underwriter;

(III) Demand from Other Sources must be limited to households that are not included in Potential Demand; and

(IV) if households with Section 8 vouchers are identified as a source of demand, the Market Study must include:

(-a-) documentation of the number of vouchers administered by the local Housing Authority; and

(-b-) a complete demographic report for the area in which the vouchers are distributed.

(F) Employment. Provide a comprehensive analysis of employment trends and forecasts in the Primary Market Area. Analysis must discuss existing or planned employment opportunities with qualifying income ranges.

(10) Conclusions. Include a comprehensive evaluation of the subject Property, separately addressing each housing type and specific population to be served by the Development in terms of items in subparagraphs (A) - (J) of this paragraph. All conclusions must be consistent with the data and analysis presented throughout the Market Analysis.

(A) Unit Mix. Provide a best possible unit mix conclusion based on the occupancy rates by Bedroom type within the PMA and target, income-eligible, size-appropriate and tenure-appropriate household demand by Unit Type and income type within the PMA.

(B) Rents. Provide a separate Market Rent conclusion for each proposed Unit Type by number of Bedrooms and rent restriction category. Conclusions of Market Rent below the maximum Net Program Rent limit must be well documented as the conclusions may impact the feasibility of the Development under §11.302(i) of this chapter (relating to Feasibility Conclusion). In support of the Market Rent conclusions, provide a separate attribute adjustment matrix for each proposed Unit Type by number of Bedrooms and rental restriction category.

(i) The Department recommends use of HUD Form 92273.

(ii) A minimum of three developments must be represented on each attribute adjustment matrix.

(iii) Adjustments for concessions must be included, if applicable.

(iv) Adjustments for proximity and drive times to employment centers and services narrated in the Comparable Unit description, and the rationale for the amount of the adjustments must be included.

(v) Total adjustments in excess of 15% must be supported with additional narrative.

(vi) Total adjustments in excess of 25% indicate the Units are not comparable for the purposes of determining Market Rent conclusions.

(C) Effective Gross Income. Provide rental income, secondary income, and vacancy and collection loss projections for the subject derived independent of the Applicant's estimates.

(D) For Demand:

(i) state the Gross Demand for each Unit Type by number of Bedrooms proposed and rent restriction category (e.g. one-Bedroom Units restricted at 50% of AMGI; two-Bedroom Units restricted at 60% of AMGI);

(ii) state the Gross Demand for the proposed Development as a whole. If some households are eligible for more than one Unit Type due to overlapping eligible ranges for income or household size, Gross Demand should be adjusted to avoid including households more than once; and

(iii) state the Gross Demand generated from each AMGI band. If some household incomes are included in more than one AMGI band, Gross Demand should be adjusted to avoid including households more than once.

(E) Relevant Supply. The Relevant Supply of proposed and Unstabilized Comparable Units includes:

(i) the proposed subject Units to be absorbed;

(ii) Comparable Units in an Application with priority over the subject pursuant to §11.201(5) of this chapter (relating to Procedural Requirements for Application Submission);

(iii) Comparable Units in previously approved Developments in the PMA that have not achieved 90% occupancy for a minimum of 90 days; and

(iv) proposed and Unstabilized Comparable Units that are located in close proximity to the subject PMA if they are likely to share eligible demand or if the PMAs have overlapping census tracts. Underwriter may require Market Analyst to run a combined PMA including eligible demand and Relevant Supply from the combined census tracts; the Gross Capture Rate generated from the combined PMA must meet the feasibility criteria as defined in §11.302(i) (relating to Feasibility Conclusion).

(F) Gross Capture Rate. The Gross Capture Rate is defined as the Relevant Supply divided by the Gross Demand. Refer to §11.302(i) of this chapter (relating to Feasibility Conclusion).

(G) Individual Unit Capture Rate. For each Unit Type by number of Bedrooms and rent restriction categories, the individual unit capture rate is defined as the Relevant Supply of proposed and Unstabilized Comparable Units divided by the eligible demand for that Unit. Some households are eligible for multiple Unit Types. In order to calculate individual unit capture rates, each household is included in the capture rate for only one Unit Type.

(H) Capture Rate by AMGI Band. For each AMGI band (30%, 40%, 50%, 60%, and also 20%, 70%, and 80% if the Applicant will make the Income Average election), the capture rate by AMGI band is defined as Relevant Supply of proposed and Unstabilized Comparable Units divided by the eligible demand from that AMGI band. Some households are qualified for multiple income bands. In order to calculate AMGI band rates, each household is included in the capture rate for only one AMGI band.

(I) Absorption. Project an absorption period for the subject Development to achieve Breakeven Occupancy. State the absorption rate.

(J) Market Impact. Provide an assessment of the impact the subject Development, as completed, will have on existing Developments supported by Housing Tax Credits in the Primary Market. (§2306.67055)

(11) Photographs. Provide labeled color photographs of the subject Property, the neighborhood, street scenes, and comparables. An aerial photograph is desirable but not mandatory.

(12) Appendices. Any Third Party reports including demographics relied upon by the Market Analyst must be provided in appendix form. A list of works cited including personal communications also must be provided, and the Modern Language Association (MLA) format is suggested.

(13) Qualifications. Current Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships) and any changes to items listed in subsection (c)(1)(B) and (C) of this section (relating to Market Analyst Qualifications).

(e) The Department reserves the right to require the Market Analyst to address such other issues as may be relevant to the Department's evaluation of the need for the subject Development and the provisions of the particular program guidelines.

(f) In the event that the PMA for a subject Development overlaps the PMA's of other proposed or Unstabilized comparable Developments, the Underwriter may perform an extended Sub-Market Analysis considering the combined PMA's and all proposed and Unstabilized Units in the extended Sub-Market Area; the Gross Capture Rate from such an extended Sub-Market Area analysis may be used by the Underwriter as the basis for a feasibility conclusion.

(g) All Applicants shall acknowledge, by virtue of filing an Application, that the Department shall not be bound by any such opinion or Market Analysis, and may substitute its own analysis and underwriting conclusions for those submitted by the Market Analyst.

§11.304. *Appraisal Rules and Guidelines.*

(a) General Provision.

(1) An appraisal prepared for the Department must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation. The appraisal must be prepared by a general certified appraiser by the Texas Appraisal Licensing and Certification Board. The appraisal must include a statement that the report preparer has read and understood the requirements of this section. The appraisal must include a statement that the person or company preparing the appraisal, or reviewing the appraisal, is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the appraisal and that the fee is in no way contingent upon the outcome of the appraisal.

(2) Appraisals received by the Department for Applications to be underwritten will be reviewed in accordance with USPAP Standard 3 and Standard 4. The reviewing appraiser will be selected

by the Department from an approved list of review appraisers. If the reviewing appraiser disagrees with the conclusions or value(s) determined by the appraiser, the Underwriter will reconcile the appraisal and appraisal review and determine the appropriate value conclusions to be used in the underwriting analysis.

(b) **Self-Contained.** An appraisal prepared for the Department must describe sufficient and adequate data and analyses to support the final opinion of value. The final value(s) must be reasonable, based on the information included. Any Third Party reports relied upon by the appraiser must be verified by the appraiser as to the validity of the data and the conclusions.

(c) **Appraiser Qualifications.** The appraiser and reviewing appraiser must be appropriately certified or licensed by the Texas Appraiser Licensing and Certification Board.

(d) **Appraisal Contents.** An appraisal prepared for the Department must be organized in a format that follows a logical progression. In addition to the contents described in USPAP Standards Rule 2, the appraisal must include items addressed in paragraphs (1) - (12) of this subsection.

(1) **Title Page.** Include a statement identifying the Department as the client, acknowledging that the Department is granted full authority to rely on the findings of the report, and name and address of person authorizing report. The title page must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(2) **Letter of Transmittal.** Include reference to accompanying appraisal report, reference to all person(s) that provided significant assistance in the preparation of the report, date of report, effective date of appraisal, date of property inspection, name of person(s) inspecting the property, tax assessor's parcel number(s) of the site, estimate of marketing period, and signatures of all appraisers authorized to work on the assignment including the appraiser who inspected the property. Include a statement indicating the report preparer has read and understood the requirements of this section.

(3) **Table of Contents.** Number the exhibits included with the report for easy reference.

(4) **Disclosure of Competency.** Include appraiser's qualifications, detailing education and experience.

(5) **Statement of Ownership of the Subject Property.** Discuss all prior sales of the subject Property which occurred within the past three years. Any pending agreements of sale, options to buy, or listing of the subject Property must be disclosed in the appraisal report.

(6) **Property Rights Appraised.** Include a statement as to the property rights (e.g., fee simple interest, leased fee interest, leasehold, etc.) being considered. The appropriate interest must be defined in terms of current appraisal terminology with the source cited.

(7) **Site/Improvement Description.** Discuss the site characteristics including subparagraphs (A) - (E) of this paragraph.

(A) **Physical Site Characteristics.** Describe dimensions, size (square footage, acreage, etc.), shape, topography, corner influence, frontage, access, ingress-egress, etc. associated with the Development Site. Include a plat map or survey.

(B) **Floodplain.** Discuss floodplain (including flood map panel number) and include a floodplain map with the subject Property clearly identified.

(C) **Zoning.** Report the current zoning and description of the zoning restrictions and any deed restrictions, where applicable, and type of Development permitted. Any probability of change in zoning should be discussed. A statement as to whether or not the improvements conform to the current zoning should be included. A statement addressing whether or not the improvements could be rebuilt if damaged or destroyed, should be included. If current zoning is not consistent with the highest and best use, and zoning changes are reasonable to expect, time and expense associated with the proposed zoning change should be considered and documented. A zoning map should be included.

(D) **Description of Improvements.** Provide a thorough description and analysis of the improvements including size (Net Rentable Area, gross building area, etc.), use (whether vacant, occupied by owner, or being rented), number of residents, number of stories, number of buildings, type/quality of construction, condition, actual age, effective age, exterior and interior amenities, items of deferred maintenance, energy efficiency measures, etc. All applicable forms of depreciation should be addressed along with the remaining economic life.

(E) **Environmental Hazards.** It is recognized appraisers are not experts in such matters and the impact of such deficiencies may not be quantified; however, the report should disclose any potential environmental hazards (such as discolored vegetation, oil residue, asbestos-containing materials, lead-based paint etc.) noted during the inspection.

(8) **Highest and Best Use.** Market Analysis and feasibility study is required as part of the highest and best use. The highest and best use analysis should consider paragraph (7)(A) - (E) of this subsection as well as a supply and demand analysis.

(A) The appraisal must inform the reader of any positive or negative market trends which could influence the value of the appraised Property. Detailed data must be included to support the appraiser's estimate of stabilized income, absorption, and occupancy.

(B) The highest and best use section must contain a separate analysis "as if vacant" and "as improved" (or "as proposed to be improved/renovated"). All four elements (legally permissible, physically possible, feasible, and maximally productive) must be considered.

(9) **Appraisal Process.** It is mandatory that all three approaches, Cost Approach, Sales Comparison Approach and Income Approach, are considered in valuing the Property. If an approach is not applicable to a particular property an adequate explanation must be provided. A land value estimate must be provided if the Cost Approach is not applicable.

(A) **Cost Approach.** This approach should give a clear and concise estimate of the cost to construct the subject improvements. The source(s) of the cost data should be reported.

(i) Cost comparables are desirable; however, alternative cost information may be obtained from Marshall & Swift Valuation Service or similar publications. The section, class, page, etc. should be referenced. All soft costs and entrepreneurial profit must be addressed and documented.

(ii) All applicable forms of depreciation must be discussed and analyzed. Such discussion must be consistent with the description of the improvements.

(iii) The land value estimate should include a sufficient number of sales which are current, comparable, and similar to the subject in terms of highest and best use. Comparable sales information should include address, legal description, tax assessor's parcel num-

ber(s), sales price, date of sale, grantor, grantee, three year sales history, and adequate description of property transferred. The final value estimate should fall within the adjusted and unadjusted value ranges. Consideration and appropriate cash equivalent adjustments to the comparable sales price for subclauses (I) - (VII) of this clause should be made when applicable:

- (I) Property rights conveyed;
- (II) Financing terms;
- (III) Conditions of sale;
- (IV) Location;
- (V) Highest and best use;
- (VI) Physical characteristics (e.g., topography, size, shape, etc.); and
- (VII) Other characteristics (e.g., existing/proposed entitlements, special assessments, etc.).

(B) Sales Comparison Approach. This section should contain an adequate number of sales to provide the Underwriter with a description of the current market conditions concerning this property type. Sales data should be recent and specific for the property type being appraised. The sales must be confirmed with buyer, seller, or an individual knowledgeable of the transaction.

(i) Sales information should include address, legal description, tax assessor's parcel number(s), sales price, financing considerations and adjustment for cash equivalency, date of sale, recordation of the instrument, parties to the transaction, three year sale history, complete description of the Property and property rights conveyed, and discussion of marketing time. A scaled distance map clearly identifying the subject and the comparable sales must be included.

(ii) The method(s) used in the Sales Comparison Approach must be reflective of actual market activity and market participants.

(I) Sale Price/Unit of Comparison. The analysis of the sale comparables must identify, relate, and evaluate the individual adjustments applicable for property rights, terms of sale, conditions of sale, market conditions, and physical features. Sufficient narrative must be included to permit the reader to understand the direction and magnitude of the individual adjustments, as well as a unit of comparison value indicator for each comparable.

(II) Net Operating Income/Unit of Comparison. The Net Operating Income statistics for the comparables must be calculated in the same manner. It should be disclosed if reserves for replacement have been included in this method of analysis. At least one other method should accompany this method of analysis.

(C) Income Approach. This section must contain an analysis of both the actual historical and projected income and expense aspects of the subject Property.

(i) Market Rent Estimate/Comparable Rental Analysis. This section of the report should include an adequate number of actual market transactions to inform the reader of current market conditions concerning rental Units. The comparables must indicate current research for this specific property type. The comparables must be confirmed with the landlord, tenant or agent and individual data sheets must be included. The individual data sheets should include property address, lease terms, description of the property (e.g., Unit Type, unit size, unit mix, interior amenities, exterior amenities, etc.), physical characteristics of the property, and location of the comparables. Analysis of the Market Rents should be sufficiently detailed to permit the

reader to understand the appraiser's logic and rationale. Adjustment for lease rights, condition of the lease, location, physical characteristics of the property, etc. must be considered.

(ii) Comparison of Market Rent to Contract Rent. Actual income for the subject along with the owner's current budget projections must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. The Contract Rents should be compared to the market-derived rents. A determination should be made as to whether the Contract Rents are below, equal to, or in excess of market rates. If there is a difference, its impact on value must be qualified.

(iii) Vacancy/Collection Loss. Historical occupancy data and current occupancy level for the subject should be reported and compared to occupancy data from the rental comparables and overall occupancy data for the subject's Primary Market.

(iv) Expense Analysis. Actual expenses for the subject, along with the owner's projected budget, must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. Historical expenses should be compared to comparables expenses of similar property types or published survey data (such as IREM, BOMA, etc.). Any expense differences should be reconciled. Include historical data regarding the subject's assessment and tax rates and a statement as to whether or not any delinquent taxes exist.

(v) Capitalization. The appraiser should present the capitalization method(s) reflective of the subject market and explain the omission of any method not considered in the report.

(I) Direct Capitalization. The primary method of deriving an overall rate is through market extraction. If a band of investment or mortgage equity technique is utilized, the assumptions must be fully disclosed and discussed.

(II) Yield Capitalization (Discounted Cash Flow Analysis). This method of analysis should include a detailed and supportive discussion of the projected holding/investment period, income and income growth projections, occupancy projections, expense and expense growth projections, reversionary value and support for the discount rate.

(10) Value Estimates. Reconciliation of final value estimates is required. The Underwriter may request additional valuation information based on unique existing circumstances that are relevant for deriving the market value of the Property.

(A) All appraisals shall contain a separate estimate of the "as vacant" market value of the underlying land, based upon current sales comparables. The "as vacant" value assumes that there are no improvements on the property and therefore demolition costs should not be considered. The appraiser should consider the fee simple or leased fee interest as appropriate.

(B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value at current contract rents." For public housing converting to project-based rental assistance, the appraiser must provide a value based on the future restricted rents. The value used in the analysis may be based on the unrestricted market rents if supported by the appraisal. Regardless of the rents used in the valuation, the appraiser must consider any other on-going restrictions that will remain in place even if not affecting rents. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates or

occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.

(C) For existing Developments with rent restrictions, the appraisal must include the "as-is as-restricted" value. In particular, the value must be based on the proposed restricted rents when deriving the value based on the income approach.

(D) For all other existing Developments, the appraisal must include the "as-is" value.

(E) For any Development with favorable financing (generally below market debt) that will remain in place and transfer to the new owner, the appraisal must include a separate value for the existing favorable financing with supporting information.

(F) If required the appraiser must include a separate assessment of personal property, furniture, fixtures, and equipment (FF&E) or intangible items. If personal property, FF&E, or intangible items are not part of the transaction or value estimate, a statement to such effect should be included.

(11) Marketing Time. Given property characteristics and current market conditions, the appraiser(s) should employ a reasonable marketing period. The report should detail existing market conditions and assumptions considered relevant.

(12) Photographs. Provide good quality color photographs of the subject Property (front, rear, and side elevations, on-site amenities, interior of typical Units if available). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should be included. An aerial photograph is desirable but not mandatory.

(e) Additional Appraisal Concerns. The appraiser(s) must be aware of the Department program rules and guidelines and the appraisal must include analysis of any impact to the subject's value.

§11.305. Environmental Site Assessment Rules and Guidelines.

(a) General Provisions. The Environmental Site Assessments (ESA) prepared for the Department must be conducted and reported in conformity with the standards of the American Society for Testing and Materials (ASTM). The initial report must conform with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527-13 or any subsequent standards as published). Any subsequent reports should also conform to ASTM standards and such other recognized industry standards as a reasonable person would deem relevant in view of the Property's anticipated use for human habitation. The ESA shall be conducted by a Third Party environmental professional at the expense of the Applicant, and addressed to the Department as a User of the report (as defined by ASTM standards). Copies of reports provided to the Department which were commissioned by other financial institutions must either address Texas Department of Housing and Community Affairs as a co-recipient of the report or letters from both the provider and the recipient of the report may be submitted extending reliance on the report to the Department. The ESA report must also include a statement that the person or company preparing the ESA report will not materially benefit from the Development in any other way than receiving a fee for performing the ESA, and that the fee is in no way contingent upon the outcome of the assessment. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law." The ESA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(b) In addition to ASTM requirements, the report must:

(1) State if a noise study is recommended for a property in accordance with current HUD guidelines and identify its proximity to industrial zones, major highways, active rail lines, civil and military airfields, or other potential sources of excessive noise;

(2) Provide a copy of a current survey, if available, or other drawing of the site reflecting the boundaries and adjacent streets, all improvements on the site, and any items of concern described in the body of the ESA or identified during the physical inspection;

(3) Provide a copy of the current FEMA Flood Insurance Rate Map showing the panel number and encompassing the site with the site boundaries precisely identified and superimposed on the map;

(4) If the subject Development Site includes any improvements or debris from pre-existing improvements, state if testing for Lead Based Paint or asbestos containing materials would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;

(5) State if testing for lead in the drinking water would be required pursuant to local, state, and federal laws, or recommended due to any other consideration such as the age of pipes and solder in existing improvements. For all Rehabilitation Developments, the ESA provider must state whether the on-site plumbing is a potential source of lead in drinking water;

(6) Assess the potential for the presence of Radon on the Development Site, and recommend specific testing if necessary;

(7) Identify and assess the presence of oil, gas or chemical pipelines, processing facilities, storage facilities or other potentially hazardous explosive activities on-site or in the general area of the site that could potentially adversely impact the Development. Location of these items must be shown on a drawing or map in relation to the Development Site and all existing or future improvements. The drawing must depict any blast zones (in accordance with HUD guidelines) and include HUD blast zone calculations; and

(8) Include a vapor encroachment screening in accordance with the ASTM "Standard Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions" (E2600-10).

(c) If the report recommends further studies or establishes that environmental hazards currently exist on the Property, or are originating off-site, but would nonetheless affect the Property, the Development Owner must act on such a recommendation, or provide a plan for either the abatement or elimination of the hazard. Evidence of action or a plan for the abatement or elimination of the hazard must be presented upon Application submittal.

(d) For Developments in programs that allow a waiver of the Phase I ESA such as an existing USDA funded Development, the Development Owners are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(e) Those Developments which have or are to receive first lien financing from HUD may submit HUD's environmental assessment report, provided that it conforms to the requirements of this section.

§11.306. Scope and Cost Review Guidelines.

(a) General Provisions. The objective of the Scope and Cost Review Report (SCR) required for Rehabilitation Developments (excluding Reconstruction) and Adaptive Reuse Developments is to provide a self-contained report that provides a comprehensive description and evaluation of the current conditions of the Development and identifies a scope of work for the proposed repairs, replacements and improvements to an existing multifamily property or identifies a scope of work for the conversion of a non-multifamily property to multifamily

use. The SCR author must evaluate the sufficiency of the Applicant's scope of work and provide an independent review of the Applicant's proposed costs. The report must be in sufficient detail for the Underwriter to fully understand all current conditions, scope of work and cost estimates. It is the responsibility of the Applicant to ensure that the scope of work and cost estimates submitted in the Application is provided to the author. The SCR must include a copy of the Development Cost Schedule submitted in the Application. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(b) For Rehabilitation Developments, the SCR must include analysis in conformity with the ASTM "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018)" except as provided for in subsections (f) and (g) of this section.

(c) The SCR must include good quality color photographs of the subject Real Estate (front, rear, and side elevations, on-site amenities, interior of the structure). Photographs should be properly labeled.

(d) The SCR must also include discussion and analysis of:

(1) Description of Current Conditions. For both Rehabilitation and Adaptive Reuse, the SCR must contain a detailed description with good quality photographs of the current conditions of all major systems and components of the Development regardless of whether the system or component will be removed, repaired or replaced. For historic structures, the SCR must contain a description with photographs of each aspect of the building(s) that qualifies it as historic and must include a narrative explaining how the scope of work relates to maintaining the historic designation of the Development. Replacement or relocation of systems and components must be described;

(2) Description of Scope of Work. The SCR must provide a narrative of the consolidated scope of work either as a stand-alone section of the report or included with the description of the current conditions for each major system and components. Any New Construction must be described. Plans or drawings (that are in addition to any plans or drawings otherwise required by rule) and that relate to any part of the scope of work should be included, if available;

(3) Useful Life Estimates. For each system and component of the property the SCR must estimate its remaining useful life, citing the basis or the source from which such estimate is derived;

(4) Code Compliance. The SCR must document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Applicant to ensure that the SCR adequately considers any and all applicable federal, state, and local laws and regulations which are applicable and govern any work and potentially impact costs. For Applications requesting Direct Loan funding from the Department, the SCR author must include a comparison between the local building code and the International Existing Building Code of the International Code Council;

(5) Program Rules. The SCR must assess the extent to which any systems or components must be modified, repaired, or replaced in order to comply with any specific requirements of the housing program under which the Development is proposed to be financed, the Department's Uniform Physical Condition Standards, and any scoring criteria including amenities for which the Applicant may claim points. It is the responsibility of the Applicant to inform the report author of those requirements in the scope of work; for Direct Loan De-

velopments this includes, but is not limited to the requirements in the Lead-Based Paint Poisoning Prevention Act (42 USC §§4821-4846), the Residential Lead- Based Paint Hazard Reduction Act of 1992 (42 USC §§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, and R), and the Lead: Renovation, Repair, and Painting Program Final Rule and Response to Children with Environmental Intervention Blood Lead Levels (40 CFR Part 745);

(6) Accessibility Requirements. The SCR report must include an analysis of compliance with the Department's accessibility requirements pursuant to Chapter 1, Subchapter B and §11.101(b)(8) of this title (relating to Site and Development Requirements and Restrictions) and identify the specific items in the scope of work and costs needed to ensure that the Development will meet these requirements upon Rehabilitation (including conversion and Adaptive Reuse);

(7) Reconciliation of Scope of Work and Costs. The SCR report must include the Department's Scope and Cost Review Supplement (SCR Supplement) with the signature of the SCR author. The SCR Supplement must reconcile the scope of work and costs of the immediate physical needs identified by the SCR author with the Applicant's scope of work and costs. The costs presented on the SCR Supplement must be consistent with both the scope of work and immediate costs identified in the body of the SCR report and the Applicant's scope of work and costs as presented in the Application. Variations between the costs listed on the SCR Supplement and the costs listed in the body of the SCR report or on the Applicant's Development Cost Schedule must be reconciled in a narrative analysis from the SCR provider. The consolidated scope of work and costs shown on the SCR Supplement will be used by the Underwriter in the analysis to the extent adequately supported in the report; and

(8) Cost Estimates. The Development Cost Schedule and SCR Supplement must include all costs identified below:

(A) Immediately Necessary Repairs and Replacement. For all Rehabilitation developments, and Adaptive Reuse developments if applicable, immediately necessary repair and replacement should be identified for systems or components which are expected to have a remaining useful life of less than one year, which are found to be in violation of any applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or which are otherwise in a state of deferred maintenance or pose health and safety hazards. The SCR must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.

(B) Proposed Repair, Replacement, or New Construction. If the development plan calls for additional scope of work above and beyond the immediate repair and replacement items described in subparagraph (A) of this paragraph, the additional scope of work must be evaluated and either the nature or source of obsolescence to be cured or improvement to the operations of the Property discussed. The SCR must provide a separate estimate of the costs associated with the additional scope of work, citing the basis or the source from which such cost estimate is derived.

(C) Reconciliation of Costs. The combined costs described in subparagraphs (A) and (B) of this paragraph should be consistent with the costs presented on the Applicant's Development Cost Schedule and the SCR Supplement.

(D) Expected Repair and Replacement Over Time. The term during which the SCR should estimate the cost of expected repair and replacement over time must equal the lesser of 30 years or the longest term of any land use or regulatory restrictions which are, or

will be, associated with the provision of housing on the Property. The SCR must estimate the periodic costs which are expected to arise for repairing or replacing each system or component or the property, based on the estimated remaining useful life of such system or component as described in paragraph (1) of this subsection adjusted for completion of repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B) of this paragraph. The SCR must include a separate table of the estimated long term costs which identifies in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred for a period and no less than 30 years. The estimated costs for future years should be given in both present dollar values and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5% per annum.

(e) Any costs not identified and discussed in sufficient detail in the SCR as part of subsection (d)(6), (d)(8)(A) and (d)(8)(B) of this section will not be included in the underwritten Total Development Cost in the Report.

(f) If a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied, the Department will also accept copies of reports commissioned or required by the primary lender for a proposed transaction, which have been prepared in accordance with:

- (1) Fannie Mae's criteria for Physical Needs Assessments;
- (2) Federal Housing Administration's criteria for Project Capital Needs Assessments;
- (3) Freddie Mac's guidelines for Engineering and Property Condition Reports; and
- (4) USDA guidelines for Capital Needs Assessment.

(g) The Department may consider for acceptance reports prepared according to other standards which are not specifically named in this section, if a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied.

(h) The SCR shall be conducted by a Third Party at the expense of the Applicant, and addressed to Texas Department of Housing and Community Affairs as the client. Copies of reports provided to the Department which were commissioned by other financial institutions should address Texas Department of Housing and Community Affairs as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to Texas Department of Housing and Community Affairs.

(i) The SCR report must include a statement that the individual or company preparing the SCR report will not materially benefit from the Development in any other way than receiving a fee for performing the SCR. Because of the Department's heavy reliance on the independent cost information, the provider must not be a Related Party to or an Affiliate of any other Development Team member. The SCR report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(j) The SCR report must include the Department's SCR Compliance checklist containing the signatures of both the Applicant and SCR author.

(k) Scope of Work Narrative. For Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, a Scope and Cost Review prepared

by a Third Party is not required. The application must provide a Scope of Work Narrative, consisting of:

(1) A detailed description of the current conditions of all major systems and components of the Development regardless of whether the system or component will be removed, repaired or replaced;

(2) For historic structures, a description of each aspect of the building(s) that qualifies it as historic, including a narrative explaining how the scope of work relates to maintaining the historic designation of the Development; and

(3) a narrative of the consolidated scope of work for the proposed rehabilitation for each major system and components.

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 December 3, 2021.

TRD-202104798

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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



SUBCHAPTER E. FEE SCHEDULE, APPEALS, AND OTHER PROVISIONS

10 TAC §§11. 901 - 11.907

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

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

§11.901. Fee Schedule.

Any unpaid fees, as stated in this section, will cause an Applicant to be ineligible to apply for Department funding, ineligible to receive additional Department funding associated with a Commitment, Determination Notice or Contract, and ineligible to submit extension requests, ownership transfers, and Application amendments until such time the Department receives payment. Payments of the fees shall be in the form of a check and to the extent there are insufficient funds available, it may cause the Application, Commitment, Determination Notice or Contract to be terminated or Allocation rescinded. Other forms of payment may be considered on a case-by-case basis. Applicants will be required to pay any insufficient payment fees charged to the Department by the State Comptroller. The Executive Director may extend the deadline for specific extenuating and extraordinary circumstances, unless prohibited by other parts of this Chapter, provided the Applicant submits a written request for an extension to a fee deadline no later than five business days prior to the deadline associated with the particular fee.

(1) Competitive Housing Tax Credit Pre-Application Fee. A pre-application fee, in the amount of \$10 per Unit, based on the total number of Units reflected in the pre-application, must be submitted with the pre-application in order for the pre-application to be consid-

ered accepted by the Department. Pre-applications in which a Community Housing Development Corporation (CHDO) or a private Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, may be eligible to receive a discount of 10% off the calculated pre-application fee provided such documentation is submitted with the fee. (§2306.6716(d))

(2) Refunds of Pre-application Fees. (§2306.6716(c)) Upon written request from the Applicant, the Department shall refund the balance of the pre-application fee for a pre-application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Initial processing will constitute 50% of the review, threshold review prior to a deficiency being issued will constitute 30% of the review, and review after deficiencies are submitted and reviewed will constitute 20% of the review. In no instance will a refund of the pre-application fee be made after the Full Application Delivery Date.

(3) Application Fee. Each Application must be accompanied by an Application fee.

(A) Housing Tax Credit Applications. For Applicants having submitted a Competitive Housing Tax Credit pre-application which met the pre-application threshold requirements, and for which a pre-application fee was paid, the Application fee will be \$20 per Unit based on the total number of Units in the full Application. Otherwise, the Application fee will be \$30 per Unit based on the total number of Units in the full Application. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, may be eligible to receive a discount of 10% off the calculated Application fee, provided such documentation is submitted with the fee. (§2306.6716(d))

(B) Direct Loan Applications. The fee will be \$1,000 per Application except for those Applications that are layered with Housing Tax Credits and submitted simultaneously with the Housing Tax Credit Application. Pursuant to Tex. Gov't Code §2306.147(b), the Department is required to waive Application fees for private nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services and if HOME funds are awarded. In lieu of the Application fee, these organizations must include proof of their exempt status and a description of their supportive services as part of the Application. The Application fee is not a reimbursable cost under the HOME Program.

(4) Refunds of Application Fees. Upon written request from the Applicant, the Department shall refund the balance of the Application fee for an Application that is withdrawn by the Applicant and that is not fully processed by the Department. The withdrawal must occur prior to any Board action regarding eligibility or appeal. The amount of refund will be commensurate with the level of review completed. Initial processing will constitute 10% of the review, the site visit will constitute 10% of the review, program evaluation review will constitute 40% of the review, and the underwriting review will constitute 40% of the review. For Competitive HTC Applications, in no instance will a refund of the Application fee be made after final awards are made in July.

(5) Third Party Underwriting Fee. Applicants will be notified in writing prior to the evaluation in whole or in part of a Development by an independent external underwriter if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the external underwriting will be credited against

the Commitment or Determination Notice Fee, as applicable, established in paragraphs (6) and (7) of this section, in the event that a Commitment or Determination Notice is issued by the Department to the Development Owner.

(6) Housing Tax Credit Commitment Fee. No later than the expiration date in the Commitment, a fee equal to 4% of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and returns the credits by November 1 of the current Application Round, then a refund of 50% of the Commitment Fee may be issued upon request.

(7) Tax Exempt Bond Development Determination Notice Fee. No later than the expiration date in the Determination Notice, a fee equal to 4% of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and is not able close on the bonds, then a refund of 50% of the Determination Notice Fee may be issued upon request. The refund must be requested no later than 30 days after the Certificate of Reservation deadline.

(8) Tax-Exempt Bond Credit Increase Request Fee. Requests for increases to the credit amounts to be issued on IRS Forms 8609 than what was reflected in the Determination Notice for Tax-Exempt Bond Developments must be submitted with a fee equal to 4% of the amount of the credit increase for one year.

(9) Extension Fees. All extension requests for deadlines relating to the Carryover, 10% Test (submission and expenditure), Construction Status Reports, or Cost Certification requirements submitted at least 30 calendar days in advance of the applicable original deadline will not be required to submit an extension fee. Any extension request submitted fewer than 30 days in advance or after the original deadline must be accompanied by an extension fee of \$2,500. Fees for each subsequent extension request on the same activity will increase by increments of \$500, regardless of whether the first request was submitted thirty (30) calendar days in advance of the applicable deadline. An extension fee will not be required for extensions requested on Developments that involve Rehabilitation when the Department or U.S. Department of Agriculture (USDA) is the primary lender, if USDA or the Department is the cause for the Applicant not meeting the deadline. For each Construction Status Report received after the applicable deadline, extension fees will be automatically due (regardless of whether an extension request is submitted). Unpaid extension fees related to Construction Status Reports will be accrued and must be paid prior to issuance of IRS Forms 8609. For purposes of Construction Status Reports, each report will be considered a separate activity.

(10) Amendment Fees. An amendment request for a non-material change that has not been implemented will not be required to pay an amendment fee. Material amendment requests (whether implemented or not), or non-material amendment requests that have already been implemented will be required to submit an amendment fee of \$2,500 in order for the request to be processed. Fees for each subsequent amendment request related to the same Application will increase by increments of \$500. A subsequent request, related to the same Application, regardless of whether the first request was non-material and did not require a fee, must include a fee of \$3,000. Amendment fees and fee increases are not required for the Direct Loan programs.

(11) Right of First Refusal Fee. Requests for approval of the satisfaction of the Right of First Refusal provision of the Land Use Restriction Agreement (LURA) must be accompanied by a non-refundable fee of \$2,500.

(12) Qualified Contract Pre-Request Fee. A Development Owner must file a preliminary Qualified Contract Request to confirm eligibility to submit a Qualified Contract request. The Pre-Request must be accompanied by a non-refundable processing fee of \$250.

(13) **Qualified Contract Fee.** Upon eligibility approval of the Qualified Contract Pre-Request, the Development Owner may file a Qualified Contract Request. Such request must be accompanied by a non-refundable processing fee of \$3,000.

(14) **Ownership Transfer Fee.** Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of \$1,000.

(15) **Unused Credit or Penalty Fee for Competitive HTC Applications.** Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of IRS Form 8609. A penalty fee equal to the one year credit amount of the lost credits (10% of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of IRS Form 8609 if the tax credits are not returned, and 8609's issued, within 180 days of the end of the first year of the credit period. This penalty fee may be waived without further Board action if the Department recaptures and re-issues the returned tax credits in accordance with Code, §42. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Executive Director may recommend to the Board the imposition of a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate for any Application in an Application Round occurring concurrent to the return of credits as further provided for in §11.9(f) of this chapter (relating to Factors Affecting Scoring and Eligibility in current and future Application Rounds), or if no Application Round is pending, the Application Round immediately following the return of credits. If any such point penalty is recommended to be assessed and presented for final determination by the Board, it must include notice from the Department to the affected party not less than 14 calendar days prior to the scheduled Board meeting. The Executive Director may, but is not required to, issue a formal notice after disclosure if it is determined that the matter does not warrant point penalties.

(16) **Compliance Monitoring Fee.** Upon receipt of the cost certification for HTC Developments, HTC Developments that are layered with Direct Loan funds, or upon the completion of the 24-month development period and the beginning of the repayment period for Direct Loan only Developments, the Department will invoice the Development Owner for compliance monitoring fees. For HTC only the amount due will equal \$40 per low-income unit. For Direct Loan Only Developments the fee will be \$34 per Direct Loan Designated Units. Developments with both HTCs and Direct Loan will only pay one fee equal to \$40 per low income unit. Existing HTC developments with a Land Use Restriction Agreement that require payment of a compliance monitoring fee that receive a second allocation of credit will pay only one fee; the fee required by the original Land Use Restriction Agreement will be disregarded. For HTC Developments, the fee will be collected, retroactively if applicable, beginning with the first year of the credit period. For Direct Loan only Developments, the fee will be collected beginning with the first year of the repayment period. The invoice must be paid prior to the issuance of IRS Form 8609 for HTC properties. For Direct Loan only developments, the fee must be paid prior to the release of final retainage. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. Compliance fees may be adjusted from time to time by the Department.

(17) **Public Information Request Fee.** Public information requests are processed by the Department in accordance with the provisions of Tex. Gov't Code, Chapter 552. The Department uses the guidelines promulgated by the Office of the Attorney General to determine the cost of copying and other costs of production.

(18) **Adjustment of Fees by the Department and Notification of Fees.** (§2306.6716(b)) All fees charged by the Department in the administration of the Housing Tax Credit and Direct Loan programs may be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. Unless otherwise determined by the Department, all revised fees shall apply to all Applications in process and all Developments in operation at the time of such revisions.

(19) **Appraisal Review Fee.**

(A) **Competitive HTC Applications.** Applicants required to submit an Appraisal must submit an Appraisal Review Fee for priority Applications on or before the Market Analysis Delivery Date. If an Application becomes a priority Application after the Market Analysis Delivery Date, the Appraisal Review Fee is due in response to the initial Administrative Deficiency issued by the Department, which will request payment for the fee.

(B) **Tax-Exempt Bond Developments.** Applicants required to submit an Appraisal must submit the Appraisal Review Fee with the Application. For Applications that are withdrawn prior to the Third Party Appraisal Review, the Appraisal Review Fee will be refunded upon request.

(C) The Appraisal Review Fee will be \$1,875 per Application.

§11.902. Appeals Process.

(a) For Competitive HTC Applications, an Applicant or Development Owner may appeal decisions made by the Department pursuant to Tex. Gov't Code §2306.0321 and §2306.6715 using the process identified in this section. For Tax-Exempt Bond Developments and Direct Loan Developments (not layered with a Competitive HTC Application), an Applicant or Development Owner may appeal decisions made by the Department pursuant to §1.7 of this title (relating to Appeals). Matters that can be appealed include:

(1) A determination regarding the Application's satisfaction of applicable requirements, Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications), pre-application threshold criteria, and underwriting criteria;

(2) The scoring of the Application under the applicable selection criteria;

(3) A recommendation as to the amount of Department funding to be allocated to the Application;

(4) Misplacement of an Application or parts of an Application, mathematical errors in scoring an Application, or procedural errors resulting in unequal consideration of the Applicant's proposal;

(5) Denial of a requested change to a Commitment or Determination Notice;

(6) Denial of a requested change to a loan agreement;

(7) Denial of a requested change to a LURA;

(8) Any Department decision that results in the termination or change in set-aside of an Application; and

(9) Any other matter for which an appeal is permitted under this chapter.

(b) An Applicant or Development Owner may not appeal a decision made regarding an Application filed by or an issue related to another Applicant or Development Owner.

(c) An Applicant or Development Owner must file its appeal in writing with the Department not later than the seventh calendar day after the date the Department publishes the results of any stage of the Application evaluation or otherwise notifies the Applicant or Development Owner of a decision subject to appeal. The appeal must be made by a Person designated to act on behalf of the Applicant or an attorney that represents the Applicant. For Application related appeals, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application as supplemented in accordance with the limitations and requirements of this chapter.

(d) The Executive Director may respond in writing not later than 14 calendar days after the date of actual receipt of the appeal by the Department. If the Applicant is not satisfied with the Executive Director's response to the appeal or the Executive Director does not respond, the Applicant may appeal directly in writing to the Board. While information can be provided in accordance with any rules related to public comment before the Board, full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal must be disclosed in the appeal documentation filed with the Executive Director.

(e) An appeal filed with the Board must be received in accordance with Tex. Gov't Code §2306.6715 (d).

(f) If there is insufficient time for the Executive Director to respond to a Competitive Housing Tax Credit Application appeal prior to the agenda being posted for the July Board meeting at which awards from the Application Round will be made, the appeal may be posted to the Board agenda prior to the Executive Director's issuance of a response.

(g) Board review of an Application related appeal will be based on the original Application. A witness in an appeal may not present or refer to any document, instrument, or writing not already contained within the Application as reflected in the Department's records.

(h) The decision of the Board regarding an appeal is the final decision of the Department.

(i) The Department will post to its website an appeal filed with the Department or Board and any other document relating to the processing of an Application related appeal. (§2306.6717(a)(5))

§11.903. Adherence to Obligations. (§2306.6720).

Any Applicant, Development Owner, or other Person that fails to adhere to its obligations with regard to the programs of the Department, whether contractual or otherwise, made false or misleading representations to the Department with regard to an Application, request for funding, or compliance requirements, or otherwise violated a provision of Tex. Gov't Code, Chapter 2306 or a rule adopted under that chapter, may be subject to:

(1) Assessment of administrative penalties in accordance with Chapter 2, Subchapter C of this title (relating to Administrative Penalties) the Department's rules regarding the assessment of such penalties. Each day the violation continues or occurs is a separate violation for purposes of imposing a penalty; or

(2) In the case of the competitive Low Income Housing Tax Credit Program, a point reduction for any Application involving that Applicant over the next two Application Rounds succeeding the date on which the Department first gives written notice of any such failure to adhere to obligations or false or misleading representations. Point reductions under this section may be appealed to the Board.

§11.904. Alternative Dispute Resolution (ADR) Policy.

In accordance with Tex. Gov't Code, §2306.082, it is the Department's policy to encourage the use of appropriate ADR procedures under the Governmental Dispute Resolution Act, Tex. Gov't Code Chapter 2010, to assist in resolving disputes under the Department's jurisdiction, as provided for in §1.17 of this title (relating to Alternative Dispute Resolution).

§11.905. General Information for Commitments or Determination Notices.

(a) A Commitment or Determination Notice shall not be issued with respect to any Development for an unnecessary amount in accordance with §42(m)(2)(A) or where the cost for the total development, acquisition, construction or rehabilitation exceeds the limitations established by the Department and the Board.

(b) All Commitments or Determination Notices, whether reflected in the Commitment or Determination Notice or not, are made subject to full compliance with all applicable provisions of law and the Department's rules, all provisions of Commitment, Determination Notice, and Contract, satisfactory completion of underwriting, and satisfactory resolution of any conditions of underwriting, award, and administrative deficiencies.

(c) The Department shall notify, in writing, the mayor, county judge, or other appropriate official of the municipality or county, as applicable, in which the Development is located informing him/her of the Board's issuance of a Commitment Notice, as applicable.

(d) The Department may cancel a Commitment, Determination Notice or Carryover Allocation prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or completion of construction with respect to a Development and/or apply administrative penalties if:

(1) The Applicant, Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure, to meet any of the conditions of such Commitment, Determination Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Application process for the Development;

(2) Any material statement or representation made by the Development Owner or made with respect to the Development Owner or the Development is untrue or misleading;

(3) An event occurs with respect to the Applicant or the Development Owner which would have made the Application ineligible for funding pursuant to Subchapter C of Chapter 11 of this title (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules) if such event had occurred prior to issuance of the Commitment, Determination Notice or Carryover Allocation; or

(4) The Applicant, Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure, to comply with this chapter or other applicable Department rules, procedures, or requirements of the Department.

§11.906. Commitment and Determination Notice General Requirements and Required Documentation.

(a) Commitment. For Competitive HTC Developments, the Department shall issue a Commitment to the Development Owner which shall confirm that the Board has approved the Application and state the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) and the determination that the Development satisfies the requirements of this chapter and other applicable Department rules. The Commitment shall expire on

the date specified therein, which shall be 30 calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §11.901 of this title (relating to Fee Schedule), and satisfies any conditions set forth therein by the Department. The Commitment expiration date may not be extended.

(b) Determination Notices. For Tax Exempt Bond Developments, the Department shall issue a Determination Notice which shall confirm that the Development satisfies the requirements of this chapter as applicable and other applicable Department rules in accordance with the §42(m)(1)(D) of the Internal Revenue Code (the Code). The Determination Notice shall also state the Department's determination of a specific amount of housing tax credits that the Development may be eligible for, subject to the requirements set forth in the Department's rules, as applicable. The Determination Notice shall expire on the date specified therein, which shall be 30 calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Determination Notice, pays the required fee specified in Chapter 11, Subchapter E of this title, and satisfies any conditions set forth therein by the Department. The Determination Notice expiration date may not be extended. If the requirements of the Determination Notice, and any conditions of the Determination Notice are met, the Determination Notice shall be valid for a period of one year from the effective date of the Determination Notice, without distinction between a Certificate of Reservation or Traditional Carryforward Reservation. In instances where the Certificate of Reservation is withdrawn after the Determination Notice has been issued and a new Certification of Reservation is issued, staff will not re-issue the Determination Notice. After one year from the effective date of the Determination Notice, if a new Certificate of Reservation or Traditional Carryforward Reservation is issued, the Applicant will be required to contact the Department in order to have a new Determination Notice issued and a new Application must be submitted. Such Application submission must meet the requirements of §11.201(2) of this chapter (relating to Procedural Requirements for Application Submission). If more than a year has not passed from the effective date of the Determination Notice, yet an Applicant desires to have a new Determination Notice issued that reflects a different recommended credit amount, then a new Application must be submitted that meets the requirements of §11.201(2) of this chapter.

(c) Documentation Submission Requirements at Commitment of Funds. No later than the expiration date of the Commitment (or no later than December 31 for Competitive HTC Applications, whichever is earlier) or Determination Notice, the documentation described in paragraphs (1) - (7) of this subsection must be provided. Failure to provide these documents may cause the Commitment or Determination Notice to be rescinded.

(1) For entities formed outside the state of Texas, evidence that the entity filed a Certificate of Application for foreign qualification in Texas, a Franchise Tax Account Status from the Texas Comptroller of Public Accounts, and a Certificate of Fact from the Office of the Secretary of State. If the entity is newly registered in Texas and the Franchise Tax Account Status or Certificate of Fact are not available, a statement can be provided to that effect.

(2) For Texas entities, a copy of the Certificate of Filing for the Certificate of Formation from the Office of the Secretary of State; a Certificate of Fact from the Secretary of State, and a Franchise Tax Account Status from the Texas Comptroller of Public Accounts. If the entity is newly registered and the Certificate of Fact and the Franchise Tax Account Status are not available, a statement can be provided to that effect.

(3) Evidence that the signer(s) of the Commitment or Determination Notice have sufficient authority to sign on behalf of the Ap-

plicant in the form of a corporate resolution which indicates the sub-entity in Control consistent with the entity contemplated and described in the Application.

(4) Evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan.

(5) Evidence of satisfaction of any conditions identified in the Credit Underwriting Analysis Report, any conditions from the Executive Award Review and Advisory Committee as provided for in Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), or any other conditions of the award required to be met at Commitment or Determination Notice.

(6) Documentation of any changes to representations made in the Application subject to §10.405 of this title (relating to Amendments and Extensions).

(7) For Applications underwritten with a property tax exemption, documentation must be submitted in the form of a letter from an attorney identifying the statutory basis for the exemption and indicating that the exemption is reasonably achievable, subject to appraisal district review. Additionally, any Development with a proposed Payment in Lieu of Taxes (PILOT) agreement must provide evidence regarding the statutory basis for the PILOT and its terms.

(d) Post Bond Closing Documentation Requirements. Regardless of the issuer of the bonds, no later than 60 calendar days following closing on the bonds, the Development Owner must submit the documentation in paragraphs (1) - (5) of this subsection.

(1) Training certificate(s) from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager has attended and passed at least five hours of Fair Housing training. The certificate(s) must not be older than two years from the date of submission and must verify that all parts or phases of the offered training have been completed; two certificates supplied for the same part or phase of an offered training will not be counted towards the five hour required minimum, even if they were attended on different dates.

(2) A training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineer responsible for certifying compliance with the Department's accessibility and construction standards has attended and passed at least five hours of Fair Housing training. The certificate must not be older than two years from the date of submission and must verify that all parts or phases of the offered training have been completed; two certificates supplied for the same part or phase of an offered training will not be counted towards the five hour required minimum, even if they were attended on different dates.

(3) Evidence that the financing has closed, such as an executed settlement statement.

(4) A confirmation from the Compliance Division evidencing receipt of the CMTS Filing Agreement form pursuant to §10.607(a) of this title (relating to Reporting Requirements).

(5) An initial construction status report consisting of items from paragraphs (1) - (5) of §10.402(h) of this title (relating to Construction Status Reports).

§11.907. Carryover Agreement General Requirements and Required Documentation.

Carryover (Competitive HTC Only). All Developments that received a Commitment, and will not be placed in service and receive IRS Form(s) 8609 in the year the Commitment was issued, must submit the Carryover documentation, in the form prescribed by the Department in the

Carryover Manual, no later than the Carryover Documentation Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) of the year in which the Commitment is issued pursuant to §42(h)(1)(C) of the Code.

(1) Commitments for credits will be terminated if the Carryover documentation has not been received by this deadline, unless an extension has been approved. This termination is subject to right of appeal directly to the Board, and if so determined by the Board, immediately upon final termination by the Board, staff is directed to award the credits to other qualified Applicants on the approved waiting list.

(2) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be re-evaluated by the Department for a reduction of credit or change in conditions.

(3) All Carryover Allocations will be contingent upon the Development Owner providing evidence that they have and will maintain Site Control through the 10% Test or through the anticipated closing date, whichever is earlier. For purposes of this paragraph, any changes to the Development Site acreage between Application and Carryover must be addressed by written explanation or, as appropriate, in accordance with §10.405 of this title (relating to Amendments and Extensions).

(4) Confirmation of the right to transact business in Texas, as evidenced by the Franchise Tax Account Status (the equivalent of the prior Certificate of Account Status) from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State must be submitted with the Carryover Allocation.

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 December 3, 2021.

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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



SUBCHAPTER F. SUPPLEMENTAL HOUSING TAX CREDITS

10 TAC §§11.1001 - 11.1009

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

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

§11.1001. *General.*

(a) This subchapter applies only to 2022 Housing Tax Credits (HTC) requested to supplement Competitive HTC awards from the 2019 and 2020 ceilings, hereinafter referred to as Supplemental Credits. Applications receiving 2022 credits as forward commitments or as

part of the regular 2022 Housing Credit Cycle are not subject to the policies in this subchapter. Applicants with 2017 and 2018 allocations that received Force Majeure treatment in 2019 are prohibited from requesting Supplemental allocations, as are 2021 applicants.

(b) Submissions required to make such a request are considered a supplement to the Original Application. Requests for Supplemental Allocations are not considered Applications under the 2022 HTC Competitive Cycle nor are they part of the 2022 Application Round.

(c) Requests for Supplemental Allocations are not considered an Amendment to the Original Application. Requests for Supplemental Allocations may only include the items described in this subchapter, and submissions may not include changes to the Application that would be classified as an Amendment under §10.405 of this title (relating to Amendments and Extensions). Applicants that have Application changes that would constitute an Amendment must pursue approval of those changes separately by following the process for Amendments identified in §10.405 of this title. Issuance of a Supplemental Allocation does not constitute implicit approval of any items that may require approval as an Amendment.

(d) Any and all required notifications, submissions, satisfaction of deadlines, or resolutions required in association with Housing De-concentration Factors and satisfaction of Housing De-concentration Factor requirements, or resolution of any deficiencies, undertaken by an Applicant in association with their Original Application were satisfactorily addressed in the year of the Original Application, as evidenced by having received an allocation, are considered by extension to have been sufficiently satisfied for the Supplemental Credits with no further actions required by the Applicant.

(e) Funding decisions, satisfaction of deadlines, final scoring, or other Departmental processes that were undertaken in the award year are considered, by extension, to have been sufficiently satisfied for the Supplemental Credits; revisions to costs will not have an impact on points originally awarded for Costs of Development per Square Foot or Leveraging, as described in §11.9(e)(2) of this title (relating to Cost of Development per Square Foot) and §11.9(e)(4) of this title (relating to Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3)), respectively.

(f) Developments that have Placed in Service are not eligible to receive Supplemental Credits. Applications awarded in 2019 or 2020 that have already closed their financing, Applications requesting or being awarded Multifamily Development Loans, and Applications originally funded in 2019 or 2020 that have been approved for force majeure consideration by the Department's Board are eligible to receive Supplemental Credits. However, for Developments that have contracted for Multifamily Loan funds, the increased expenses must have occurred after the execution date of the Multifamily Contract.

(g) Except where preempted by federal or state law, the Qualified Allocation Plan (QAP) for the year of the original award will continue to apply. Proposed Developments and Applications will maintain their eligibility determinations from the Original Application, along with having met threshold requirements under Subchapters B and C of this chapter, unless specifically stated otherwise in this subchapter.

(h) All awards of Supplemental Credits will constitute the Department's approval of the original allocation being qualified for Force Majeure and the original allocation will be accompanied with Force Majeure treatment. The previously-executed Carryover Allocation Agreement will be void and a new Carryover Allocation Agreement will be issued that reflects a new total allocation that includes the full amount of the original award plus any Supplemental Credits awarded. The Department's Governing Board may impose a deadline that is

earlier than the Placed in Service Deadline and may impose conditions that were not placed on the original allocation.

§11.1002. Program Calendar for Supplemental Housing Tax Credits.

Supplemental HTC Deadlines. Non-statutory deadlines specifically listed in the Program Calendar may be extended by the Department for a period of not more than 5 business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the Department that there is good cause for the extension.

Figure: 10 TAC §11.1002

§11.1003. Maximum Supplemental Housing Tax Credits, Requests and Award Limits.

(a) The maximum amount available for allocation of Supplemental Credits will be \$5,000,000. This maximum may not provide sufficient credits to fully fund all requests for Supplemental Allocations. If there are any Supplemental Credits still available after all requests have been considered, the remainder will be transferred to the 2022 Competitive Housing Tax Credit ceiling after the Board's approval of the Supplemental Allocation awards. Applications for which a request for Supplemental Credits was submitted will not be eligible to receive an allocation from the 2022 Competitive Housing Tax Credit ceiling.

(b) Maximum Supplemental Request Limit for any given Development. Supplemental Allocations are limited to the increase in eligible costs. Supplemental Allocations will not be awarded for costs that were excluded from basis in the underwriting of the original Application. An Applicant may not request more than 7% more credits than their Original allocation. For all requests, the Department will consider the amount in the funding request of the Application to be the amount of Housing Tax Credits requested and will reduce the Applicant's request to the maximum allowable under this subsection through the underwriting process. (§2306.6711(b)).

(c) Increase in Eligible Basis (30% Boost). Applications having received an increase in Eligible Basis in their Original Application are determined by the Department, on the basis of having been previously determined eligible for this purpose, to be eligible for the basis boost for the Supplemental Allocation. However, staff will not recommend a Supplemental Allocation that would cause the Development to be over sourced, as determined by the Department, in which case a credit amount necessary to fill the gap in financing will be recommended. In no instance will the boost exceed more than the amount of credits required to create the HTC rent-restricted Units.

§11.1004. Competitive HTC Set-Asides. (§2306.111(d)).

(a) All Supplemental Allocation amounts will be associated with the Set-Aside for which the Original allocation qualified. Developments having been awarded under a set-aside in 2019 or 2020 will be considered to meet the set-aside requirements for that same set-aside in 2022. Supplemental Credits issued by the Board will be attributed to each 2022 Set-aside for the 2022 Application round as appropriate (for instance, for a 2020 development awarded out of the 2020 Non-Profit Set-Aside, now receiving \$100,000 in Supplemental Credits, \$100,000 would be attributed to the 2022 Non-Profit Set-Aside).

(b) At-Risk and USDA Set-Asides. At least 15% of the amount available for Supplemental Allocations will be allocated under the At-Risk Development Set-aside and will be deducted from the amount available for Supplemental Allocations prior to the application of the regional allocation formula required under §11.1005(c)(1) of this subchapter (relating to Regional Allocation Formula). Up to 5% of the amount available for Supplemental Allocations may be given priority to Rehabilitation Developments under the USDA Set-aside.

If the allocations set aside for the At-Risk and USDA applications are not fully utilized, they will be made available to other Supplemental Allocation requests through the collapse referenced in §11.1005(c)(2) of this subchapter (relating to Award Recommendation Methodology and Collapse).

§11.1005. Supplemental Credit Allocation Process.

(a) Intent to Request a Supplemental Allocation. Only those Applicants who submit an Intent to Request a Supplemental Allocation form to the Department by the deadline specified in §11.1002 of this subchapter (relating to Program Calendar for Supplemental Housing Tax Credits) are eligible to submit a Request for Supplemental Allocation. The Intent to Request a Supplemental Allocation must include at a minimum, the application name and number, the year of the award, the subregion and an estimate of the amount of Supplemental credits being requested.

(b) Request for Supplemental Allocation. Requests for Supplemental Allocations must be received by the deadline specified in §11.1002 of this subchapter in the format required by the Department. Changes in the amount of the Supplemental credits requested between submission of an Intent to Request a Supplemental Allocation and the actual Request for Supplemental Allocation are permitted.

(c) This section identifies the general allocation process and the methodology by which awards under the Supplemental Credit Ceiling are made.

(1) Regional Allocation Formula. After making adjustments for the At-Risk and USDA Set-Asides referenced in §11.1004(b) of this subchapter, the Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region (subregion) Supplemental Credits consistent with the Regional Allocation Formula developed in compliance with Tex. Gov't Code §2306.1115; however, consistent with the total amount available being significantly less than the Credit Ceiling, the Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region (subregion) Supplemental Credits in an amount not less than \$40,000.

(2) Award Recommendation Methodology and Collapse. The methodology described in §11.6(3) of this chapter (relating to Award Recommendation Methodology) will apply to the Supplemental HTC credit allocations. Awards of Supplemental Allocations may be made prior to completion of the Underwriting evaluation provided for in §11.1008 of this subchapter (relating to Supplemental Credit Applications Underwriting and Loan Policy), in which case the award will be made conditionally. Any conditionally awarded Supplemental Allocations may, among other things, have the amount of their Supplemental Allocation subsequently reduced or have other conditions placed on it. In the event of a tie between two or more Applications, the tie breakers in §11.7 of this chapter (relating to Tie Breaker Factors) will be utilized.

(3) Supplemental Credit Selection Criteria. The final score from the Original Application will be utilized for ranking purposes of the Supplemental Credit Applications.

(4) Third Party Requests for Administrative Deficiency. Due to the nature of the Supplemental Credit process and reliance on the Original Application and scores, the Third Party Request for Administrative Deficiency process will not be utilized during the Supplemental Allocation process under this subchapter.

§11.1006. Procedural Requirements for Supplemental Credit Application Submission.

(a) The procedures and requirements of §11.201 of this chapter (relating to Procedural Requirements for Application Submission) will

generally apply to the Supplemental Credit Application, unless otherwise specified in this subchapter.

(b) The Original Application will be relied upon, as deemed final and reviewed by staff as part of the original award; the request for Supplemental Credits must only include the items authorized in this subchapter. Architectural drawings, or other documents that relate to changes to the Application other than revisions to the financing structure may not be submitted. The Applicant must submit the required documents as a single PDF document and all spreadsheet exhibits must also be provided in a usable spreadsheet format as further specified in the Department's released materials, which will be incorporated into the Original Application by staff, and become the full request for Supplemental Allocation.

§11.1007. Required Documentation for Supplemental Credit Application Submission.

The purpose of this section is to identify the threshold documentation that is specific to the request for Supplemental Allocation submission, unless specifically indicated or otherwise required by Department rule. Only those documents listed herein may be submitted.

(1) Certification, Acknowledgement and Consent of Development Owner. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by the Development Owner and addresses the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification and that they have given it with all required authority and with actual knowledge of the matters certified. Applicants must certify that there has been no change to the Applicant Eligibility or Original Owner Certification since the Original Application was submitted.

(2) Site Requirements and Restrictions. The Applicant must certify that there have been no changes from the Original Application that would require additional disclosure or mitigation, or render the proposed Development Site ineligible. Any change must be addressed under the requirements of §10.405 of this title (relating to Amendments and Extensions).

(3) Financing Requirements. Supplemental Credit Applications must include updated exhibits and supporting information required under §11.204(7) of this chapter (relating to Required Documentation for Application Submission), along with construction contracts or contractor bids with a detailed schedule of values to support the Development Cost Schedule. The Financing Narrative should describe changes to the financial structure of the Supplemental Credit Application since the Original Application was submitted. Applicants should utilize 2021 rents in their updated exhibits; any resulting changes to operating expenses must include an explanation and rationale for the changes. Requests must include evidence from the Applicant's equity investor that the additional credits will be purchased and state the dollar value associated with that purchase. Eligible cost increases are not limited to construction costs, additionally, all cost increases must be substantiated. Supplemental Credit Applications that include Rehabilitation or Adaptive Reuse activities must include a letter from the Original Application Scope and Cost Review provider certifying that the scope of the project has not changed from the Original Application; the Development Cost Schedule must be supported by either:

- (A) construction contracts or contractor bids, or
- (B) an updated Scope and Cost Review Supplement.

(4) Site Control. Applicants must certify that there has been no change to Site Control, other than extensions or purchase by

the Applicant, since the Original Application was submitted. If the nature of Site Control has changed, Supplemental Credit Applicants must submit the appropriate documentation as described in §11.204(10) of this chapter (relating to Site Control).

(5) Zoning. (§2306.6705(5)) If the zoning status of the Development has changed since the Original Application, the Supplemental Credit Application must include all requirements of §11.204(11) of this chapter (relating to Zoning).

§11.1008. Supplemental Credit Applications Underwriting and Loan Policy.

Changes to a Development's financing structure do not constitute an Amendment. Requests for Supplemental Credits will only be reviewed for items addressed in this subchapter. In requests for Supplemental Credits the Total Developer Fee and Developer Fee included in Eligible Basis cannot exceed the Developer Fee amounts in the published Real Estate Analysis report for the Original Application. Requests may not reduce the Deferred Developer Fee from the amount included in the published Real Estate Analysis report for the Original Application, and any updates made to the Original Application that is reflected in an executed Multifamily Direct Loan Contract. The Real Estate Analysis Division will publish a memo for the Supplemental allocation serving as a supplement to the report for the Original Application.

§11.1009. Supplemental Credit Fee Schedule.

Supplemental Credit Commitment Fee. No later than the expiration date in the Commitment, a fee equal to 4% of the annual Supplemental Housing Credit Allocation amount must be submitted.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Department of Housing and Community Affairs

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



TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.65, §3.107

The Railroad Commission of Texas (Commission) adopts new §3.65, relating to Critical Designation of Natural Gas Infrastructure, and amendments to §3.107, relating to Penalty Guidelines for Oil and Gas Violations, with changes to the proposed text as published in the October 1, 2021, issue of the *Texas Register* (46 TexReg 6458). The rules will be republished. The Commission also adopts Commission Forms CI-D and CI-X, which are related to the adopted new rule and amendments and were proposed on the Commission's website.

The new section and amendments implement changes made by House Bill 3648 and Senate Bill 3 from the 87th Texas Legislative Regular Session.

The Commission received comments on the proposed new rule and amendments from 11 associations, 18 companies or organizations, and 910 individuals. The comments are summarized below.

House Bill 3648 amends Texas Natural Resources Code, Chapter 81, to add new section 81.073, regarding critical natural gas facilities and entities. Section 81.073 requires the Commission to collaborate with the Public Utility Commission of Texas (PUCT) to adopt rules to establish a process to designate certain natural gas facilities and entities associated with providing natural gas in this state as critical customers or critical gas suppliers during energy emergencies. The rules adopted by the Commission under new section 81.073 must provide that those designated as critical natural gas facilities and entities provide critical customer information, as defined by the Commission, to their electric entities. House Bill 3648 requires that the Commission adopt the new rules not later than December 1, 2021.

Senate Bill 3 is the 87th Legislature's sweeping response to the February 2021 Winter Weather Event ("Winter Storm Uri") in Texas and generally creates new law related to preparing for, preventing, and responding to weather emergencies and power outages. Senate Bill 3 requires several state agencies and regulated industries to make significant changes in response to Winter Storm Uri. This proposed rulemaking is the Commission's first of many steps in implementing the requirements of Senate Bill 3.

Weatherization

Importantly, this rulemaking implements Section 4 of Senate Bill 3. It does not implement Sections 5 or 21 of Senate Bill 3, which added Natural Resources Code section 86.044 and Utilities Code section 121.2015 requiring the Commission to adopt rules requiring a gas supply chain facility operator and a gas pipeline facility operator, respectively, to implement measures to prepare to operate during a weather emergency (i.e., "weatherize"). Many comments focused on these weatherization requirements, and some suggested the Commission include weatherization requirements or guidelines in §3.65. The Commission will initiate a rulemaking at a later date to adopt weatherization rules. Because this rulemaking is limited to addressing critical designation for load shed purposes, adding weatherization requirements or guidelines at this stage of the rulemaking is inappropriate. And, as described more fully below, both the critical designation rulemaking and the publication of the electricity supply chain map are prerequisites to the weatherization rules. Therefore, the Commission views these comments as outside the scope of the current rulemaking.

However, the Commission recognizes that the critical designation process in this rulemaking is connected to the later weatherization rulemaking because, according to § 86.044, gas supply chain facilities subject to weatherization requirements are those that are: (1) designated critical in §3.65; and (2) included on the electricity supply chain map created by the Texas Electricity Supply Chain Security and Mapping Committee (Mapping Committee). The Commission notes that Section 21 of Senate Bill 3 provides different criteria to determine whether gas pipeline facilities are subject to weatherization requirements. A gas pipeline facility is subject to weatherization requirements if the pipeline: (1) directly serves a natural gas electric generation facility oper-

ating solely to provide power to the electric grid for the ERCOT power region or for the ERCOT power region and an adjacent power region; and (2) the pipeline is included on the electricity supply chain map. Therefore, while a pipeline's critical designation status in §3.65 does not impact whether it will be required to weatherize, a gas supply chain facility's critical designation status does. In any case, the specific requirements for weatherization will be proposed in a future rulemaking and will depend on the map created by the Mapping Committee.

Comments from the Texas Senate Committee on Business and Commerce (Senate B&C), Sierra Club, Texas Consumer Association (TCA), American Public Gas Association (APGA), City of Houston, Commission Shift, Lower Colorado River Authority (LCRA), Texas Public Power Association (TPPA), CPS Energy, Public Citizen, and 910 individuals expressed concerns regarding facilities either not designated critical in the proposal or designated critical but eligible for an exception. Commenters opposed language that would allow critical facilities to "opt out" of critical designation and subsequent weatherization requirements. These commenters asked that more facilities stay critical, so these facilities are subject to weatherization requirements adopted under § 86.044 and, ultimately, to ensure natural gas is available for electric generation in an energy emergency.

The Commission has addressed these comments with two changes to the rule. First, the Commission adopts § 3.65 with new subsection (e), which states certain facilities are not eligible for an exception. These facilities include facilities on the electricity supply chain map and other facilities that contribute significantly to the natural gas supply chain - namely gas wells or oil leases producing gas or casinghead gas in excess of 250 Mcf/day; gas processing plants; natural gas pipelines or pipeline facilities that directly serve local distribution companies or electric generation; local distribution company pipelines or pipeline facilities; underground natural gas storage facilities; natural gas liquids storage and transportation facilities; and saltwater disposal facilities that support the other listed facilities. Because these facilities are not eligible for an exception, they will remain critical for load shed purposes and they will be required to weatherize if they are included on the electricity supply chain map. The Commission notes that its deadline to adopt weatherization rules in Sections 5 and 21 of Senate Bill 3 is six months after the Mapping Committee publishes the electricity supply chain map. As stated above, Section 5 of Senate Bill 3 states that only gas supply chain facilities that are both designated critical and on the electricity supply chain map are required to weatherize. The Commission is prepared to timely adopt weatherization rules in accordance with the requirements of Senate Bill 3.

Second, the Commission adopts subsection (b) with changes to designate two classes of facilities as critical. The facilities designated "critical gas suppliers" are the key parts of the natural gas supply chain. These facilities may or may not need electricity to operate. However, because they are designated critical, they will later be required to comply with Commission weatherization rules if they are also included on the electricity supply chain map regardless of whether they require electricity from an electric entity to operate. This revision addresses concerns from the City of Houston, CPS Energy, Sierra Club, Commission Shift, LCRA, and individuals that §3.65 should apply to gas facilities that may potentially supply electric generators, regardless of whether a gas facility requires electricity. Subsection (b)(2) designates facilities as "critical customers." Only those critical facilities that need power to operate are "critical customers" and are required

to provide information to their electric entities, which will limit the number of critical facilities that electric entities must prioritize as critical load. Both categories of facilities are designated critical and will be subject to weatherization requirements, once adopted, if the facility is a gas supply chain facility included on the electricity supply chain map.

Critical Designation for Load Shed Purposes

Though §3.65 relates to weatherization, the purpose of §3.65 is to implement Section 4 of Senate Bill 3 and Section 1 of House Bill 3648 by designating segments of the natural gas supply chain as critical for load shed purposes. The rule specifies the criteria and process by which entities associated with providing natural gas in Texas are designated as critical gas suppliers or critical customers during an energy emergency. Designation as a critical customer prompts a requirement for the facility's operator to directly provide the electric entities described in 16 Texas Administrative Code §25.52(h) (relating to Reliability and Continuity of Service) and section 38.074(b)(1) of the Texas Utilities Code (hereinafter "electric entities") with critical customer information. Providing the information positions a critical customer to receive power during an energy emergency so that it can continue to supply natural gas in the state for power generation and/or other important uses. The sections below summarize comments the Commission received on proposed §3.65.

Subsection (a) - Definitions

The Permian Basin Petroleum Association (PBPA), the Texas Oil and Gas Association (TXOGA), the Texas Alliance of Energy Producers (the Alliance), TPPA, and the Texas Pipeline Association (TPA) commented on the Commission's proposed definition of "energy emergency." The comments expressed concern that the definition was too broad. PBPA and TXOGA requested that the definition be tied to the Electric Reliability Council of Texas (ERCOT) Energy Emergency Alert Level 2. Comments filed in the PUCT's corresponding rulemaking to implement House Bill 3648 and Senate Bill 3 requested that the PUCT adopt a definition of energy emergency. The PUCT's adopted definition is "any event that results in or has the potential to result in firm load shed required by the reliability coordinator of a power region in Texas." The Commission adopts subsection (a)(1) with changes to incorporate the PUCT's definition because consistent definitions of "energy emergency" in the regulating agencies' rules will benefit those required to comply.

PBPA, the Alliance, TPPA and TPA also expressed concerns about the proposed definition of "weather emergency," requesting additional clarification, and some comments noted under the proposed definition affected facilities would not be able to determine whether they are prepared to operate in a weather emergency. The Commission notes that this concern relates to the proposed exception process, in which an operator was required to certify it was not prepared to operate in weather emergency. The exception process is revised in the adopted version of §3.65, and the rule no longer includes the term "weather emergency." Thus, the definition is removed.

Several comments concerned the definition of "critical customer information" in proposed subsection (a)(3) (adopted in subsection (a)(2)) and the related Table CCI proposed on the Commission's website. First, the Electric Reliability Council of Texas (ERCOT), comments jointly filed by the "Texas LDCs" (Atmos Energy Corporation's Mid-Tex and West Texas Divisions; CenterPoint Energy Resources d/b/a CenterPoint Energy Entex; and

Texas Gas Service Company, a Division of ONE Gas, Inc.); and TPA asked that the Commission consider requiring the critical customer information to be filed with the Commission in addition to filing with electric entities. TPA suggested that forms be consolidated so that the same forms can be filed with the RRC, ERCOT, PUCT, and transmission and distribution utilities (TDUs). The Texas LDCs recommended amending the definition of "critical customer information" to omit the reference to Table CCI and replace it with a reference to the Form CI-D. The Commission agrees with these comments. The proposed Table CCI is removed and replaced with the Form CI-D and its attachment. The Commission revised the Form CI-D to include the information that was listed on the Table CCI. Additional information was also added to the Form CI-D in response to comments. The Form CI-D is still required to be filed by any facility designated critical in §3.65(b). However, only critical customers are required to provide the "critical customer information" (i.e., the Form CI-D and its attachments) to their electric entity. The Commission will also grant the PUCT secure access to the forms filed with the Commission, so that the Commission, the PUCT, and the TDUs will have the same information. The Form CI-D attachment is currently in Excel form, which is the format requested by the Joint TDUs and ERCOT in their comments. The Commission notes that in the future an operator may be required to file the Form CI-D and attachment electronically without the use of Excel.

Subsection (a) is also adopted with a change to add a definition in subsection (a)(3). New subsection (a)(3) states, "In this section, any volume of gas indicated in Mcf/day means the average daily production from the well's six most recently filed monthly production reports. Wells without six months of production reports shall average the production from the well's production reports on file with the Commission or use the production volume from the well's initial potential test or deliverability test if the well has not yet filed a production report." This language is added to ensure production volumes are calculated consistently and allow for better evaluation by electric entities receiving critical customer information.

Subsection (b) - Critical Designation Criteria

Most commenters expressed concern that the proposal designated too many facilities critical such that the rule does not provide information electric entities need to incorporate critical natural gas facilities into their respective load-shed plans. These commenters include the Atmos Cities Steering Committee, Commission Shift, CPS Energy, Joint TDUs, Office of Public Utility Counsel (OPUC), PBPA, Public Citizen, Senate B&C, Southwestern Electric Power Company (SWEPCO), South Texas Electric Cooperative, Inc. (STEC), TCA, Texas Competitive Power Advocates (TCPA), Texas Electric Cooperatives (TEC), Texas Independent Producers and Royalty Owners Association (TIPRO), TXOGA, TPPA, TPA, and many individuals. Specifically, the Joint TDUs, PBPA, TIPRO, and TXOGA requested that wells that produce non-reportable or marginal amounts of gas not be designated critical. The Commission understands these concerns and has made several changes to narrow the universe of critical facilities.

First, subsection (b) is adopted with changes to include two classes of critical facilities. Subsection (b)(1) lists "critical gas suppliers." The list of critical gas suppliers is similar to the list of critical facilities in proposed subsection (b). However, the list is narrowed in three important areas: (1) critical gas wells are limited to those wells producing gas in excess of 15 Mcf/day; (2) critical oil leases are limited to those leases

producing casinghead gas in excess of 50 Mcf/day; and (3) the catchall provision in proposed (b)(8) is removed. These revisions remove thousands of facilities from the universe of critical facilities. The Commission notes that the Alliance requested the Commission refrain from making a blanket declaration that all wells below a certain production threshold are not critical. The Commission disagrees. Removing wells and leases not producing a certain threshold from critical designation removes thousands of facilities but only 1.2-1.4% of total gas production. However, the Commission notes the addition of an option for such wells to apply for critical designation in new subsection (c), which is discussed below.

The Commission further narrowed the universe of critical facilities by requiring that only "critical customers" --defined as the critical gas suppliers for whom electricity is essential to the ability of such gas supplier to operate--provide critical customer information to the electric entities. This change will limit the volume of information that electric entities must process in connection with their load shed planning. Electric entities need not incorporate in their load-shed plans facilities that do not need power. Subsection (b) and subsection (g) are adopted with a change to clarify which electric entities must be provided critical customer information. Electric entities are those described in 16 Texas Administrative Code §25.52(h) and those described in Texas Utilities Code §38.074(b)(1).

The Commission adopts subsection (b) with another change to add "control centers" to the description of pipeline facilities designated critical in subsection (b)(1)(D) and (b)(1)(E). This addition was requested by the Texas LDCs.

Many of the commenters listed above requested that the rule incorporate a "tiering" concept for purposes of prioritizing facilities for load shed. These commenters include CPS Energy, Joint TDUs, the Alliance, PBPA, SWEPCO, STEC, T CPA, TPA, TIPRO, and TXOGA. The Commission does not have any jurisdiction over electric utilities or their load shed planning and accordingly, §3.65 does not include tiers. However, recognizing that there are certain facilities that play a more significant role than others in the natural gas supply chain due to their volumetric contributions or their proximity and connectedness to electric power generation facilities and local distribution companies, the adopted rule identifies facilities in new subsection (e) that are not eligible to apply for an exception to critical designation.

The Alliance, the Joint TDUs, STEC, TPA, and TXOGA included in their comments proposed "tiers" for prioritization of critical natural gas facilities for load-shed purposes during an energy emergency. However, the above-referenced organizations, representing several portions of the natural gas and electricity supply chain, did not provide consistent suggestions regarding which critical natural gas facilities should fall into the first tier. While the Commission does not have jurisdiction over electric utilities or electricity load-shed events, the Commission sent a letter to the PUCT on November 23, 2021 to offer suggestions for the PUCT's guidance document implementing Tex. Util. Code § 38.074(b)(2) relating to load-shed during an energy emergency. The Commission recommended the following facilities be given highest priority for maintaining electric service and restoring electric service following an outage: pipelines that directly provide natural gas to electric generation or to local distribution company facilities; underground natural gas transportation and storage facilities; natural gas liquids transportation and storage facilities; gas processing plants with a capacity of 200 MMcf/day and greater; natural gas wells and oil leases

producing natural gas in the amount of 5000 Mcf/day or greater, and saltwater disposal wells, compressor stations, and control centers supporting the listed facilities. The letter also indicated support for the types of facilities that should be given lower priority, as proposed by the industry groups in their comments.

As mentioned above, facilities with a significant role in the natural gas supply chain are listed in new subsection (e). These facilities may not obtain an exception and, therefore, remain critical. Critical facilities that are not included in subsection (e) may apply for an exception to critical designation. These facilities are listed on the revised form CI-X and include gas wells producing less than or equal to 250 Mcf/day; oil leases producing less than or equal to 250 Mcf/day in casinghead gas; natural gas pipelines and pipeline facilities that do not directly serve local distribution companies or electric generation; and saltwater disposal wells and pipelines that do not support a facility listed under §3.65(e)(1)-(7). The process to apply for an exception is discussed below.

New Subsection (c) - Request for Critical Designation

The Commission adopts § 3.65 with a change to add new language in subsection (c). New subsection (c) creates an option for facilities that are excluded from critical designation in subsection (b) to apply for critical designation. The option to apply for critical designation is limited to two types of facilities: (1) facilities that are not designated in subsection (b) but are required to operate in order for another critical facility to operate; and (2) facilities that are not designated in subsection (b) but are included on the electricity supply chain map.

Subsection (c)(1) incorporates the catch-all provision from proposed subsection (b)(8). To limit the universe of facilities designated critical, the catch-all provision was removed from subsection (b). In subsection (c) as adopted, facilities that must operate in order for a critical facility to operate may apply for critical designation if they provide objective evidence that their operation is necessary for a critical facility to operate. Facilities that are included on the electricity supply chain map are required to apply for critical designation. Adopted changes in subsection (c) address comments from STEC, T CPA, TEC, and TPPA suggesting that the Commission require an application for critical designation rather than presume facilities are critical. The Commission agrees that for certain types of facilities, an application process is appropriate. The application process involves writing the Commission a letter requesting critical designation. If and when a facility's application is approved, the facility's operator will be required to file the Form CI-D.

Subsection (d) - Acknowledgment of Critical Status

The Commission received few comments on proposed subsection (d), which requires a critical facility to acknowledge its critical status on Commission Form CI-D. Comments from Commission Shift suggested that connectivity information be collected on the Form CI-D. Similarly, ERCOT, the Texas LDCs, TPA, TPPA, and TEC asked that the Commission consider requiring the critical customer information to be filed with the RRC in addition to electric entities. TPA suggested that forms be consolidated so that the same forms can be filed with the RRC, ERCOT, PUCT, and TDUs. The Texas LDCs recommended amending the definition of "critical customer information" to omit the reference to Table CCI and replace it with a reference to the Form CI-D. TPPA and TEC requested a requirement that critical customer information be provided to electric utilities at the same time the Form CI-D is filed with the Commission.

The Commission agrees and adopts subsections (a) and (d) with changes to address these comments. As mentioned above, the Table CCI is removed, and the information previously included on that Table CCI is now included on the Form CI-D attachment. The definition of "critical customer information" is revised in subsection (a) to reference the Form CI-D rather than the Table CCI. Section 3.65 now requires that all facilities designated critical in subsection (b) (both critical gas suppliers and critical customers) file the Form CI-D and any attachments with the Commission. Only critical customers are then required to file the same information with their electric entity. The certification on the Form CI-D is revised to reflect a requirement that a critical customer provide the critical customer information (i.e., the Form CI-D) to its electric entity before or at the same time the information is filed with the Commission. To address comments by TEC, the Commission has added the following statement to the Form CI-D: "Designation as a critical customer does not guarantee the uninterrupted delivery of electric service to your facilities."

Relatedly, some comments requested a certification on the Form CI-D that the facilities listed on the attachment are prepared to operate in a weather emergency. The Commission disagrees. It is not appropriate to require certification that a facility is prepared to operate until the Commission adopts weatherization rules to define what an operator must do to prepare to operate. PBPA and TPA requested language that filing the Form CI-D is not a guarantee that a facility will operate. The Commission agrees with PBPA and TPA but does not adopt this change in the rule or forms.

Subsection (d) as adopted removes references to an electronic acknowledgment or electronic system because the Commission's "RRC Online" filing system will be available to operators for filing Forms CI-D and CI-X by the time §3.65 is effective. A more comprehensive online system filing system for Forms CI-D and CI-X may be developed in the future and operators will be notified of such a new system.

Subsection (d) is adopted with a change to the biannual filing deadlines in 2022. A facility included on the electricity supply chain map will no longer be eligible for an exception and must file Form CI-D. The map will not be available by the first Form CI-D filing deadline of January 15, 2022. The second filing deadline in 2022 was proposed as September 1, 2022. However, that is the same deadline included in Senate Bill 3 for when the map must be produced. Therefore, in order to give facilities included on the map time to learn whether they are included on the map prior to filing the Form CI-D or Form CI-X, the Commission has altered the second filing deadline to September 1, 2022, or 30 days after the electricity supply chain map is published, whichever is later. Thus, if the map is published March 1, 2022, the second deadline for filing Form CI-D would be September 1, 2022, but if the map is not published until September 1, 2022, then the deadline for filing would be October 1, 2022 (30 days after the map is published).

The Commission notes STEC and TCPA suggested the rules make clear that the Form CI-D must be submitted for each facility, rather than permitting operators to submit a single form purporting to cover all of an operator's facilities. The Commission disagrees. The Form CI-D as proposed and adopted has a spreadsheet attachment that allows an operator to list of its critical facilities. The Commission and commenters who will use the form agree that a process that allows an operator to list all its facilities in one filing is most efficient. PBPA suggested that the Commission allow operators to supplement and amend forms

as more information is available. The Commission agrees that forms it requires to be filed may be updated as appropriate.

Commission Shift, PBPA, and TXOGA asked that the Commission clarify how its Form CI-D process works with the ERCOT Critical Load Designation Form. PBPA also asked the Commission to make changes to ensure §3.65 does not prevent participation in ERCOT's Load Resources Program. The Commission declines to adopt any changes in response to these comments. Based on ERCOT's comments, the Commission expects that ERCOT will use information provided on Form CI-D moving forward, but the Commission cannot speak for ERCOT on that matter. To ensure entities associated with providing natural gas in Texas are considered critical for Winter 2021-2022, the Commission sent Notices to Operators reminding operators within Commission jurisdiction to file ERCOT's Critical Load Designation Form.

New subsection (e) - Facilities Not Eligible for An Exception

As mentioned above, many commenters expressed concerns about the exception provision in proposed §3.65. These commenters include Senate B&C, the American Public Gas Association (APGA), City of Houston, Commission Shift, CPS Energy, LCRA, OPUC, Sierra Club, TCA, TPPA, and the comments submitted by individuals. The comments requested that the Commission limit the types of facilities that can obtain an exception. Several comments, such as those by STEC, TPPA, and TCPA, specifically suggested that facilities included on the electricity supply chain map be ineligible for an exception.

As mentioned above, the Commission adopts §3.65 with new language in subsection (e) to list facilities that are not eligible for an exception to critical designation. The facilities not eligible for an exception are those with a significant contribution to the natural gas supply chain, namely, facilities on the electricity supply chain map; gas wells or oil leases producing gas or casinghead gas in excess of 250 Mcf/day; gas processing plants; natural gas pipelines or pipeline facilities that directly serve local distribution companies or electric generation; local distribution company pipelines or pipeline facilities; underground natural gas storage facilities; natural gas liquids storage and transportation facilities; and saltwater disposal facilities that support the other listed facilities. Because these facilities are not eligible for an exception, they will remain critical for load shed purposes and they will be required to weatherize if they are included on the electricity supply chain map.

Subsection (f) - Critical Designation Exception

Other commenters opposed the process for a facility to obtain an exception. These commenters include APGA, Atmos Cities Steering Committee, Commission Shift, CPS Energy, Joint TDUs, LCRA, OPUC, Sierra Club, TCA, TPPA, and the comments submitted by individuals. The concern expressed in these comments is that an exception could be obtained too easily and the comments suggested including a more robust application and review process. The Commission agrees and clarifies its exception review process in subsection (f)(1).

New language added in (f)(1) requires that an application for exception to critical designation include objective evidence to demonstrate a reasonable basis and justification in support of the application. Some commenters, including the Alliance, requested examples of information an operator could provide to obtain an exception. Subsection (f)(1) includes an example of a reasonable basis and justification, which is that all of the gas produced at a critical facility is for on-site consumption or is other-

wise not available for third-party use. The evidence demonstrating the reasonable basis must be included with the applicant's Form CI-X. Subsection (f) further states that the application will be approved or denied by the Director of the Critical Infrastructure Division, and if denied, the applicant will have an opportunity to request a hearing.

The Commission also adopts changes to the exception application language similar to the changes made in subsection (d) for the Form CI-D - references to an electronic acknowledgement are removed and filing deadlines for 2022 are altered to allow facilities included on the electricity supply chain map to learn of their map status prior to filing Form CI-D or Form CI-X as appropriate.

Commenters such as OPUC, Sierra Club, and individuals opposed the amount an operator is required to pay for an exception application. The Commission understands this concern but the Commission cannot charge a fee or penalty unless it has statutory authority. With regard to the \$150 exception application fee, the Commission's authority comes from Natural Resources Code section 81.0521, which sets the fee amount at \$150.

APGA and LCRA asked that the Commission require facilities granted an exception to disclose this information to their counterparties on the supply chain so the counterparties can prepare appropriately. The Commission understands this concern and notes that whether a facility obtains an exception is public information that will be available unless claimed confidential under the Public Information Act.

Subsection (g) - Providing Critical Customer Information

The Commission adopts proposed subsection (e) as subsection (g). Subsection (g) clarifies that only critical customers are required to provide critical customer information to their electric entities. Subsection (g) is adopted with a change to clarify which electric entities must be provided critical customer information. Electric entities are those described in 16 Texas Administrative Code §25.52(h) and those described in Texas Utilities Code §38.074(b)(1). Due to comments from TPPA, subsection (g) is adopted with a change to require that critical customers provide critical customer information (the Form CI-D) to their electric entity prior to or at the same time the critical customer files the Form CI-D with the Commission. As mentioned above, this statement was also added to the certification language on the Form CI-D.

TPPA and TEC commented that the Commission should also require critical customers to timely respond to an electric entity's reasonable request for additional information within five business days of receipt of the request. The Commission agrees that critical customers and their electric entities should work together to ensure the electric entity has the information it needs for load-shed purposes. However, the Commission does not agree this language should be included in the rule.

Subsection (h) - Confidentiality of Information Filed Pursuant to §3.65

The Commission adopts §3.65 with a change to add new subsection (h). CPS Energy, Texas LDCs, and TPA requested that if critical customer information is provided to the Commission in addition to electric entities, the Commission specify how the information will be kept confidential. Though no provision of law excludes the information collected under this rule from the Public Information Act and the Commission cannot determine whether information is confidential, the Commission adds subsection (h)

to describe the process prescribed under the Public Information Act, Texas Government Code Chapter 552, for claiming information is confidential. The Commission has also added a section on both the Form CI-D and Form CI-X to allow filers to indicate that information included on the forms/attachments is confidential.

Subsection (i)

The Commission did not receive comments on proposed subsection (f), "Exceptions not transferable," adopted as subsection (i). Therefore, that provision is adopted with only minor changes to correct internal rule references.

§3.65(j) and §3.107

The Commission received comments from Atmos Cities Steering Committee, Commission Shift, CPS Energy, OPUC, and Sierra Club opposing the minimum penalties specified in the proposed amendments to §3.107, which is referenced in §3.65(j). Atmos Cities Steering Committee and CPS Energy suggested that the penalties align with those in the statute relating to weatherization requirements. That statute, Natural Resources Code §86.222, gives the Commission authority to issue a penalty up to \$1,000,000 for each violation of a rule adopted under Natural Resources Code §86.044. However, §3.65 is not adopted under Natural Resources Code §86.044. The statute requiring adoption of a critical designation rule, Natural Resources Code §81.073, does not provide the Commission penalty authority. Therefore, the Commission relies on its general penalty authority in Natural Resources Code §81.0531. The Commission notes that the penalties to which commenters are opposed are included in the Commission's penalty guidelines rule and are merely minimum penalties. The Commission has discretion to increase the penalties if circumstances warrant an increase. Therefore, the Commission adopts the penalty amounts as proposed, with the only adopted changes to §3.107 being updates to subsection references in §3.65.

TEC and TPPA asked that the Commission penalize critical facilities who fail to provide required information by removing those facilities' critical designation. The Commission disagrees because removing critical status as a penalty could incentivize non-compliance.

The Commission adopts the new rule under Texas Natural Resources Code §81.073, which requires the Commission to adopt rules to establish a process to designate natural gas facilities and entities associated with providing natural gas in this state as critical customers or critical gas suppliers during an energy emergency; and Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission. The amendments are adopted under Texas Natural Resources Code, §81.0531, which gives the Commission authority to assess a penalty if a person violates provisions of Texas Natural Resources Code, Title 3, that pertain to safety or the prevention or control of pollution or the provisions of a rule, order, license, permit, or certificate that pertain to safety or the prevention or control of pollution that are issued under Title 3.

Statutory authority: Natural Resources Code §§81.051, 81.052, 81.0531, and 81.073.

Cross reference to statute: Natural Resources Code Chapter 81.

§3.65. *Critical Designation of Natural Gas Infrastructure.*

(a) Definitions.

(1) In this section, the term "energy emergency" means any event that results in or has the potential to result in firm load shed required by the reliability coordinator of a power region in Texas.

(2) In this section, the term "critical customer information" means the information required on Commission Form CI-D and any attachments.

(3) In this section, "any volume of gas indicated in Mcf/day" means the average daily production from the well's six most recently filed monthly production reports. Wells without six months of production reports shall average the production from the well's production reports on file with the Commission or use the production volume from the well's initial potential test or deliverability test if the well has not yet filed a production report.

(b) Critical designation criteria. The following facilities are designated critical during an energy emergency:

(1) Critical Gas Supplier. The following facilities are designated a critical gas supplier:

- (A) gas wells producing gas in excess of 15 Mcf/day;
- (B) oil leases producing casinghead gas in excess of 50 Mcf/day;
- (C) gas processing plants;
- (D) natural gas pipelines and pipeline facilities including associated compressor stations and control centers;
- (E) local distribution company pipelines and pipeline facilities including associated compressor stations and control centers;
- (F) underground natural gas storage facilities;
- (G) natural gas liquids transportation and storage facilities; and
- (H) saltwater disposal facilities including saltwater disposal pipelines.

(2) Critical Customer. A critical customer is a critical gas supplier for whom the delivery of electricity from an electric entity is essential to the ability of such gas supplier to operate. A critical customer is required to provide critical customer information pursuant to subsection (g) of this section to the electric entities described in §25.52(h) of this title (relating to Reliability and Continuity of Service) and Texas Utilities Code §38.074(b)(1) so that those electric entities may prioritize the facilities in accordance with Texas Utilities Code §38.074(b)(2) and (b)(3). Priority for load-shed purposes during an energy emergency is described by §25.52(h)(2) of this title and any guidance issued thereunder by the Public Utility Commission.

(c) Request for critical designation if not designated critical in subsection (b) of this section.

(1) A facility that is not designated critical under subsection (b) of this section may write to the Commission to apply to be designated critical if the facility's operation is required in order for another facility designated critical to operate. The applicant shall include objective evidence that the facility's operation is required for another facility designated critical in subsection (b) of this section to operate. If approved, the facility shall submit Form CI-D.

(2) A facility that is not designated critical under subsection (b) of this section but that is included on the electricity supply chain map produced by the Texas Electricity Supply Chain Security

and Mapping Committee shall write to the Commission to apply to be designated critical, and after approval, shall submit Form CI-D.

(d) Acknowledgment of critical status. Except as provided by subsection (f) of this section, an operator of a facility designated as critical under subsection (b) of this section shall acknowledge the facility's critical status by filing Form CI-D as provided in this subsection. In the year 2022, the Form CI-D acknowledgment shall be filed bi-annually by January 15, 2022, and either September 1, 2022, or 30 days from the date the map is produced by the Texas Electricity Supply Chain Security and Mapping Committee, whichever is later. Beginning in 2023, the Form CI-D acknowledgment shall be filed bi-annually by March 1 and September 1 of each year.

(e) Facilities not eligible for an exception. Because of their contribution to the natural gas supply chain, the following facilities designated critical under subsection (b) of this section are not eligible for an exception under subsection (f) of this section:

(1) a facility included on the electricity supply chain map produced by the Texas Electricity Supply Chain Security and Mapping Committee;

(2) gas wells or oil leases producing gas or casinghead gas in excess of 250 Mcf/day;

(3) gas processing plants;

(4) natural gas pipelines or pipeline facilities that directly serve local distribution companies or electric generation;

(5) local distribution company pipelines or pipeline facilities;

(6) underground natural gas storage facilities;

(7) natural gas liquids storage and transportation facilities; and

(8) a saltwater disposal facility, including a saltwater disposal pipeline, that supports a facility listed in paragraphs (1) through (7) of this subsection.

(f) Critical designation exception.

(1) A facility listed in subsection (b) of this section other than those identified in subsection (e) of this section may apply for an exception. An applicant shall demonstrate with objective evidence a reasonable basis and justification in support of the application, such as all of the gas produced at a facility is for on-site consumption, or the facility does not otherwise provide gas for third-party use. The Director of the Critical Infrastructure Division will administratively approve or deny a request for an exception. If the request is denied, the Division will notify the applicant and the applicant may request a hearing to challenge the denial. The party requesting the hearing shall have the burden of proof.

(2) An applicant for exception shall submit a Form CI-X exception application that identifies each facility for which an exception is requested. The Form CI-X shall be accompanied by an exception application fee. The amount of the fee is \$150 as established in Chapter 81, Texas Natural Resources Code.

(A) In the year 2022, the Form CI-X exception application shall be filed bi-annually by January 15, 2022, and either September 1, 2022, or 30 days from the date the map is produced by the Texas Electricity Supply Chain Security and Mapping Committee, whichever is later. Beginning in 2023, the Form CI-X exception application shall be filed bi-annually by March 1 and September 1 of each year.

(B) Once an operator has an approved Form CI-X on file with the Commission, the operator is not required to pay the \$150

exception application fee when the operator updates the facilities identified on its Form CI-X.

(g) Providing critical customer information. A critical customer shall provide the critical customer information to the electric entities described in §25.52 of this title and Texas Utilities Code § 38.074(b)(1) unless the critical customer is granted an exception under subsection (f) of this section. The critical customer information shall be provided in accordance with §25.52 of this title. The operator shall certify on its Form CI-D that it has provided the critical customer information to its electric entity.

(h) Confidentiality of information filed pursuant to this section. A person filing information with the Commission that the person contends is confidential by law shall notify the Commission on the applicable form. If the Commission receives a request under the Texas Public Information Act (PIA), Texas Government Code, Chapter 552, for materials that have been designated confidential, the Commission will notify the filer of the request in accordance with the provisions of the PIA so that the filer can take action with the Office of the Attorney General to oppose release of the materials.

(i) Exceptions not transferable. Exceptions are not transferable upon a change of operatorship. When a facility is transferred, both the transferor operator and the transferee operator shall ensure the transfer is reflected on each operator's Form CI-D or Form CI-X when the applicable form update is submitted in accordance with the bi-annual filing timelines in subsections (d) and (f) of this section. If the facility has an exception under subsection (f) of this section, the exception shall remain in effect until the next bi-annual filing deadline. If the transferee operator seeks to continue the exception beyond that time period, the transferee operator shall indicate the transferred facility on the Form CI-X pursuant to subsection (f) of this section.

(j) Failure to file or provide required information. An operator who fails to comply with this section may be subject to penalties under §3.107 of this title (relating to Penalty Guidelines for Oil and Gas Violations).

§3.107. *Penalty Guidelines for Oil and Gas Violations.*

(a) Policy. Improved safety and environmental protection are the desired outcomes of any enforcement action. Encouraging operators to take appropriate voluntary corrective and future protective actions once a violation has occurred is an effective component of the enforcement process. Deterrence of violations through penalty assessments is also a necessary and effective component of the enforcement process. A rule-based enforcement penalty guideline to evaluate and rank oil- and natural gas-related violations is consistent with the central goal of the Commission's enforcement efforts to promote compliance. Penalty guidelines set forth in this section will provide a framework for more uniform and equitable assessment of penalties throughout the state, while also enhancing the integrity of the Commission's enforcement program.

(b) Only guidelines. This section complies with the requirements of Texas Natural Resources Code, §81.0531 and §91.101, which provides the Commission with the authority to adopt rules, enforce rules, and issue permits relating to the prevention of pollution. The penalty amounts shown in the tables in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of provisions of Texas Natural Resources Code, Title 3; Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; or the provisions of a rule adopted or order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29. This rule does not contemplate auto-

matic enforcement. Violations can be corrected by operators before being referred to legal enforcement.

(c) Commission authority. The establishment of these penalty guidelines shall in no way limit the Commission's authority and discretion to cite violations and assess administrative penalties. The guideline minimum penalties listed in this section are for the most common violations cited; however, this is neither an exclusive nor an exhaustive list of violations that the Commission may cite. The Commission retains full authority and discretion to cite violations of Texas Natural Resources Code, Title 3; including Nat. Res. Code §91.101, which provides the Commission with the authority to adopt rules, enforce rules, and issue permits relating to the prevention of pollution; the provisions of Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; and the provisions of a rule adopted or an order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29, and to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case, regardless of inclusion in or omission from this section.

(d) Factors considered. The amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the following factors:

- (1) the person's history of previous violations;
- (2) the seriousness of the violation;
- (3) any hazard to the health or safety of the public; and
- (4) the demonstrated good faith of the person charged.

(e) Typical penalties. Regardless of the method by which the guideline typical penalty amount is calculated, the total penalty amount will be within the statutory limit.

(1) A guideline of typical penalties for violations of Texas Natural Resources Code, Title 3; the provisions of Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; and the provisions of a rule adopted or an order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29, are set forth in Table 1.

Figure: 16 TAC §3.107(e)(1)

(2) Guideline penalties for violations of §3.73 of this title, relating to Pipeline Connection; Cancellation of Certificate of Compliance; Severance, include additional penalty amounts that are based on four components. In combination, these four components yield the factor by which an additional penalty amount of \$1,000 is multiplied. The various combinations of the components are set forth in Table 1A.

(A) The first component is the length of the violation. A low rating means the violation has been in existence less than three months. A medium rating means the violation has been outstanding for more than three months and up to one year. A high rating means the violation has been outstanding for more than one year.

(B) The second component is production value. A low rating means the value of the production is less than \$5,000. A medium rating means the value of the production is more than \$5,000 and up to \$100,000. A high rating means the value of the production is more than \$100,000.

(C) The third component is the number of unresolved severances. A low rating means there are fewer than two unresolved severances. A medium rating means there are more than two and up

to six unresolved severances. A high rating means there are more than six unresolved severances.

(D) The fourth component is the basis of the severance. The letter "N" indicates that the severance is not pollution related. The letter "Y" indicates that the severance is pollution related. Figure: 16 TAC §3.107(e)(2)(D) (No change.)

(f) Penalty enhancements for certain violations. For violations that involve threatened or actual pollution; result in threatened or actual safety hazards; or result from the reckless or intentional conduct of the person charged, the Commission may assess an enhancement of the guideline penalty amount. The enhancement may be in any amount in the range shown for each type of violation as shown in Table 2. Figure: 16 TAC §3.107(f) (No change.)

(g) Penalty enhancements for certain violators. For violations in which the person charged has a history of prior violations within seven years of the current enforcement action, the Commission may assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both. Figure 1: 16 TAC §3.107(g) (No change.) Figure 2: 16 TAC §3.107(g) (No change.)

(h) Penalty reduction for accelerated settlement before hearing. The recommended monetary penalty for a violation may be reduced by up to 50% if the person charged agrees to an accelerated settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the person charged to reduce the basic monetary penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.

(i) Demonstrated good faith. In determining the total amount of any monetary penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the person charged. Demonstrated good faith includes, but is not limited to, actions taken by the person charged before the filing of an enforcement action to remedy, in whole or in part, a violation or to mitigate the consequences of a violation.

(j) Penalty calculation worksheet. The penalty calculation worksheet shown in Table 5 lists the guideline minimum penalty amounts for certain violations; the circumstances justifying enhancements of a penalty and the amount of the enhancement; and the circumstances justifying a reduction in a penalty and the amount of the reduction. Figure: 16 TAC §3.107(j)

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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**PART 2. PUBLIC UTILITY
COMMISSION OF TEXAS**

**CHAPTER 24. SUBSTANTIVE RULES
APPLICABLE TO WATER AND SEWER
SERVICE PROVIDERS
SUBCHAPTER C. ALTERNATIVE RATE
METHODS**

The Public Utility Commission of Texas (commission) repeals existing 16 Texas Administrative Code (TAC) §24.75 and adopts new 16 TAC §24.75, relating to Alternative Ratemaking Methodologies. The commission also adopts new 16 TAC §24.76, relating to System Improvement Charge. Both rules are adopted with changes to the proposed text as published in the June 4, 2021, issue of the *Texas Register* (46 TexReg 3481). Repealed §24.75 will not be republished. New §24.75 and §24.76 will be republished. These rules implement Texas Water Code (TWC) §13.183(c) enacted by the 86th Texas Legislature by establishing alternative ratemaking methodologies for water and sewer utility rates and establishing the requirements for a system improvement charge (SIC).

No party requested a public hearing; therefore, a public hearing was not held.

The commission received comments and reply comments on the proposed amendments from CSWR Texas Utility Operating Company, LLC (CSWR), Texas Association of Water Companies, Inc., and National Association of Water Companies (jointly TAWC/NAWC), and Office of Public Utility Council (OPUC).

§24.75(c) - Cash needs method

Under proposed §24.75(c), a Class C or Class D utility is allowed to use the cash needs method, if necessary, to establish the utility's revenue requirement in a comprehensive rate proceeding for the utility to provide continuous and adequate service or if other good cause exists to support the use of the cash needs method.

TAWC/NAWC stated that Class A and Class B utilities should be allowed to use the cash needs method "as there appears to be no justification for [the] limitation" to Class C and Class D utilities.

OPUC supported the limitation to Class C and Class D utilities.

Commission Response

The commission declines to allow Class A and Class B utilities to use the cash needs method. The use of the cash needs method is generally more suitable for the operating and financial aspects of smaller companies such as Class C and Class D utilities. Class A and Class B utilities most commonly use the rate base rate of return method but can apply for a good cause exception to use the cash needs method if necessary.

§24.75(c)(3)(A) - Inclusion of an additional margin

Under proposed §24.75(c)(3)(A), a utility may request an operating margin in addition to operations and maintenance expenses if the utility's most recent annual report included net plant of less than 25 percent of its related original cost. The proposed rule provides that an operating margin of up to five percent of operating expenses will be considered reasonable and may be included in the utility's revenue requirement.

TAWC/NAWC recommended that the operating margin presumed reasonable should be raised to ten percent or eliminated entirely.

Commission Response

The commission declines to adopt TAWC/NAWC's recommendation. A utility is not limited to five percent of operating expenses. Rather, the five percent limit only applies to what will be presumed reasonable. A utility may request a coverage amount above five percent of its operating expenses with appropriate evidentiary support.

§24.75(d)(1) - Form of application

Under proposed §24.75(d), a utility may request the addition of a new customer class or classes without filing a base rate case. Proposed paragraph (d)(1) outlines the application requirements for requesting a new customer class.

Commission Action

The commission amends §24.75(d)(1)(A) to clarify that a cost-of-service and rate design study must be submitted for each new proposed customer class.

§24.75(d)(3)(A) - Rate case requirement

Under proposed §24.75(d)(3)(A), a utility that has received commission approval for the creation of a new customer class or classes must file a comprehensive rate case not later than 18 months from the date service begins unless the utility can demonstrate that each new customer class represents less than ten percent of the utility's total annual revenue.

TAWC/NAWC requested clarification that the exception from filing a new rate case under proposed §24.75(d)(3)(A) applies when each new customer class individually represents less than ten percent of the utility's total annual revenue.

Commission Response

The commission declines to modify the language of this section. The proposed language clearly articulates that "each new customer class" must represent less than ten percent of the utility's total annual revenue. The addition of "individually" would be superfluous.

§24.75(d)(3)(B) and (C) - Exception to filing and required filing

Under proposed §24.75(d)(3)(B), if the utility fails to show in its annual report that each new customer class remains less than ten percent of the utility's total annual revenue, a utility is not required to submit a comprehensive rate case until a maximum of five years after the date service begins if it demonstrates to the commission that each new customer class represents less than ten percent of the utility's total annual revenue requirement. The utility is required to report the amount of revenues each customer class represents in its annual report. Under proposed §24.75(d)(3)(C), a utility is required to file a comprehensive rate case within the earlier of six months from the date its annual report is due under §24.129(a) or five years from the date service to the new customer class or classes began.

TAWC/NAWC commented that language should be added to clarify that after the comprehensive rate case is filed, the amount of revenues each class represents is no longer required in its annual report.

Commission Response

The commission declines to adopt TAWC/NAWC's recommendation. The act of filing a rate case is insufficient to relieve a utility of its obligation to continue to provide demonstrations that the new customer class remains less than ten percent of the utility's total annual revenue. Merely filing a rate case does not guarantee that new rates will be approved by the commission. This would create a compliance loophole that would allow a utility to defer initiating a rate case for longer than intended. Accordingly, the utility must continue to provide demonstrations as a part of its annual report until a final order is issued in the utility's next comprehensive base rate case or upon the triggering of one of the conditions in the rule that requires the utility to file a comprehensive base rate case under (B) and (C). For example, if the revenues from a new customer class increase above ten percent of the utility's total annual revenues or five years have passed since service to the new customer class has begun, the utility is no longer required to provide demonstrations as part of its annual report, because one of the requirements to initiate a rate case has already been triggered.

§24.76 - System improvement charge

Under proposed §24.76, the requirements for a SIC are established.

TAWC/NAWC stated that the SIC should be part of the commission's minor tariff change procedures found in §24.25(b)(2) (relating to Form and Filing of Tariffs), and that the applications should not be referred to the State Office of Administrative Hearings (SOAH) for hearing, as the goal is for the process to be streamlined. TAWC/NAWC further commented that allowing parties to intervene and allowing for referrals to SOAH makes the SIC process expensive, complicated, and may lead to more rate case expenses.

Commission Response

The commission declines to adopt TAWC/NAWC's recommendations. The minor tariff change provisions of §24.25 are outside of the scope of this proceeding. Moreover, a request for a SIC is a rate proceeding, not a minor tariff change.

The commission finds that allowing the proceeding to be sent to SOAH is necessary to provide ratepayers an opportunity to participate in the SIC proceeding. Further, allowing this participation is consistent with similar substantive rules regarding electric rate proceedings such as §25.193 (relating to Distribution Service Provider Transmission Cost Recovery Factors (TCRF)) and §25.243 (relating to Distribution Cost Recovery Factor (DCRF)). Both rules are intended to provide for administratively streamlined proceedings that result in expedited implementation of updated rates, but which may contain certain circumstances that require referral to SOAH.

TAWC/NAWC and CSWR stated that §24.76 should explicitly include a provision for rate case expense recovery. CSWR commented that recovery of rate case expenses should be allowed because related costs may be relatively high, which could result in some smaller utilities incurring litigation expenses that are greater than the amount of additional revenues provided by implementation of the SIC. CSWR further opined that a cost recovery proceeding is necessary because significant litigation ex-

penses incurred pursuant to a SIC may disincentivize the use of the proceeding by utilities if such costs are not reimbursable. Alternatively, CSWR recommended the initiation of a new rule-making to address the recovery of expenses associated with filing and litigating rate proceedings

OPUC agreed with TAWC/NAWC and CSWR on modifying §24.76 to provide for SIC rate case expense recovery but stated that such recovery should be addressed in the utility's next comprehensive base rate case proceeding to allow for thorough review of the expenses while keeping the SIC proceeding streamlined. OPUC also argued that inclusion of SIC rate case expense recovery in a base rate proceeding allows for the examination of the prudence of expenses.

Commission Response

The commission agrees that the rule should explicitly state that a utility may request recovery of rate case. The commission agrees with OPUC that rate case expenses should be reviewed in the utility's next comprehensive base rate case to allow for an examination of the prudence of expenses without further delaying the SIC proceeding. The commission adds the following language: "Recovery of rate case expenses may be requested and must be reviewed in the utility's next comprehensive base rate case and in accordance with §24.44 of this chapter."

§24.76(b)(1) - Eligible plant

Under proposed §24.76(b)(1), "eligible plant" is defined as, "[p]lant properly recorded in the National Association of Regulatory Utility Commissioners System of Accounts, accounts 304 through 339 for water utility service or accounts 354 through 389 for sewer utility service."

OPUC noted that "eligible plant," as proposed, is not limited to one discrete water or sewer facility. OPUC argued that the definition of "eligible plant" should be limited to preclude utilities from using the SIC as a catch-all mechanism for all interim plant investment between comprehensive rate cases. OPUC recommended including "a single plant" at the beginning of the definition. OPUC referenced the Generation Cost Recovery Rider (GCRR), codified as 16 TAC §25.248 (relating to Generation Cost Recovery Rider), as an example where the commission specifically limited the application to a single discrete power generation facility.

TAWC/NAWC and CSWR opposed OPUC's proposed definition for "eligible plant." TAWC/NAWC and CSWR argued that, unlike electric generation plants, water and sewer systems are not composed of a single discrete facility, and it is impractical to require a separate SIC application for each component of the water or sewer system. CSWR argued that, because only one SIC can be in effect at one time, utilities that operate multiple systems would be precluded from using the mechanism to recover investments made in all but one of its systems.

TAWC/NAWC argued that TWC §13.183(a) and (c) do not confine the definition of "eligible plant" to a single plant and that all of a utility's invested capital used and useful without restriction should be included in a utility's rates. Therefore, in TAWC/NAWC's view, the SIC should allow for inclusion of a utility's capital improvements recordable in the listed accounts within the proposed rule. TAWC/NAWC also stated that "eligible plant" should be broadly defined to maximize a utility's ability to use a SIC for invested capital recovery.

Commission Response

The commission declines to change the definition of eligible plant to "a single plant" as water and wastewater systems are not discrete facilities. The commission also clarifies, in response to CSWR's reply comment, that under (c)(1), a utility must have only one SIC in effect for each of its rate schedules at any time. Because each system would have its own rate schedules, a utility with multiple systems is not prohibited from having a SIC in effect for each system.

§24.76(c)(4) - Timing of application with final rate case

Under proposed §24.76(c)(4), a utility cannot apply to establish or amend a SIC until 12 months after a commission order establishing rates is final and appealable.

TAWC/NAWC and CSWR asserted that the 12-month restriction creates a maximum waiting period of 45 months to file a SIC case, citing a 12-month test year period prior to filing, plus the time it takes to assemble a rate filing package, plus "up to a year or two after an application is filed and accepted to [be] complete," plus the 12-month waiting period, plus up to nine additional months depending on the "[Certificate of Convenience and Necessity]-specific time periods to file in proposed §24.76(c)(6)." TAWC/NAWC also stated that the SIC rules should reflect the timelines and processes of the generation cost recovery rider under §25.248, and interim Transmission Cost of Service (TCOS) proceedings under §25.192(h) (relating to Transmission Service Requirements).

Commission Response

The commission does not agree with the commenters that the proposed rule creates a 45-month waiting period. However, the commission does agree that the 12-month waiting period creates an unnecessary delay in implementing a SIC and removes this requirement from the adopted rule.

§24.76(c)(6) - Timing of application to calendar quarter

Under proposed §24.76(c)(6), a utility may apply to establish or amend a SIC, limited to filing in a specific quarter of the calendar year based on the last two digits of a utility's certificate of convenience and necessity CCN number, unless good cause is shown for filing in a different quarter. For a utility holding multiple CCNs, the utility can file in any quarter for which any of its CCNs is eligible.

TAWC/NAWC opposed the requirement in §24.76(c)(6) limiting SIC filings to certain months based on the utility's CCN number as in practice this could increase the waiting period for filing a SIC application to 21 months after a comprehensive rate case is finalized. TAWC/NAWC stated that they do not expect that adding a SIC process would create the type of workload that would necessitate CCN-specific filing time windows, particularly if the SIC process is streamlined as intended. TAWC/NAWC also stated that, in its view, there will not be many utilities filing and SIC cases do not need to be spread out. Lastly, TAWC/NAWC stated that the GCRR proceedings under §25.248 and interim TCOS proceedings under §25.192(h) do not have a similar CCN-based time-to-file limitation as §24.76(c)(6) imposes and therefore the limitation should be removed.

Commission Response

Because establishment of a SIC is a new process, it is difficult to predict how many requests will be filed. Without a schedule, the number of requests could potentially create an administrative burden on the commission and delay the processing of requests, contrary to the streamlined method intended by the

rule. In addition, there are significantly more water utilities eligible for SIC than there are electric utilities eligible for GCRR and interim TCOS. Therefore, the commission declines to remove the schedule.

§24.76(c)(7) - Multi-step implementation

Under proposed §24.76(c)(7), the commission, either on its own motion, at the request of the utility seeking the SIC, or at the request of any other interested party, may approve a SIC charge as a multi-step rate increase if such a rate increase is already in effect or to limit the utility's annual total revenue increase to no more than ten percent. This mirrors the parties that are eligible to request a multi-step rate increase as part of a base rate case under §24.75(b)(2).

TAWC/NAWC stated that the language "any other interested party" would complicate what should be a streamlined process. TAWC/NAWC further requested that the commission eliminate the wording "or if necessary to limit the utility's annual total revenue increase to no more than 10 percent," or at least add the wording "unless there is good cause to exceed that limit." TAWC/NAWC argued that the revenue increase limitation should be determined on a case-by-case basis and that the described limit may be too restrictive.

Commission Response

The commission agrees with TAWC/NAWC that allowing any interested party to request a multi-step implementation of a SIC could complicate what is intended to be a streamlined process. Further, the commission may approve the multi-step implementation at its discretion, without explicit language in the rule. Therefore, the commission deletes proposed §24.76(c)(7).

§24.76(d)(4) - Annual report

Under proposed §24.76(d)(4), an application for a SIC must include the utility's most recent annual report filed with the commission, which must be the annual report most recently due for filing.

TAWC/NAWC proposed eliminating this requirement, stating that a utility filing a SIC application should be allowed to refer to a publicly available report that it has already filed with the commission pursuant to a utility's obligation under §24.129, and that it should not have to re-file the report as part of the SIC application.

Commission Response

The commission declines to remove the requirement to include the annual report in a SIC application. Submitting the annual report with the SIC application ensures that all relevant information to the SIC determination is readily available in the SIC docket. The commission has recently switched to e-filing and, therefore, attaching the annual report to the SIC application is not burdensome.

§24.76(e)(10)(B) - After-tax rate of return

Proposed §24.76(e)(9), adopted as §24.76(e)(10)(B), determines the after-tax rate of return used in calculating a utility's SIC. Under subparagraph (B), if the final order for a utility's last comprehensive base rate case was issued three or more years before the date the SIC application is filed, the after-tax rate of return is computed by using the average rate of return for settled and fully litigated approved rates of return for water and sewer utilities over the three years immediately preceding the filing of the SIC application.

OPUC agreed with the after-tax rate of return limitations of the proposed rule and further recommended limiting the increase in rate of return, over the utility's last commission-approved rate of return, to ten percent. OPUC stated that in the same way a utility's annual revenues are limited to a ten percent increase in §24.27(c)(7) (relating to Notice of Intent and Application to Change Rates Pursuant to TWC §13.187 or §13.1871), the authorized return should also be limited to a ten percent increase.

TAWC/NAWC opposed OPUC's proposed limitation, arguing that revenue growth resulting from a SIC does not equate to return. TAWC/NAWC requested clarification on whether the term "return" used in §24.76(e)(9) adopted as §24.76(e)(10), refers to the return on equity or the overall return.

CSWR argued that the commission should remove §24.76(e)(9)(B), adopted as §24.76(e)(10)(B), and instead use the utility's approved rate of return in lieu of the after-tax rate of return as the rule currently states. CSWR argued that each utility has its own capital structure and financing needs and, therefore, may have a different overall rate of return than the average of the commission's recently approved rates of return. CSWR opined that a case-by-case approach utilizing an individual utility's approved rate of return is more favorable to smaller utilities from a financing and cost-recovery risk perspective than the average rate of return provided in the proposed rule. CSWR argued that imputing an average rate of return based on rate cases filed by other utilities would entirely decouple a utility's commission-approved reasonable and necessary rate of return from its actual capital structure, cost of debt, risk profile, and financing needs. CSWR stated that if the commission finds that a utility's return that was approved three years prior is too high, it can require the utility to file a comprehensive rate case at any time where utility-specific evidence can be presented to justify any modification to the rate of return. CSWR argued that the commission should remove §24.76(e)(9)(B), adopted as §24.76(e)(10)(B), entirely, but that if the commission keeps the provision, OPUC's proposed changes to §24.76(e)(9)(B), adopted as §24.76(e)(10), should be denied. CSWR commented that, if §24.76(e)(9)(B), adopted as §24.76(e)(10), is not deleted and the commission does not reject OPUC's proposed limitation, the commission should apply the ten percent limitation to both increases and decreases to the rate of return.

Commission Response

The commission declines to remove §24.76(e)(9)(B), adopted as §24.76(e)(10)(B), as requested by CSWR. If a utility decides to use a company-specific return, it may file a rate case on its own motion, or it can use the average of the most recent three years of commission-approved rates. While a rate of return for water and sewer utilities that was approved three or more years ago may not cause a utility to over-earn, it is not current, and should not be applied to a SIC, because a SIC consists of plant financed under current market conditions.

The commission also declines to limit a company's rate of return to a ten percent increase over the rate approved by the commission in the utility's last comprehensive rate case, as proposed by OPUC. Applying a ten percent increase limitation to a rate of return approved more than three years prior may not appropriately reflect current market conditions.

The commission does, however, clarify which return is being referenced, as requested by TAWC/NAWC. The commission adds

the language "weighed average cost of capital" or "overall" as appropriate.

§24.76(f) - Notice

Under §24.76(f), the intervention deadline in SIC proceedings is 25 days from the date service of notice is complete.

CSWR argued that if the commission accepts its proposal to reduce the deadline for the commission to issue a final order in SIC proceedings from 120 to 60 days, as discussed in heading §24.76(g) below, the commission should also reduce the intervention deadline from 25 to 21 days.

Commission Response

As previously discussed, the commission has declined to implement CSWR's recommendation to reduce the deadline for the commission to issue a final order in SIC proceedings from 120 to 60 days. Accordingly, the CSWR's comments regarding the intervention deadline are moot.

§24.76(g) - Processing of application

Under proposed §24.76(g), the presiding officer must set a procedural schedule that will enable the commission to issue a final order within 120 days after the application is determined to be sufficient.

CSWR stated that the SIC should be streamlined similar to proceedings for interim TCOS proceedings under §25.192(h) and GCRR applications under §25.248, both of which are mechanisms for expedited cost recovery for electric companies with significantly shorter timelines. CSWR contended that there is no reason a SIC would be more complex or take longer to review than an interim TCOS proceeding or GCRR application. CSWR recommended a timeline of 60 days after a materially sufficient application is filed similar to an interim TCOS proceeding under §25.192, or 60 days after an application is deemed sufficient consistent with the GCRR application under §25.248.

Commission Response

The commission declines to change the schedule as proposed by CSWR. The commission anticipates that, for some utilities, SIC application reviews may be complex and require significant review of detailed company-specific information. The commission also notes that a distribution cost recovery factor (DCRF) proceeding under §25.243--a similar cost-recovery mechanism for electric companies that has well-established administrative procedures--is processed on a 150-day schedule.

§24.76(g)(2) - Requests for information

Under proposed §24.76(g)(2), after an application is deemed sufficient, the applicant must respond to requests for information within ten days. An applicant's failure to timely respond to requests for information constitutes good cause for extending the deadline for final action one day for each day that a response exceeds ten days.

TAWC/NAWC and CSWR opposed linking the deadline for final approval to the timeliness of discovery responses. CSWR recommended removing this provision. CSWR stated that tying the deadline for final approval to the timing of the applicant's discovery responses is unnecessary and potentially confusing. CSWR additionally commented that parties that fail to comply with discovery deadlines are already subject to sanctions under the commission's rules, and parties can request a hearing if they believe there are controversial issues that cannot be resolved through the discovery process that necessitate further delay of the pro-

ceeding. CSWR also opined that this requirement means the deadline for final action is in constant flux.

In the alternative, CSWR recommended that the ten-day discovery deadline be changed to ten working days and should only affect the deadline if requested by a party through a motion filed pursuant to §22.77 (relating to Motions).

If neither of its prior proposals for §24.76(g)(2) are adopted, CSWR alternatively recommended adding language to clarify that the extension does not apply in situations where a timely filed discovery response is updated or supplemented, or where a discovery request is subject to an objection that extends the deadline for filing the response.

Commission Response

The commission declines to remove or otherwise modify paragraph (g)(2) as requested by TAWC/NAWC and CSWR. Late responses must undergo the same review as timely responses, with identical deadlines, and commission staff must be able to request an extension of time if necessary, to properly evaluate an application. Moreover, an extension of the deadline serves as an incentive for utilities to timely response to requests for information. The commission disagrees with CSWR's contention that the risk of sanctions for untimely responses to requests for information or the ability of a party to request a hearing to extend the discovery process mitigates the need for this provision. Asking the commission to impose sanctions is an extreme remedy and requesting a hearing to extend the discovery process is significantly less efficient than merely extending the deadline for final action by a few days.

The commission agrees with CSWR that a party must file a motion for a final deadline to be extended for late discovery responses. Under paragraph (g)(2), failure to respond to a discovery request does not automatically extend the deadline for final action. Rather, it "constitutes good cause" for extending the deadline. The commission intends this remedy to be used only when necessary to properly evaluate an application. Therefore, the commission does not believe that the additional language requested by CSWR is required to effectuate the intent of §24.76(g)(2).

§24.76(g)(3) - Request for hearing by intervenor

Under proposed §24.76(g)(3), a request by an intervenor for hearing must be filed within 25 days after the application is determined to be sufficient. A request for hearing must state with specificity the issues to be addressed.

TAWC/NAWC opposed §24.76(g)(3) as too restrictive but made no specific recommendation for the rule.

CSWR argued that if the commission accepts its proposal for §24.76(g) to reduce the 120-day deadline for final order to 60 days, then proposed §24.76(g)(3) should also be amended by reducing the intervention deadline from 25 days to 21 days.

Commission Response

As stated above, the commission has declined to adopt CSWR's proposal to reduce the deadline for final action from 120 days to 60 days under heading. Accordingly, CSWR's comments regarding §24.76(g)(3) are moot.

§24.76(g)(4) - Processing of application

Under proposed §24.76(g)(4), unless an intervenor requests a hearing, commission staff must submit a recommendation on the application or request a hearing not later than 45 days after the

application is determined to be sufficient unless commission staff requests additional time.

CSWR argued that if the commission accepts its proposal to reduce the 120-day deadline for final order under §24.76(g) to 60 days, proposed §24.76(g)(3) should also be amended by reducing the deadline for commission staff to file its final recommendation from 45 days to 30 days.

Commission Response

The commission has declined to accept CSWR's proposal to reduce the deadline for final action from 120 days to 60 days under heading §24.76(g). Accordingly, CSWR's comments regarding the deadline for commission staff to issue its final recommendation are moot.

§24.76(g)(5) - Evidentiary hearing and schedule

Under proposed §24.76(g)(5), if a hearing on the application is requested, the application will be referred to SOAH for an evidentiary hearing. The presiding officer must set a procedural schedule that will enable the commission to issue a final order within 120 days after the application is referred to SOAH.

TAWC/NAWC and CSWR both argued that SICs should be eligible for informal disposition under §22.35(b)(1) (relating to Informal Disposition). CSWR requested that, if the requirements for informal disposition are met, the presiding officer be required to issue a notice of approval within 60 days of the date a materially sufficient application is filed.

CSWR further requested that the commission direct commission staff to work with utilities to "develop a standardized set of schedules to be used in these filings." CSWR argued that a standard set of schedules will streamline the submission and review of rate filing packages, "giving all utilities more clarity as to what should be included in the filing package and how it is presented," and facilitate commission staff review within a 60-day procedural schedule.

Commission Response

The commission declines to add language clarifying that SIC proceedings are eligible for informal disposition under §22.35(b)(1). The commission at this time does not have experience with SIC proceedings, the frequency with which they will be filed, or the range of issues that processing them will present. Accordingly, the commission is not prepared to fully delegate authority to resolve these decisions to an administrative law judge. However, the commission may revisit this decision at a future date and provide the necessary delegation by commission order to resolve SIC proceedings via notice of approval.

The commission also declines to direct staff to develop a standardized set of schedules at this time, but may elect to do so after additional experience with SIC proceedings.

§24.76(h) - Scope of proceeding

Under proposed §24.76(h), whether a cost is "prudent" and "reasonable and necessary" will not be addressed in a SIC proceeding unless the presiding officer finds good cause exists to do so. This provision effectively defers consideration of these standards to the utility's next comprehensive rate proceeding.

TAWC/NAWC stated there is no reason to address "prudent" costs in the SIC, therefore the rule language "unless the presiding officer finds good cause exists to address those issues" should be removed. CSWR recommended that the proposed rule explicitly preclude the consideration of prudence, similar to

§25.248(g)(1) of the GCRR rule. CSWR argued that the provision allowing the presiding officer to consider prudence is ambiguous and is not included in other interim rate adjustment proceedings. Finally, CSWR argued that discovery on prudence would self-generate "good cause," and that prudence review is best deferred to the utility's next base rate case.

Commission Response

The commission finds that circumstances may exist that warrant consideration of whether issues of prudence, reasonableness, and necessity of costs may be appropriate in a particular SIC proceeding and declines to remove the language. A similar provision exists under §25.243(e)(5) of the DCRF rule.

§24.76(i) - Reconciliation

Under proposed §24.76(i), costs recovered through a SIC are subject to reconciliation in a utility's next comprehensive rate case. Any amounts recovered through the SIC found not to be prudent, reasonable, or necessary are subject to refund.

TAWC/NAWC's proposed adding the following clarifying language: "[n]either system improvement charge revenues nor plant costs paid for with such revenues shall be considered contributions in aid of construction."

Commission Response

The commission declines to add the clarifying language suggested by TAWC/NAWC because it is unnecessary. There is no instance in which SIC revenues might be considered contributions in aid to construction.

TAWC/NAWC identified a typographical error in §24.76(i) that should read, "...approved *in the* utility's next comprehensive rate case are effective."

Commission Response

The commission agrees with TAWC/NAWC and amends the rule accordingly.

§24.76(j) - Requirement to file a rate case

Under proposed §24.76(k), adopted as §24.76(j), utility must file a comprehensive base rate case within certain timelines following the date the commission files an order approving a SIC. Class A utilities must file within four years, Class B utilities must file within six years, and Class C and Class D utilities must file within eight years.

§24.76(j) - Good cause exception

TAWC/NAWC argued that §24.76(k), adopted as §24.76(j), should include a good cause exception for a utility failing to file a comprehensive rate case according to the rule schedule. TAWC/NAWC contended that the annual report may show it is not timely for the utility to file a rate case based on its earning levels, or that a utility may have gained or lost enough connections while the SIC was in effect to change the utility's rate class. Therefore, the utility may not need to file for comprehensive rate proceeding within the timeframes prescribed by the rule.

CSWR stated that §24.76(k), adopted as §24.76(j), appears to be in response to language in TWC §13.183(c) that directs the commission to "establish a schedule that requires all utilities that have implemented a system improvement charge approved by the utility commission to make periodic filings with the utility commission to modify or review base rates charged by the utility." CSWR stated that TWC §13.183(c) does not require that utilities file a comprehensive rate case but only that the utility make peri-

odic filings to modify or review base rates; CSWR further stated that review of a utility's rates can be accomplished through the commission's evaluation of a utility's mandatory annual reports to determine if a utility is over- or under-earning, and the commission can require a utility to file a comprehensive base rate case at any time, making this provision unnecessary. CSWR alternatively recommended that the commission should allow a good cause exception to §24.76(k), adopted as §24.76(j), the utility is earning less than 50 basis points above its approved rate of return, similar to §25.247 (relating to Rate Review Schedule).

Commission Response

The commission declines to include an explicit allowance for a good cause exception to §25.76(k), adopted as §25.75(j), because the utility can request a good cause exception on its own motion. Furthermore, earnings are not the only consideration in the requirement to file a rate case. The commission is also obligated to timely ensure that the costs included in a SIC meet "prudence" and "reasonable and necessary" standards. Regulated electric utilities in Texas are subject to schedules requiring periodic applications for comprehensive base rate cases. However, water and sewer utilities do not have a mandatory date by which they file a comprehensive base rate case and, absent specific commission action, are not required to file for a rate case. A comprehensive base rate case allows the commission to conduct a thorough and detailed review of a utility's current financial position and level of regulated earnings.

Finally, for utilities that have changed class because of a gain or loss in connections, the rule specifically states that the filing deadline for a comprehensive base rate case is based on the utility's class at the time of the SIC application filing.

§24.76(j) - Cost trigger

OPUC proposed that the commission use an invested capital cost trigger to require a comprehensive base rate case filing on a shorter timeframe when a water and sewer utility's invested capital costs exceed a certain amount, similar to the requirements of a GCRR application under §25.248. OPUC recommended that the invested capital cost trigger not be a flat or a specific amount but instead should be determined on a case-by-case basis. Such a determination might depend on the size of utility or be based on a SIC amount relative to a water and sewer utility's annual revenue. OPUC provided an example of a utility with SIC revenues that are greater than 30 percent of its total annual revenues and specified it would be required to file a comprehensive rate case within 18 months of the date the SIC takes effect.

TAWC/NAWC opposed OPUC's recommendation for an invested capital cost trigger to be included in §24.76(k), adopted as §24.76(j), as, in its view, such a change would not reduce the goal of the SIC rule to reduce the frequency of comprehensive rate case filings.

Commission Response

The commission declines to add an invested capital cost trigger, because the schedule for requiring the utility to file a comprehensive base rate case fulfills the same purpose as an invested capital cost trigger without overburdening utilities with frequent, required rate cases.

§24.76(j) - Time frames

OPUC agreed with the intent of proposed §24.76(k), adopted as §24.76(j), requiring a water and sewer utility that is granted a SIC to file a comprehensive base rate case within a specified

timeframe based on utility class and further recommended that the timeframes in the proposed rule should be reduced, not increased. OPUC stated that the comprehensive base rate case filing requirements allowed in the rule are too long, especially for the large Class A and Class B water and sewer utilities that should have the expertise and resources to file a comprehensive base rate case. The inclusion of carrying costs in a SIC, which are not subject to a prudence review, could result in a water and sewer utility including carrying costs in a SIC for a minimum of four years, after which the SIC costs could be deemed imprudent in a comprehensive base rate case. OPUC stated that, therefore, the proposed required timelines for filing a comprehensive base rate case should be shortened to lessen the impact of potential over-recoveries and to mitigate against the recovery of imprudent costs in a SIC. If the commission declines to implement an invested capital cost trigger in §24.76(k), adopted as §24.76(j), OPUC recommended adjusting the schedule so that Class A utilities file in two years instead of four, Class B utilities file in four years instead of six, Class C utilities file in six years instead of eight, and Class D utilities file in eight years. OPUC stated this would lessen the impact of potential over recoveries and hedge against the recovery of imprudent costs in a SIC. In its reply to TAWC/NAWC and CSWR, OPUC opposed increasing the time to file deadlines and recommended that the time requirements of the rule remain as initially proposed if its own proposals, discussed above, were rejected.

TAWC/NAWC and CSWR opposed OPUC's recommendation to reduce the rate case filing deadlines in §24.76(j) and replied that the goal of a SIC is to decrease the number of comprehensive base rate cases. TAWC/NAWC and CSWR contended that OPUC's recommendation would in fact increase the number of such rate cases. CSWR explained TWC §13.183(c) does not require a utility to file a comprehensive rate case, and the commission can already order a utility to file a rate case via an audit of a utility's annual report to determine if a utility is over- or under-earning. thus making §24.76(k), adopted as §24.76(j), unnecessary. CSWR further argued that OPUC's suggestion would discourage the use of the SIC mechanism. Therefore, CSWR recommended removing §24.76(k), adopted as §24.76(j), entirely, or in the alternative, urged the commission to decline OPUC's recommendations to reduce the timeframes to file a comprehensive base rate case. Similarly, TAWC/NAWC recommend that the rate case deadlines described in §24.76(k), adopted as §24.76(j), be extended.

Commission Response

The commission declines to amend or eliminate the schedule as recommended by commenters. The schedule as proposed strikes an appropriate balance between a timely, thorough review of a utility's costs and minimizing litigation expenses.

16 TAC §24.75

Statutory Authority

This repeal is adopted under Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, § 13.183(c), which allows the commission to adopt rules related to specific alternative ratemaking methodologies for water and sewer rates.

Cross reference to statutes: Texas Water Code §§ 13.041(b) and 13.184(c).

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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16 TAC §24.75

Statutory Authority

These new rules are adopted under Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, §13.183(c), which allows the commission to adopt rules related to specific alternative ratemaking methodologies for water and sewer rates.

Cross reference to statutes: Texas Water Code §§13.041(b) and 13.184(c).

§24.75. *Alternative Ratemaking Methodologies.*

(a) Purpose and application. This section establishes alternative ratemaking methodologies for utilities that provide water or sewer service. The commission may prescribe modified rate filing packages for these alternative ratemaking methodologies.

(b) Multi-step rates. Multi-step rates allow a utility to implement one or more rates over time without filing multiple rate applications. Multi-step rates must be established in accordance with this subsection.

(1) Multi-step rates must be established in a comprehensive rate proceeding under Texas Water Code (TWC) §§13.187, 13.1871, 13.18715, or 13.1872.

(2) The commission may establish multi-step rates on its own motion or at the request of a utility or any other interested party.

(3) Rates established in a comprehensive rate case under TWC §§13.187, 13.1871, 13.18715, or 13.1872 will replace any multi-step rates already in effect or previously approved by the commission to go into effect for that utility.

(4) Multi-step rates may be established when a utility transitions from use of flat rates for unmetered service to use of volumetric rates for metered service.

(A) Multi-step rates for a utility's transition to metered service must not be effective before the date that meters are installed and in operation for all of the utility's connections.

(B) If the utility is seeking multi-step rates to transition to the use of volumetric rates for metered service, the utility must state in its notice of intent to change rates that it is seeking permission to use multi-step rates to transition to metered service with volumetric usage rates.

(C) The utility must provide notice to its customers at least 30 days before the utility begins charging its volumetric usage rate

for metered service and at least 30 days before implementation of each step of its commission-approved multi-step rate.

(5) Multi-step rates may be established when a utility transitions from multiple rate schedules for different systems or service areas to consolidated rate schedules for regional or system-wide rates.

(A) Different rates and a different timeline may be established for each step in the multi-step rates of each system or service area that is transitioning to a consolidated rate schedule provided that the final step for each system or service area is the same consolidated rate.

(B) If the utility is seeking multi-step rates to transition to consolidated rate schedules, the utility must state in its notice of intent to change rates that it is seeking permission to use multi-step rates to transition from multiple rate schedules for different systems or service areas to consolidated rate schedules for regional or system-wide rates.

(C) The utility must provide notice to its customers at least 30 days before implementation of each step of its commission-approved multi-step rate.

(6) Multi-step rates may be established to moderate the effects of a rate increase on customers or if other good cause exists.

(A) Different rates and a different timeline may be established for each step in the multi-step rates for each of a utility's systems or service areas provided that the final step for each system or service area is the same final rate.

(B) If the utility is seeking multi-step rates under this paragraph, the utility must state in its notice of intent to change rates that it is seeking permission to use multi-step rates.

(C) The utility must provide notice to its customers at least 30 days before implementation of each step of its commission-approved multi-step rate.

(7) The notice requirements in paragraphs (4) - (6) of this subsection do not replace the standard statement of intent notice requirements under TWC §§13.187, 13.1871, 13.18715, or 13.1872.

(8) The commission may place conditions on the implementation of a multi-step rate or on any step of a multi-step rate. For the purpose of ensuring just and reasonable rates, the commission may terminate a multi-step rate in a rate proceeding before completion of all steps of the multi-step rate.

(c) Cash needs method. The commission may approve use of the cash needs method to establish a utility's revenue requirement in a comprehensive rate proceeding for a Class C or Class D utility under TWC §13.18715 or §13.1872 if use of the method is necessary for the utility to provide continuous and adequate service or other good cause exists to support the use of the cash needs method. Under the cash needs method, the allowable components of cost of service are operating expenses, debt service costs, and an additional margin consisting of either an operating margin or an incremental revenue amount.

(1) Operating expenses. Only those operating expenses that are reasonable and necessary to provide service may be recovered, and these amounts must be based on the utility's test year expenses, adjusted for known and measurable changes.

(2) Debt-service costs. Debt service costs include principal and interest payments on the utility's debt.

(A) The debt must have reasonable terms and must finance facilities that will be used and useful in the provision of utility service.

(B) If required by the commission, Texas Water Development Board, other state or federal agency, or financial institution, debt-service costs may include amounts placed in a debt-service reserve account or an escrow account.

(C) Debt service costs may include owner-financed assets. Debt-service costs related to these assets must include debt repayments using a reasonable amortization schedule and must use the prime interest rate in effect at the time the application is filed.

(3) Additional margin. An additional margin consists of either an operating margin or an incremental revenue amount. A utility requesting an additional margin must provide an explanation for the magnitude of the additional margin it requests.

(A) If a utility requesting an additional margin in the form of an operating margin has filed its most recent required annual report and has a net plant (original cost of plant in service less accumulated depreciation) of less than 25 percent of the original cost of plant, an operating margin of up to five percent of operating expenses approved by the commission will be presumed reasonable and may be included in the utility's revenue requirement.

(B) An additional margin consisting of an incremental revenue amount is calculated by adding an incremental amount to the debt service costs described in paragraph (c)(2)(A) of this section to achieve a reasonable total debt service coverage level above 1.0.

(4) Restrictions. Rates established using the cash needs method under this subsection may not be subsequently set using cost of service calculated under §24.41 of this title (related to Cost of Service) for any comprehensive rate change application filed within five years after the date of the commission's order establishing rates using the cash needs method. If, after this five-year period, the utility has a comprehensive rate change proceeding based on a cost of service calculated under §24.41 of this title, the utility's rate base must exclude an amount equal to the principal paid on the debt service during the time that rates based on the cash needs method were in effect.

(5) Subsequent acquisition. If a utility with rates established using the cash needs method is acquired by another utility while such rates are in effect, the acquiring utility is not subject to the restriction in paragraph (4) of this subsection on calculating cost of service. If the acquiring utility files a comprehensive rate change application based on a cost of service calculated under §24.41 of this title, the acquiring utility must exclude from rate base an amount equal to the principal paid on the debt service that was related to the acquired utility during the time that rates based on the cash needs method were in effect.

(d) New customer classes. A utility may request the addition of a new customer class or classes as provided by this subsection.

(1) Application. An application for new customer classes under this section must include:

(A) a cost-of-service and rate design study for each new proposed customer class;

(B) a definition for each proposed new customer class;

(C) demonstration that the characteristics of each proposed new customer class are sufficiently different from the characteristics of all existing and other proposed new customer classes for different rate treatment;

(D) a request for service from a customer in each proposed new customer class; and

(E) if the utility wants to extend the 18-month deadline to file a comprehensive rate case under paragraph (3) of this subsection,

documentation that the revenues to be recovered from each new customer class will be less than ten percent of the utility's total annual revenue.

(2) Rates for new customer classes.

(A) The rates for each new customer class must be based on cost-of-service and rate design studies.

(B) On the effective date of the rates for each new customer class, common costs assigned to and recovered from the new customer classes must be removed from the rates of existing customer classes.

(3) Rate case requirement.

(A) A utility that has received commission approval for the creation of a new customer class or classes under this subsection must file a comprehensive rate case by filing a statement of intent under TWC §§13.187, 13.1871, 13.18715, or 13.1872 not later than 18 months from the date service begins to the new customer class or classes unless the utility has submitted documentation under subparagraph (1)(E) of this subsection demonstrating that each new customer class represents less than ten percent of the utility's total annual revenue required.

(B) If the utility demonstrates to the commission that each new customer class represents less than ten percent of the utility's total annual revenue by submitting documentation under subparagraph (1)(E) of this subsection, a comprehensive rate case is not required until the earlier of six months following the date on which the revenues of any of the new the customer classes equals or exceeds ten percent of the utility's total annual revenue or five years following the date service to the new customer class or classes begins. The utility must, as an attachment to its annual report filed under §24.129 (relating to Water and Sewer Utilities Annual Reports), annually update its demonstration to show that the revenues of each new customer class remain less than ten percent of the utility's total annual revenue. A utility must continue to update its demonstration annually until the commission adopts a final order in a comprehensive rate case for that utility or the utility is no longer eligible to delay filing a comprehensive rate case under this paragraph.

(C) If a utility fails to provide an annual update that shows the annual revenue of each new customer class remains less than ten percent of the utility's total annual revenue, the utility must file a comprehensive rate case within the earlier of six months from the date its annual report was due under §24.129(a) or five years from the date service to the new customer class or classes began.

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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16 TAC §24.76

Statutory Authority

These new rules are adopted under Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, §13.183(c), which allows the commission to adopt rules related to specific alternative ratemaking methodologies for water and sewer rates.

Cross reference to statutes: Texas Water Code §§13.041(b) and 13.184(c).

§24.76. System Improvement Charge.

(a) Purpose. This section establishes the requirements for a system improvement charge to ensure timely recovery of infrastructure investment.

(b) Definitions. In this section, the following words and terms have the following meanings unless the context indicates otherwise.

(1) Eligible plant -- Plant properly recorded in the National Association of Regulatory Utility Commissioners System of Accounts, accounts 304 through 339 for water utility service or accounts 354 through 389 for sewer utility service.

(2) System improvement charge -- A charge for recovery of the portion of the cost of a utility's eligible plant that is not already included in the utility's rates.

(c) System improvement charge.

(1) A utility must have only one system improvement charge in effect for water and one system improvement charge in effect for sewer for each of its rate schedules at any time.

(2) A utility may apply to establish or amend one or more system improvement charges in accordance with the requirements of this section. A utility must not adjust its rates under this section more than once each calendar year. A utility that is applying to establish or amend multiple system improvement charges in a calendar year must do so in a single application.

(3) A utility may not apply to establish or amend a system improvement charge while it has a comprehensive rate proceeding under TWC §§13.187, 13.1871, 13.18715, or 13.1872 pending before the commission.

(4) If a utility with a pending application to establish or amend a system improvement charge files an application to change rates under TWC §§13.187, 13.1871, 13.18715, or 13.1872, or the commission initiates a rate change review under TWC §13.186, the utility will be deemed to have withdrawn its application to establish or amend a system improvement charge and the presiding officer must dismiss the application.

(5) The filing of applications as allowed by this section is limited to a specific quarter of the calendar year, and is based on the last two digits of a utility's certificate of convenience and necessity (CCN) number as outlined below, unless good cause is shown for filing in a different quarter. For a utility holding multiple CCNs, the utility may file an application in any quarter for which any of its CCN numbers is eligible.

(A) Quarter 1 (January-March): CCNs ending in 00 through 27;

(B) Quarter 2 (April-June): CCNs ending in 28 through 54;

(C) Quarter 3 (July-September): CCNs ending in 55 through 81; and

(D) Quarter 4 (October-December): CCNs ending in 82 through 99.

(d) Application for a system improvement charge. An application to establish or amend a system improvement charge must include the following:

(1) a description of the eligible plant for which cost recovery is sought through the system improvement charge, including the project or projects included in the request and an explanation of how each project has improved or will improve service;

(2) a calculation of the system improvement charge in accordance with subsection (f) of this section and all supporting calculations and assumptions for each component of the system improvement charge;

(3) information that sufficiently supports the eligible cost, such as invoices, receipts, and direct testimony, and that sufficiently addresses the exclusion of costs for plant provided by explicit customer agreements or funded by customer contributions in aid of construction;

(4) a copy of the utility's most recent annual report filed with the commission, which must be the annual report most recently due for filing; and

(5) an affidavit confirming that the application meets the requirements of this section.

(e) Calculation of the system improvement charge. The revenue requirement for the system improvement charge must be calculated using the following formula: SIC RR = (Reconcilable Cost * ROR) + Federal Income Taxes + Depreciation + ad valorem taxes + other revenue related taxes.

(1) SIC = the system improvement charge.

(2) SIC RR = system improvement charge revenue requirement.

(3) Reconcilable Cost = the original costs of eligible plant installed after the later of the ending date of the 2019 reporting period reflected in the utility's annual report filed under §24.19 (relating to Water and Sewer Utilities Annual Report) or the end of the test year used in the utility's most recent base-rate proceeding, less:

(A) accumulated depreciation; and

(B) any costs for plant provided by explicit customer agreements or funded by customer contributions in aid of construction.

(4) Accumulated depreciation = depreciation accumulated for eligible plant after the date the eligible plant was placed in service.

(5) ROR = after-tax overall rate of return as defined in paragraph (10) of this subsection.

(6) Federal Income Taxes = current annual federal income tax, as related to eligible costs.

(7) Depreciation = current annual depreciation expense for the eligible plant.

(8) Ad Valorem Taxes = current annual amount of taxes based on the assessed value of the eligible cost.

(9) Other Revenue Related Taxes = current annual amount of any additional taxes resulting from the utility's increased revenues related to the SIC.

(10) The after-tax overall rate of return is one of the following:

(A) if the final order approving the utility's overall rate of return (i.e., the company's weighted-average cost of capital) was filed less than three years before the date that the utility files an application for a SIC, the after-tax rate overall of return is the one approved by the commission in the utility's last base-rate case; or

(B) if the final order approving the utility's overall rate of return (i.e., the company's weighted-average cost of capital) was filed three years or more before the date that the utility files an application for a SIC, the after-tax overall rate of return is the average of the commission's approved rates of return for water and sewer utilities in settled and fully litigated cases over the three years immediately preceding the filing of the SIC.

(11) The SIC must be calculated based on annualized meter equivalents, derived using the most recent month's total customer meter equivalents multiplied by 12. The base SIC must be calculated as the SIC RR divided by annual meter equivalents. The SIC for each meter size must be calculated as the base SIC multiplied by the multiplier for that meter size.

Figure: 16 TAC §24.76(e)(11)

(f) Notice. By the first business day after it files its application, the utility must send notice of its SIC application to all affected ratepayers by first class mail, e-mail (if the customer has agreed to receive communications electronically), bill insert, or hand delivery. The utility must include in the notice the docket number for the utility's SIC proceeding, the intervention deadline, and a brief explanation of how an affected ratepayer can intervene in the SIC proceeding and how intervention differs from protesting a rate increase. The intervention deadline is 25 days from the date service of notice is complete.

(g) Commission processing of application. Upon the filing of an application to establish a SIC, the presiding officer must set a procedural schedule that will enable the commission to issue a final order within 120 days after the application is determined to be sufficient if no hearing is requested.

(1) For good cause or by agreement of the parties, the presiding officer may set a schedule that will not enable issuance of a final order within 120 days after the application is determined to be sufficient. The deadlines established by the presiding officer will be extended as provided in this subsection.

(2) After an application is determined to be sufficient, the applicant must respond to requests for information within 10 days. An applicant's failure to timely respond to requests for information constitutes good cause for extending the deadline for final action one day for each day that a response exceeds 10 days.

(3) A request by an intervenor for hearing must be filed within 25 days after the application is determined to be sufficient. A request for hearing must state with specificity the issues to be addressed.

(4) Unless an intervenor requests a hearing, commission staff must submit a recommendation on the application or request a hearing not later than 45 days after the application is determined to be sufficient unless commission staff requests additional time, not to exceed another 15 days unless good cause exists for a later date. If commission staff is granted additional time, the deadline for final action is extended day for day for each day of additional time.

(5) If a hearing on the application is requested, the application will be referred to the State Office of Administrative Hearings (SOAH) for an evidentiary hearing. The presiding officer must set a procedural schedule that will enable the commission to issue a final order within 120 days after the application is referred to SOAH. For good cause, the presiding officer may set a procedural schedule that will not

enable the commission to issue a final order within 120 days after the application is determined to be sufficient.

(h) Scope of proceeding. The issue of whether eligible costs included in an application for a SIC or an amendment to a SIC are prudent, reasonable, or necessary, will not be addressed in a proceeding under this section unless the presiding officer finds that good cause exists to address these issues.

(i) System improvement charge reconciliation. Costs recovered through a SIC are subject to reconciliation in the utility's next comprehensive rate case. Any amounts recovered through the SIC that are found to have been unreasonable, unnecessary, or imprudent, plus the corresponding return and taxes, must be refunded with carrying costs. The utility must pay to its customers carrying costs on these amounts calculated using the same rate of return that was applied to the recovered costs in establishing the SIC until the date the rates approved in the utility's next comprehensive rate case are effective. Thereafter, carrying costs must be calculated using the utility's rate of return authorized in the comprehensive rate case.

(j) Rate case expenses. Recovery of rate case expenses may be requested and must be reviewed in the utility's next comprehensive base rate case and in accordance with §24.44 of this chapter (relating to Rate-case Expenses Pursuant to Texas Water Code §13.187 and §13.1871).

(k) Requirement to file a rate case. A utility must file a comprehensive rate case under TWC §§13.187, 13.1871, 13.18715, or 13.1872 within the following times from the date the commission files an order approving the SIC.

(1) Four years for a utility that was a Class A utility at the time of the order.

(2) Six years for a utility that was a Class B utility at the time of the order.

(3) Eight years for a utility that was a Class C or Class D utility at the time of the order.

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 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

16 TAC §25.52

The Public Utility Commission of Texas (commission) adopts amendments to existing 16 Texas Administrative Code (TAC)

§25.52, relating to Reliability and Continuity of Service, with changes to the proposed text as published in the October 1, 2021, issue of the *Texas Register* (46 TexReg 6462). The rule will be republished. These amendments implement changes to the Public Utility Regulatory Act (PURA) enacted by the 87th Texas Legislature. Specifically, these amendments implement revisions made by Senate Bill (SB) 1876 to PURA §38.072(a) and (b) by adding end stage renal disease facilities to the list of health facilities prioritized during system restoration following an extended power outage in section §25.52(f).

These amendments also implement new PURA §38.074, added by House Bill (HB) 3648 and SB 3, as part of a joint effort with the Railroad Commission of Texas (RRC) to increase the coordination between the electric and gas industries during energy emergencies. As part of this joint effort, the RRC has proposed new §3.65, relating to Critical Designation of Natural Gas Infrastructure, which will operate in conjunction with the amendments adopted in this project. Together, these rules will require a critical natural gas facility, or a "critical customer" as described under §3.65, to provide critical customer information to the utility from which it receives electric delivery service and require the utility to incorporate this information into its load-shed and power restoration planning.

The commission received comments on the proposed amendments from AEP Texas Inc., Oncor Electric Delivery Company LLC, CenterPoint Energy Houston Electric, LLC, and Texas-New Mexico Power Company (collectively, the "Joint TDUs"), Guadalupe Valley Electric Cooperative, Inc. (GVEC), the Lower Colorado River Authority and LCRA Transmission Services Corporation (collectively LCRA), Occidental Permian LTD (OPL), Office of the Public Utility Counsel (OPUC), Southwestern Electric Power Company (SWEPCO), the Steering Committee of Cities Served by Oncor and the Texas Coalition for Affordable Power (collectively Cities/TCAP), Texas Competitive Power Advocates (TCPA), Texas Electric Cooperatives, Inc. (TEC), Texas Oil & Gas Association (TXOGA), Texas Pipeline Association (TPA), Southwestern Public Service Company (SPS), Texas Public Power Association (TPPA), and Vistra Corp. (Vistra). No party requested a hearing.

General Comments

TPPA and OPUC commented that the interconnection between proposed commission rule §25.52 and the RRC proposed rule §3.65 may cause uncertainty and ambiguity for stakeholders. Specifically, the differing timelines for adoption as currently proposed for the two rules may result in inconsistencies in application.

Commission response

The Commission adjusted its adoption timeline to allow these rule amendments to be adopted on the same day that the RRC adopts §3.65.

TPPA and GVEC expressed concerns regarding the conflicting approach between the process of designating critical status by the commission and the RRC in each agency's proposed rule language. TCPA recommended that the commission should immediately pursue enhanced coordination efforts with the RRC to encourage an approach towards designating truly critical infrastructure, prevent entities from opting-out of "critical" designation until mapping and prioritization activities identify them as such, and also create a more meaningful threshold for the weatherization expectations of a critical natural gas facility to be "prepared to operate during a weather emergency." TPA argued that the ex-

ception portion of proposed RRC rule §3.65 is not an "opt-out" provision, rather it is a "prohibition on a facility's ability to be considered as critical, and thus barring it from being able to be prioritized above others in a load shed event."

Commission response

The commission has collaborated with the RRC throughout this rulemaking process, as required by PURA §38.074. However, comments addressing the RRC's rulemaking project or entities over which the commission has no direct jurisdiction are beyond the scope of this rulemaking project.

ERCOT's voluntary designation form

TCPA and LCRA requested clarification regarding the continued use of the Electric Reliability Council of Texas, Inc. (ERCOT) form, Application for Critical Load Serving Electric Generation and Cogeneration (Critical LSE Application), until the new RRC designation process is implemented. OPUC expressed reservations regarding the RRC's proposed Critical Customer Information (CCI) table and its similarity to the existing application used by ERCOT.

Commission response

The commission anticipates that the new rules adopted by the commission and the RRC will become effective on the same date, rendering most clarifications regarding the ERCOT Critical LSE Application and the RRC CCI table moot. However, the commission has clarified that under §25.53(h)(2)(B), a utility may continue to treat a natural gas facility that self-designated as critical using the Critical LSE Application as a critical natural gas facility, as circumstances require.

Intrastate vs. interstate natural gas pipelines transparency

TCPA commented on the significant differences between federal regulation of interstate pipelines and state regulation of intrastate gas pipelines in Texas, including transparency requirements of gas system conditions. TCPA recommended that the commission work with the RRC to bring about more transparency regarding intrastate natural gas pipelines as part of the Texas Electricity Supply Chain Security and Mapping Committee's (Mapping Committee) mapping process, so that information available for intrastate pipelines is similar to that available for interstate pipelines. Specifically, TCPA recommended that all pipelines should publicly post on a daily basis, the capacities of, and volumes flowing through receipt and delivery points (consistent with interstate practices) and mainline segments on electronic bulletin boards in order to make available necessary information for tracking flows of natural gas throughout Texas.

Commission response

The commission has collaborated with the RRC throughout this rulemaking process, as required by PURA §38.074. However, comments addressing the RRC's rulemaking project or entities over which the commission has no direct jurisdiction are beyond the scope of this rulemaking project. The specifics of the work being done by the Mapping Committee are also not properly addressed in this rulemaking project.

Enhanced coordination with RRC and the mapping initiative

TCPA recommended that the commission and RRC commence the mapping process as soon as possible with a goal of releasing the map and best practices far in advance of the September 1, 2022, deadline as possible. OPUC stated that formalizing rules around critical facilities is premature given the unknown result

of the Mapping Committee's future effort to map out the state's critical infrastructure as well as the RRC's future weatherization rules that will serve as the basis of opting out as a critical natural gas facility under §3.65(d).

Commission response

The commission, in conjunction with the RRC, has already begun the mapping the Texas electricity supply chain, as recommended by TCPA, and will release the map as soon as practicable.

The commission disagrees with OPUC that formalizing rules concerning critical natural gas facilities is premature. HB 3648 requires the commission to adopt rules required by PURA §38.074 by December 1, 2021.

§25.52(a) - Application

Proposed §25.52(a) lists the entities to which §25.52 applies. Vistra recommended that this list also include "operators of critical natural gas facilities," citing the proposed requirement in subparagraph (h)(1)(A) that operators of critical natural gas facilities provide critical customer information to certain entities.

Commission response

The commission declines to add operators of critical natural gas facilities to the entities listed in subsection (a). The commission does not have direct jurisdiction over these entities. Instead, the commission modifies the language of subparagraph (h)(1)(A) to clarify that operators of critical natural gas facilities are required to provide this critical customer information in accordance with §3.65 of this title, as required by the RRC.

TPPA noted that proposed §25.52(a) states that the term "utility" when used in §25.52 means an electric utility and a transmission and distribution utility and the rule further clarifies that in subsection (h), the term also includes electric cooperative and MOUs. TPPA asserted that the same word carrying different meanings within the same rule makes the rule more difficult to understand. TPPA recommended that the commission create a separate rule for addressing MOUs and electric cooperatives.

Commission response

The commission declines to address MOUs and cooperatives in a separate rule, because this rule would have to be published separately in the Texas Register and this could not be accomplished in a timely fashion. The commission agrees with TPPA that the use of same term in different ways in a single rule could be confusing, however, the use of a single term for all applicable entities significantly increases the readability of subsection (h). To mitigate potential confusion and preserve this readability, the commission moves the clarification that "utility," when used in subsection (h), includes MOUs and electric cooperatives to subsection (h).

§25.52(a) - Utilities in non-ERCOT areas of Texas

SWEPSCO and SPS both argued that PURA §38.074 should be limited to entities providing service in the ERCOT power region. Specifically, SWEPSCO and SPP construed the use of the word "certain" in PURA §38.074(a) to limit the applicability of the statute, and therefore the rule, to facilities in the ERCOT power region. "The commission shall collaborate with the Railroad Commission of Texas to adopt rules to establish a process to designate *certain* natural gas facilities and entities associated with providing natural gas in this state as critical during energy emergencies..." SWEPSCO and SPS also indicated that contextually,

HB 3648 was passed to address ERCOT-specific load shed during Winter Storm Uri and the statute and rule should therefore be limited in applicability.

SPS further argued that §38.074(b)(1)-(3) explicitly designates facilities in the ERCOT power region as the subject of the rule. SWEPSCO similarly argued that the RRC's proposed rule §3.65(e) appropriately limits the provision of critical customer information to the entities described in PURA §38.074(b)(1), however the commission's proposed §25.52(h)(1)(A) does not. SWEPSCO also recommended edits to the term "utility" in §25.52(h)(1) and §25.52(h)(2) limiting the term to facilities in the ERCOT power region. SWEPSCO offered draft language for clauses §25.52(h)(1)(A)(i) and §25.52(h)(1)(A)(ii), in accordance with its desired definition of the term "utility":

(i) The transmission and distribution utility, electric cooperative, or MOU from which the critical natural gas facility receives electric delivery service in the ERCOT region: and

(ii) For critical natural gas facilities located in the ERCOT region, the independent organization certified under PURA §39.151.

Commission response

The commission declines to adopt the recommendation of SWEPSCO and SPS to limit the applicability of the proposed rule to facilities in the ERCOT power region. PURA §38.074(a) states in relevant part: "certain natural gas facilities and entities associated with providing natural gas in this state as critical during energy emergencies." The plain meaning of PURA §38.074(a) is a directive for the RRC and the commission to establish a designation process of "[critical] facilities and entities" within the State of Texas. The adjective "certain" applies to the nouns "natural gas facilities and entities" which in turn are further limited in scope by the descriptor "in this state", meaning the State of Texas and reflective of the intent of the designation process to be statewide and not limited to the ERCOT power region. The term "as critical" is only intended as a directive for both agencies to determine which facilities and entities providing natural gas within the State should be prioritized pursuant to the statute. PURA §38.074(b)(1) should be read as a specific directive for the ERCOT power region whereas PURA §38.074(a) is a section of general applicability. SPS' interpretation of PURA §38.074(b)(1)-(3) is erroneous because, if the subsections were intended to limit the scope of the statute, (b)(1)-(3) would be subsections of (a) and not its own section, and the phrase "in this State" would not have been included in (a) by the Legislature and instead have stated "in the ERCOT power region" or nothing at all.

The commission also notes that the mapping of the Texas electric supply chain as directed by SB 3, codified as PURA §38.201, as further evidence the intention of the designation of critical nature gas to be a statewide initiative. Specifically, PURA §38.201(b)(1) directs the Mapping Committee to "map this state's electricity supply chain" and §38.201(b)(2) which requires the Mapping Committee to "identify critical infrastructure sources in the [statewide] electricity supply chain".

For these reasons, the commission also declines to adopt SWEPSCO's recommendation and proposed language limiting the scope of the term "utility" in §25.52(h)(1)(A)(i) and §25.52(h)(1)(A)(ii).

§25.52(c) - Definition of "energy emergency"

SWEPSCO, Vistra and Joint TDUs requested that the commission adopt a definition of "energy emergency, because the term is

used in this section several times. The Joint TDUs suggested the commission adopt the definition proposed by the RRC.

Commission response

Commission agrees to define the term energy emergency but does not agree to adopt the RRC's proposed definition, as recommended by the Joint TDUs. The commission defines energy emergency, when used in §25.52, as "[a]ny event that results in or has the potential to result in firm load shed required by the reliability coordinator of a power region in Texas."

§25.52(c)(2) - Definition of "critical natural gas"

Proposed §25.52(c)(2) defines the term "critical natural gas" as a facility designated as a critical gas supplier by the RRC under §3.65(b) unless the critical gas supplier has obtained an exception from its critical status under the RRC's proposed rule. Under proposed §3.65, a critical gas supplier that is not prepared to operate during a weather emergency can obtain an exception from its critical status.

Vistra recommended that rule define the term "critical natural gas facility" rather than "critical natural gas." Further, the definition should expressly include gas supply chain facilities in the electricity supply chain map and clarify that an energy emergency is declared by ERCOT.

Commission response

The commission agrees that defining "critical natural gas facility" in lieu of "critical natural gas" improves the clarity of the rule and amends the define term accordingly. However, the supply chain map is addressed in §3.65, promulgated by the RRC. Therefore, the commission declines to adopt Vistra's proposed language regarding the electric supply chain map for §25.52(c)(2). Moving forward, this order will refer to "critical natural gas" when discussing proposed language and will use "critical natural gas facility" when referring to the adopted rule.

Finally, the commission has relocated the statement "Critical natural gas is a critical load during an energy emergency" to (h)(2) for clarity.

Cities/TCAP argued that the definition of "critical natural gas" in the commission's rule should not include an exception for a critical gas supplier that is not prepared to operate during a weather emergency. TCPA and TEC requested the commission adopt rule language to require an attestation by an authorized officer of the facility operator to certify that the facility complies with best practices and is prepared to maintain service in an extreme weather event established under PURA §38.203(a)(4). TCPA and TEC also recommended removing all reference to the RRC's proposed rule §3.65 and instead rely solely on the definitions and requirements of critical natural gas facilities finalized by the commission. Specifically, TEC recommended that the commission adopt a more stringent definition for "critical natural gas" to include the criteria that the facility has provided all required information in accordance with RRC rules and has provided additional information as requested by the electric utility in accordance with subsection (h)(1)(C)(i).

Commission response

The commission declines to remove all references to §3.65 from the definition of critical natural gas facilities. Natural gas facilities are subject to the primary jurisdiction of the RRC, making the reference to its rule appropriate. Comments addressing other aspects of the RRC's rulemaking project or entities over which

the commission has no direct jurisdiction are beyond the scope of this rulemaking project.

TPPA recommended that the commission include language in proposed §25.52 excluding natural gas facilities from being declared critical if the facility failed to timely provide critical customer information to its MOU, electric cooperative, or investor-owned utility.

Commission response

The commission agrees that timely receipt of critical customer information is essential for proper emergency planning. For this reason, the commission adds language to clause (h)(1)(C)(i) that gives a utility some discretion as to whether to treat a natural gas facility that submits untimely information as critical.

TEC recommended that the commission qualify the definition of "critical natural gas" to indicate that the designation does not guarantee uninterrupted supply of energy or that load will not be shed.

Commission response

The commission agrees with TEC that a clarification of the effect of a critical designation on the certainty of electricity supply for a natural gas facility would be helpful and adds the following language to the definition of critical natural gas facility: "Designation as a critical natural gas facility does not guarantee the uninterrupted supply of electricity."

§25.52(f) - Power restoration for certain medical facilities

Under §25.52(f), a utility must give the same priority to certain medical facilities that it gives to a hospital in the utility's emergency operations plan for restoring power after an extended power outage.

Joint TDUs requested a new paragraph under this subsection adding "Nothing in this subsection (f) shall be deemed as altering the terms and conditions of a utility's tariff."

Commission response

The commission declines to add language requested by the Joint TDUs. The Joint TDUs did not provide any reasoning supporting this addition, and the commission finds it to be superfluous.

§25.52(h) - Critical natural gas

Proposed §25.52(h) specifies that critical natural gas standards, as defined under RRC rule §3.65, are applicable to gas suppliers in Texas that are designated as critical customers.

TPA recommended clarifying that load shed programs apply only to facilities served by electric distribution facilities, not transmission facilities and recommended changing the language to add the word distribution in this subsection.

Commission response

The commission declines to make the proposed changes suggested by TPA. The term "electric delivery service" encompasses both transmission and distribution service providers. Additionally, certain utilities in Texas are integrated and may provide both transmission and distribution services.

25.52(h) - Cross reference to RRC rule §3.65

TEC and TCPA commented that the cross reference to TRRC's rule §3.65 should be removed. and proposed that the commission rely on the definition and requirements of critical natural gas facilities finalized in its own rules.

Commission response

The commission declines to remove all references to §3.65 from subsection (h). Natural gas facilities are subject to the primary jurisdiction of the RRC, making the reference to its rule appropriate.

§25.52(h)(1)(A) - Critical customer information

Proposed §25.52(h)(1)(A) requires critical natural gas facilities to provide critical customer information in a format described under RRC rule §3.65(a)(3) to their respective electric delivery service providers and, for critical natural gas facilities within the ERCOT region, to the independent organization certified under PURA §39.151.

TPPA recommended that the subsection also clarify that, for any corrections or updates provided to a utility, critical natural gas facilities would be required to concurrently provide those same corrections or updates to ERCOT.

TPA also requested the Commission to provide clarity and continuity as to what is meant by "usable format" in §25.52(h)(1)(A) regarding providing Critical Customer Information, as defined by §3.65(a)(3) of the RRC rule.

Commission response

The commission replaces the reference to "usable format" with a requirement that the critical customer information must be provided using Form CI-D and any attachments, to align with a change made by the RRC in §3.65.

The commission agrees that providing updated information to ERCOT is appropriate, but finds that such a process can be addressed in implementation of the rule.

Joint TDUs proposed expanding the scope of RRC rule §3.65(a)(3) to include additional details for each critical natural gas facility. Specifically, information regarding which facilities directly support electric generation should be included so the TDUs can incorporate those facilities into their respective load-shed and emergency restoration plans.

TEC proposed changes to this subsection to require a gas operator that provides critical customer information under §3.65(a)(3) to also provide a "prepared to operate" certification from an authorized officer of the utility and, if applicable, to ERCOT, within the time frames set forth under §3.65(c).

Commission response

The commission has collaborated with the RRC throughout this rulemaking process, as required by PURA §38.074. However, comments addressing the RRC's rulemaking project or entities over which the commission has no direct jurisdiction are beyond the scope of this rulemaking project.

TPA proposed an alternate mechanism for identifying critical facilities in non-customer choice regions of Texas, where meters do not have ESI IDs. TPA made no specific recommendations beyond a special ID determined by the commission to be assigned to meters without ESI IDs and expressed general support for such an alternative protocol.

Commission response

The commission has collaborated with the RRC throughout this rulemaking process, as required by PURA §38.074. The specific critical customer information that critical natural gas facilities need to provide will be delineated in Form CI-D, as adopted by

the RRC. This form will provide an alternate mechanism of identifying critical facilities in non-customer choice regions of Texas.

§25.52(h)(1)(B) - Updating utility email information

Under proposed subparagraph (h)(1)(B), the commission will maintain on its website, a list of utility email addresses to be used for the provision of critical customer information. This subparagraph also requires that utility to ensure that its' email address is accurate by requiring the utility to immediately provide the the commission with an updated email address if the email address is inaccurate or changes.

TPPA and TEC commented that the proposed rule's requirement to immediately update the contact information is burdensome and outside normal commission practice for emergency contact maintenance. TPPA referred to §25.53(e) and recommended that timeline for compliance be set to either "as soon as practicable" or "within 30 days." TEC proposed that email addresses be updated "as soon as reasonably practicable."

LCRA recommended that in the event the utility's email address changes or is inaccurate, the utility should be allowed five business days from the date the email address changes, or the utility is informed that the email address on file is inaccurate.

Commission response

The commission agrees with commenters that requiring a utility to update its email address immediately is inconsistent with other similar requirements in the commission's rules. The commission modifies the language to require a utility provide an updated email address within five business days of the email address changing or the utility becoming aware that the posted address is inaccurate, as recommended by LCRA.

§25.52(h)(1)(C) - Evaluation of critical customer information

Proposed new §25.52(h)(1)(C) establishes the timeline for evaluation of critical natural gas facility customer information by TDUs and notification to the gas facility of its critical status.

TPPA opposed the requirement imposed by §25.52(h)(1)(C) to notify gas facilities of their critical status and argued that the proposed rule paragraph exceeds the scope of PURA §38.074. TPPA opined on the purpose served by the notification when RRC has already designated a gas facility as critical and requested clarity on which entity grants critical status and the circumstances that could result in removal of critical status. TPPA also requested that the commission set the deadline for compliance with this subsection to either "as soon as practicable" or "within 30 days" so that TDUs can more meaningfully respond to critical information submissions by gas operators.

SWEPSCO requested that the commission require critical customer information be received by utilities by September 15 of each year so it can incorporate this information during the annual review of its load shed plan. SWEPSCO also requested that utilities be granted 21 days to review the information provided.

Joint TDUs asserted that five business days is too short of a timeframe for the utilities to process, evaluate, and respond to the volume of information that will be simultaneously submitted by the gas operators. Joint TDUs recommended that a timeframe of 15 business days be adopted to allow the utilities to analyze the critical customer information analyze the critical customer information more thoroughly. Joint TDUs argued that this timeframe would also allow for an opportunity for clarification and communication with the operators if needed and would be more

consistent with the 30-day timeframe set forth in Texas Water Code §13.1396(g), which also addresses critical infrastructure.

TEC proposed clarifying the types of notices a utility may provide to gas operators depending on the circumstances, such as notices for submitting incomplete information. TEC also requested clarifying that a gas operator must respond within five business days to a utility's requests for additional information and if a gas operator fails to respond, the utility should not be required to further evaluate, classify, or designate the facility. TEC further recommended adding a new subsection providing details on timelines for providing different notices to gas operators.

Specifically, TEC offered language changes under §25.52(h) and recommended that a utility should not be required to prioritize or plan for those gas facilities in their load shed, power delivery and power restoration plan that do not meet the Commission's definition of critical natural gas supplier under §25.52(c)(2).

Commission response

The commission agrees with commenters that five business days is insufficient time for utilities to evaluate critical customer information and increases the deadline to 10 business days. The commission declines to make the changes proposed by TEC to add a new subsection on timelines for utilities to provide various notices to gas operators.

The commission does not require utilities to receive critical customer information from critical natural gas facilities by September 15, as requested by SWEPCO. The deadline for a critical natural gas facility to provide critical customer information to its utility is governed by §3.65.

The commission modifies §25.52(h)(1)(C)(i) to allow a utility to set a deadline of no shorter than five business days for a natural gas facility to provide additional, requested critical customer information. If the utility does not receive the additional information in a timely fashion, the utility may use its discretion to determine if it is possible to treat the natural gas facility as critical for load shed and power restoration purposes. However, the commission expects a utility to include as many critical natural gas facilities as practicable in its power restoration and load shed plans.

§25.52(h)(1)(C)(ii) - Utility notice to gas operator with complete information

Proposed new §25.52(h)(1)(C)(ii) details the required contents of a notice from a utility to a gas operator that has provided complete critical customer information under to §25.52(h)(1)(C).

TPPA requested the commission provide additional clarification on what is required of utilities when notifying gas operators of "any additional classifications assigned to the facility" under §25.52(h)(1)(C)(ii).

Commission response

Under §25.52(h)(2)(B), a utility retains discretion to implement load shed and power restoration as circumstances require. If a utility assigns any additional classifications, such as tier of criticality, using this discretion, that classification must be reported to the critical natural gas facility.

Subsection §25.52(h)(1)(D) - Confidentiality of critical customer information

This subsection establishes the requirement that neither investor-owned facilities, MOUs, electric cooperatives nor the independent system operator must not release any critical

customer information to any person unless authorized by the commission or the critical natural gas facility operator.

LCRA proposed the list of gas facilities that have filed RRC's Form CI-X, Critical Customer/Critical Gas Supplier Designation Exception Application be provided to electric generators, so the generators can determine if gas facilities in their fuel supply chain are not prepared to operate in winter weather conditions. LCRA further proposed that either the generators have access to the RRC's list of gas facilities or that the confidentiality provisions of §25.52(h)(1)(D) be amended to include generators' access to this information. LCRA and Vistra proposed sharing of critical customer information between a retail electric service provider and its transmission operator.

Commission response

Providing supply chain information to electric generators, as recommended by LCRA, is beyond the scope of this rulemaking. Therefore, the commission declines to amend the rule as proposed. The commission disagrees with both LCRA's and Vistra's proposals to allow exchange of critical gas customer information with REPs. Customers can provide the information voluntarily and at their own discretion to their REP.

LCRA proposed amending the language of §25.52(h)(1)(D) to include a utility's transmission operator as an exception to the prohibition of sharing critical customer information.

Commission response

The commission agrees with LCRA and amends the rule accordingly.

Vistra proposed amending language in §25.52(h)(1)(D) to include the word "delivery" between "electric" and "service."

Commission response

The commission agrees with Vistra and amends the rule accordingly.

TEC proposed changes to §25.52(h)(1)(D) to clarify that confidentiality applies when both sending and receiving customer information regarding a critical natural gas facility.

Commission response

The commission agrees with TEC and amends the rule accordingly.

TEC's proposed new subparagraph (h)(1)(E)

TEC recommended adding a new subparagraph that specifies the dates by which a utility must provide notice of the status of evaluation or designation to the critical natural gas facility operator. TEC proposed a 30-day deadline in 2022 and a 60-day deadline beginning in 2023.

Commission response

The commission agrees with TCPA and amends the rule to allow utilities to treat utilities that voluntarily self-designated as critical using the Critical LSE Application as critical natural gas facilities as circumstances require.

Vistra requested the commission clarify §25.52(h)(2)(A) as, in its view, multiple interpretations are possible of the sentence portion ""prioritize critical natural gas facilities for load-shed purposes"" in the rule. Specifically, Vistra requested the commission clarify whether the rule intended to prioritize "critical natural gas facilities as a class for continued power delivery during a load-shed event, relative to other classes of loads." Vistra opined that this is

the intended meaning of the rule due to the term "among" used in §25.52(h)(2)(B)-(C) to specify "relative prioritization of the broader critical load segment and within the more narrow critical natural gas facility segment". However, Vistra indicated that an opposing interpretation is possible, specifically that "critical natural gas facilities should be *prioritized for having their load shed*." Vistra proposed language to resolve this perceived ambiguity:

(A) A utility must prioritize include critical natural gas facilities as a category of facilities considered for prioritization of continued power delivery during for load-shed purposes during in an energy emergency.

Commission response

The commission agrees with Vistra that current rule language is ambiguous and modifies §25.52(h)(2)(A) to "A utility must prioritize critical natural gas facilities for continued power delivery during an energy emergency."

SPS proposed rule language in line with its general comments under heading §25.52(h) where it argued the applicable scope of the rule is limited to the ERCOT power region.

(h)(2)(A) A utility in the ERCOT power region must prioritize critical natural gas facilities for load-shed purposes during an energy emergency.

Commission response

The commission declines to adopt SPS's proposed rule language for the reasons stated in response to SPS's comments on the application of the rule, §25.52(a).

SWEPSCO, Cities/TCAP, and Joint TDUs expressed concern over the ambiguity of certain provisions in §25.52(h)(2) regarding prioritization by the commission and RRC, utility discretion for prioritization, and industry guidance. SWEPSCO, Cities/TCAP, and Joint TDUs recommended the commission clarify proposed new §25.52(h)(2) in order to prioritize specific facilities or entities within the umbrella term "critical natural gas facilities". SWEPSCO proposed various criteria for the commission to consider for prioritization. Cities/TCAP recommended the commission or ERCOT publish guidance on the same. Joint TDUs recommended a specific three-tiered system based on criticality for §25.52(h)(2)(A) and making §25.52(h)(2)(C) more permissive, only obligating utilities "to consider" additional guidance or prioritization criteria, provided by a limited, identifiable group within the commission, ERCOT, and RRC.

SWEPSCO argued that critical natural gas facilities should be categorized to enable utilities to incorporate them into load shed and restoration plans in the most "meaningful manner" possible.

Cities/TCAP expressed concern that identifying all gas supply chain facilities as critical without any attention to "role or ranking" may introduce risks and result in utilities unable to effectively manage prioritization of critical facilities during an emergency.

Joint TDUs asserted that neither the RRC's nor commission's proposed rules distinguish among natural gas facilities, nor do they provide a methodology by which critical natural gas facilities should be prioritized for load shedding, power delivery, and restoration purposes. According to Joint TDUs, the Legislature's mandate to the commission and the RRC in both SB 3 and HB 3648, as reflected in PURA §38.074(a) and Tex. Nat. Res. Code §8 1.073(a), was to "collaborate with [each other] to adopt rules to establish a process to designate certain natural gas facilities and entities associated with providing natural gas in this state as critical during energy emergencies;". Joint TDUs concluded that

it is unclear how this evaluation would occur under either rule as proposed. To overcome this deficiency Joint TDUs proposed Tiers 1, 2, and 3 of (high-medium-low) prioritization based on criticality. Joint TDUs provided language as proposed clauses (i), (ii), and (iii) to be added to §25.52(h)(2) to that effect. TPA argued that the commission and the RRC must recognize that not every part of a critical gas facility may be needed during a weather emergency, and not all facilities are the same. TPA emphasized the need to consider all pressure maintenance facilities "critical."

Commission response

The commission declines to adopt the proposals of SWEPSCO, Cities/TCAP, Joint TDUs, TPPA, and TPA as such recommendations are premature without consideration of the passed RRC rule in conjunction with the map of the state power grid published by the Mapping Committee. The commission anticipates providing agency guidance on prioritization of natural gas to the industry or a further rulemaking project in the future. As previously stated, the commission has collaborated with the RRC throughout this rulemaking process, as required by PURA §38.074. However, comments addressing the RRC's rulemaking project or entities over which the commission has no direct jurisdiction are beyond the scope of this rulemaking project.

§25.52(h)(2)(B) - Discretion regarding load shed and restoration

SWEPSCO requested the commission delete the word "critical" from the phrase "other critical loads" in subparagraph (h)(2)(B). According to SWEPSCO the phrase "among critical natural gas facilities and other critical loads" could be read to limit a utility's discretion further than intended. SWEPSCO provided as an example where an instance could foreseeably arise in which, to maintain the stability of the distribution system, the utility has no choice but to de-energize a circuit containing a critical natural gas facility while a circuit with no critical loads remains energized. SWEPSCO further argued that such a situation may become more likely if the natural gas facilities deemed critical are numerous and widespread. Therefore, SWEPSCO concluded removing the word critical would allow utilities retain the discretion to manage all load in the most effective manner possible during an emergency

Commission response

PURA §38.074(b)(3) requires the commission to adopt rules that provide discretion to a utility to prioritize power delivery and power restoration "among the facilities and entities designated under Subsection (a)." Subsection (a) merely refers to natural gas facilities and entities designated as critical during energy emergencies. The commission acknowledges that it has expanded this to include discretion to prioritize power delivery and power restoration among all critical loads, but this was done to harmonize PURA §38.074(b)(3) with other provisions of PURA that relate to critical loads, such as PURA §38.072(c), which requires the commission to allow an electric utility to exercise discretion to prioritize power restoration for certain medical facilities.

Joint TDUs recommended commission add the phrase to the end of subparagraph (h)(2)(B) "as circumstances require."

Commission response

The commission agrees with Joint TDUs that the recommended language provides appropriate discretion and aligns with statutory language. The commission amends the rule accordingly.

SPS proposed adding a sentence that would clarify that "Compliance with the procedures and directives of a regional transmission organization having authority over a utility outside of the ERCOT power region shall be deemed compliance for that utility."

Commission response

The commission agrees with SPS that a utility outside of the ERCOT power region must follow the directives of a regional transmission organization with authority over that utility. The commission adopts similar language as proposed by SPS as subparagraph (D) of this paragraph.

Cities/TCAP cautioned that allowing every utility to create its own load shed and power restoration priority list will lead to ineffective execution of the proposed rule and undermines the intention of the Legislature and the commission to designate critical load for the purpose of increasing electric reliability in a weather emergency. According to Cities/TCAP, entity-by-entity discretion may not lead to the optimization of all utilities. Therefore, Cities/TCAP urged the commission to provide specific guidance on the industry-wide prioritization of natural gas facilities, considering that without natural gas supply, other critical loads cannot receive service.

Commission response

PURA §38.074(b)(3) requires the commission to "provide discretion to an electric utility...to prioritize power delivery and power restoration [for facilities and entities designated as critical under PURA §38.074(a)] and the commission is therefore prohibited from limiting such discretion, as proposed by Cities/TCAP." However, the commission may issue additional guidance on prioritization for power delivery and power restoration purposes under §25.52(h)(2)(C).

§25.52(h)(2)(C) - Additional guidance for prioritization during a load shed event

Proposed new §25.52(h)(2)(C) requires a utility to consider any additional guidance or prioritization criteria provided by the commission, RRC, or ERCOT or governing RTO for its power region in prioritizing critical loads.

Joint TDUs argued that proposed §25.52(h)(2)(C) is vague and overly broad and may lead to confusion. Therefore, Joint TDUs recommended §25.52(h)(2)(C) should be narrowed so that utilities are only obligated to consider additional guidance or prioritization criteria provided by only certain authorized personnel from the commission, the RRC, and ERCOT. SWEPCO recommended the commission to remove §25.52(h)(2)(C) entirely because it is superfluous and vague, and it would leave open to subjective interpretation what constitutes "any additional guidance or prioritization criteria".

TPPA argued that any such guidance or prioritization criteria must be provided by regulatory bodies in advance of load shed events, rather than during such an event. According to TPPA, load shed and power restoration planning are detailed and complex processes, and any delay in a regulatory body providing its necessary expectations for either process can result in unnecessary confusion.

Cities/TCAP stated that the RRC "passed on the option to establish prioritization of critical natural gas facilities, stating it lacks the jurisdiction." Therefore, Cities/TCAP encouraged the commission to implement additional guidance or prioritization criteria to ensure uniformity and effective execution of the proposed rule

amendments. In the alternative, Cities/TCAP requested that the commission direct ERCOT to do so through the creation of new Nodal Protocols or Operating Guides necessary to implement the Commission's rule amendments.

Commission response

The commission declines to delete or narrow §25.52(h)(2)(C), or to set a deadline for providing additional guidance. By its very nature, an energy emergency is rapidly changing situation that calls for implementation or documentation of best practices as they are determined. The commission intends to make available guidance reflecting those best practices as appropriate, and expects that the Railroad Commission and reliability coordinators will take a similar approach. The commission further notes that the requirement in subparagraph (C) is for the utility to *consider* this additional guidance. The utility retains its discretion under §25.52(h)(2)(B). No changes to the rule language are necessary.

Vistra recommended adding language to the rule to specify that "energy emergency prioritization should seek to maximize delivered natural gas for human needs and safety, including fuel supply to power generation facilities." Vistra further recommended that the commission add language clarifying that the paragraph applies to an energy emergency declared by ERCOT.

Commission response

The commission declines to adopt Vistra's recommendation. Utilities have discretion under PURA §38.074(b)(3) to prioritize load shed and power restoration, which encompasses the concept recommended by Vistra. Further, this subparagraph applies to an energy emergency declared by any reliability coordinator not just those declared by ERCOT. Therefore, Vistra's recommended change is not appropriate. No changes to the rule are necessary.

TEC recommended language to clarify that the guidance referenced may relate not just to prioritization among critical natural gas facilities but also how the prioritization of those facilities relates to other critical loads.

Commission response

The commission agrees with TEC and modifies the rule accordingly.

SPS commented that §25.52(h) should not be applied to SPS as it is a non-ERCOT utility in Texas subject to Federal Energy Regulatory Commission regulated Regional Transmission Organizations.

Commission response

The commission addressed this issue thoroughly in its analysis of comments to §25.52(a) above. Furthermore, the commission has added §25.52(h)(2)(D), which states that "[c]ompliance with directives of a regional transmission organization having authority over a utility outside of the ERCOT power region will be deemed compliance for that utility.":

Classification criteria for critical natural gas facilities

TEC argued that the commission should explicitly allow a utility to create classifications of critical natural gas facilities for purposes of prioritizing power delivery and restoration. TEC further argued that the commission should provide the following non-exclusive list of factors to consider when creating these classifications: availability and type of backup power supply; duration of that supply; fuel source for that supply; type of facility; role of the

facility in the natural gas supply chain; size of the electric load; gas production rate; location of the facility on the utility's system; and whether new or upgraded electric energy equipment or facilities are necessary to serve the facility during an energy emergency and the cost of such equipment or facilities.

Commission response

The commission declines to add a new subparagraph explicitly authorizing a utility to create classifications of critical natural gas facilities as requested by TEC. A utility already has the discretion to develop its own classification system under subparagraph (h)(2)(B). Moreover, the commission disagrees with TEC that the non-exclusive list recommended would provide meaningful guidance to utilities in how to create such classifications. By TEC's own admission, the factors "must be non-exclusive given the variety of distribution systems, geography, and weather across the state." Given this wide variance, the commission opts to not include specific guidance in the language of the rule. The commission may, at its discretion under §25.52(h)(2)(C) as discussed previously, issue additional guidance to utilities on how to classify critical natural gas facilities at future time.

Joint TDUs' proposed new §25.52(h)(2)(D)

Joint TDUs recommended that the commission adopt a new subparagraph to (h)(2) stating that "[n]othing in this Subsection (h) shall be deemed as altering the terms and conditions of a utility's tariff."

Commission response

The commission declines to add language requested by the Joint TDUs. The Joint TDUs did not provide any reasoning supporting this addition, and the commission finds it to be superfluous.

TEC's proposed new §25.52(h)(2)(E)

TEC argued that "under [proposed rule §25.52], utilities will bear the burden of the state's effort to evaluate and determine the priority of a potentially massive amount of critical natural gas load and other critical loads in this state." TEC proposes a limitation on liability for implementing this regulatory process.

Commission response

The commission declines to add a new subparagraph providing a limitation on liability as requested by TEC. PURA §38.074 directs the commission to adopt rules that provide discretion to utilities regarding how to prioritize power delivery and power restoration during energy emergencies. The Texas Legislature did not opt to include liability protection as part of this statutory framework.

OPL's proposed new §25.52(h)(3) Limitation on critical status proposed by OPL

OPL argued that, absent weather conditions that pose a risk of supply chain disruptions, the commission should only consider natural gas facilities that are directly related to gas storage and transport as critical. OPL stated that it would be inefficient and potentially detrimental to grid reliability for the commission to require utilities to treat all types of natural gas facilities as critical electric loads throughout the year, as maintaining adequate gas supply is exclusive to extreme cold weather conditions. OPL further argued that many natural gas facilities currently provide demand response services that contribute to grid reliability, and such facilities could continue to provide those valuable services in most weather conditions without any risk of creating gas supply issues in the ERCOT power region. However, OPL contended that being unnecessarily designated as "critical electric

load" under all conditions could unintentionally interfere with a natural gas facility's ability to participate in demand response.

OPL provided recommended language requiring the ERCOT to define conditions under which certain types of natural gas facilities will be treated as critical for purposes of load obligations and being restricted from participating in ancillary services or other demand response programs in ERCOT. OPL's recommended language also indicated that until these conditions were defined by ERCOT, certain natural gas facilities designated as critical gas suppliers by the RRC shall only be treated as critical during the months of December, January, and February, or during other periods declared an extreme cold weather event by the commission.

Commission response

Commission declines to make changes in response to the comments of OPL. Under PURA §38.074, the critical status of natural gas facilities is tied to "energy emergencies" and not seasonality or weather conditions as proposed by OPL. Moreover, how ERCOT defines the conditions under which certain types of natural gas facilities are restricted from participating in ancillary services or other demand response programs is beyond the scope of this rulemaking project.

Statutory Authority

This amended rule is adopted under the following provisions of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §38.072, which requires the commission to adopt a rule requiring an electric utility to give end stage renal disease facilities the same priority it gives to hospitals in the utility's emergency operations plan for restoring power after an extended power outage; and §38.074, which requires the commission to, in collaboration with the Railroad Commission of Texas, rules to establish a process to designate certain natural gas facilities and entities as critical natural gas customers during energy emergencies and to require utilities to prioritize these facilities for load-shed and power restoration purposes during an energy emergency.

Cross reference to statutes: PURA §§14.001, 14.002, 38.072, and 38.074.

§25.52. Reliability and Continuity of Service.

(a) Application. This section applies to all electric utilities as defined by §25.5(41) of this title (relating to Definitions) and all transmission and distribution utilities as defined by §25.5(137) of this title. When specifically stated, this section also applies to electric cooperatives and municipally-owned utilities (MOUs). The term "utility" as used in this section means an electric utility and a transmission and distribution utility.

(b) General.

(1) Every utility must make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility must reestablish service within the shortest possible time.

(2) Each utility must make reasonable provisions to manage emergencies resulting from failure of service, and each utility must issue instructions to its employees covering procedures to be followed

in the event of emergency in order to prevent or mitigate interruption or impairment of service.

(3) In the event of national emergency or local disaster resulting in disruption of normal service, the utility may, in the public interest, interrupt service to other customers to provide necessary service to civil defense or other emergency service entities on a temporary basis until normal service to these agencies can be restored.

(4) Each utility must maintain adequately trained and experienced personnel throughout its service area so that the utility is able to fully and adequately comply with the service quality and reliability standards.

(5) With regard to system reliability, a utility must not neglect any local neighborhood or geographic area, including rural areas, communities of less than 1,000 persons, and low-income areas.

(c) Definitions. The following words and terms, when used in this section, have the following meanings unless the context indicates otherwise.

(1) Critical loads--Loads for which electric service is considered crucial for the protection or maintenance of public safety; including but not limited to hospitals, police stations, fire stations, critical water and wastewater facilities, and customers with special in-house life-sustaining equipment.

(2) Critical natural gas facility--A facility designated as a critical customer by the Railroad Commission of Texas under §3.65(b) of this title (relating to Critical Designation of Natural Gas Infrastructure) unless the facility has obtained an exception from its critical status. Designation as a critical natural gas facility does not guarantee the uninterrupted supply of electricity.

(3) Energy emergency--Any event that results in or has the potential to result in firm load shed required by the reliability coordinator of a power region in Texas.

(4) Interruption classifications:

(A) Forced--Interruptions, exclusive of major events, that result from conditions directly associated with a component requiring that it be taken out of service immediately, either automatically or manually, or an interruption caused by improper operation of equipment or human error.

(B) Scheduled--Interruptions, exclusive of major events, that result when a component is deliberately taken out of service at a selected time for purposes of construction, preventative maintenance, or repair. If it is possible to defer an interruption, the interruption is considered a scheduled interruption.

(C) Outside causes--Interruptions, exclusive of major events, that are caused by influences arising outside of the distribution system, such as generation, transmission, or substation outages.

(D) Major events--Interruptions that result from a catastrophic event that exceeds the design limits of the electric power system, such as an earthquake or an extreme storm. These events shall include situations where there is a loss of power to 10% or more of the customers in a region over a 24-hour period and with all customers not restored within 24 hours.

(5) Interruption, momentary--Single operation of an interrupting device which results in a voltage zero and the immediate restoration of voltage.

(6) Interruption, sustained--All interruptions not classified as momentary.

(7) Interruption, significant--An interruption of any classification lasting one hour or more and affecting the entire system, a major division of the system, a community, a critical load, or service to interruptible customers; and a scheduled interruption lasting more than four hours that affects customers that are not notified in advance. A significant interruption includes a loss of service to 20% or more of the system's customers, or 20,000 customers for utilities serving more than 200,000 customers. A significant interruption also includes interruptions adversely affecting a community such as interruptions of governmental agencies, military bases, universities and schools, major retail centers, and major employers.

(8) Reliability indices:

(A) System Average Interruption Frequency Index (SAIFI)--The average number of times that a customer's service is interrupted. SAIFI is calculated by summing the number of customers interrupted for each event and dividing by the total number of customers on the system being indexed. A lower SAIFI value represents a higher level of service reliability.

(B) System Average Interruption Duration Index (SAIDI)--The average amount of time a customer's service is interrupted during the reporting period. SAIDI is calculated by summing the restoration time for each interruption event times the number of customers interrupted for each event and dividing by the total number of customers. SAIDI is expressed in minutes or hours. A lower SAIDI value represents a higher level of service reliability.

(d) Record of interruption. Each utility must keep complete records of sustained interruptions of all classifications. Where possible, each utility must keep a complete record of all momentary interruptions. These records must show the type of interruption, the cause for the interruption, the date and time of the interruption, the duration of the interruption, the number of customers interrupted, the substation identifier, and the transmission line or distribution feeder identifier. In cases of emergency interruptions, the remedy and steps taken to prevent recurrence must be recorded. Each utility must retain records of interruptions for five years.

(e) Notice of significant interruptions.

(1) Initial notice. A utility must notify the commission, in a method prescribed by the commission, as soon as reasonably possible after it has determined that a significant interruption has occurred. The initial notice must include the general location of the significant interruption, the approximate number of customers affected, the cause if known, the time of the event, and the estimated time of full restoration. The initial notice must also include the name and telephone number of the utility contact person and must indicate whether local authorities and media are aware of the event. If the duration of the significant interruption is greater than 24 hours, the utility must update this information daily and file a summary report.

(2) Summary report. Within five working days after the end of a significant interruption lasting more than 24 hours, the utility must submit a summary report to the commission. The summary report must include the date and time of the significant interruption; the date and time of full restoration; the cause of the interruption, the location, substation and feeder identifiers of all affected facilities; the total number of customers affected; the dates, times, and numbers of customers affected by partial or step restoration; and the total number of customer-minutes of the significant interruption (sum of the interruption durations times the number of customers affected).

(f) Priorities for power restoration to certain medical facilities.

(1) A utility must give the same priority that it gives to a hospital in the utility's emergency operations plan for restoring power

after an extended power outage, as defined by Texas Water Code, §13.1395, to the following:

(A) An assisted living facility, as defined by Texas Health and Safety Code, §247.002;

(B) A facility that provides hospice services, as defined by Texas Health and Safety Code, §142.001;

(C) A nursing facility, as defined by Texas Health and Safety Code, §242.301; and

(D) An end stage renal disease facility, as defined by Texas Health and Safety Code, §251.001.

(2) The utility may use its discretion to prioritize power restoration for a facility after an extended power outage in accordance with the facility's needs and with the characteristics of the geographic area in which power must be restored.

(g) System reliability. Reliability standards apply to each utility and are limited to the Texas jurisdiction. A "reporting year" is the 12-month period beginning January 1 and ending December 31 of each year.

(1) System-wide standards. The standards must be unique to each utility based on the utility's performance and may be adjusted by the commission if appropriate for weather or improvements in data acquisition systems. The standards will be the average of the utility's performance from the later of reporting years 1998, 1999, and 2000, or the first three reporting years the utility is in operation.

(A) SAIFI. Each utility must maintain and operate its electric distribution system so that its SAIFI value does not exceed its system-wide SAIFI standard by more than 5.0%.

(B) SAIDI. Each utility must maintain and operate its electric distribution system so that its SAIDI value does not exceed its system-wide SAIDI standard by more than 5.0%.

(2) Distribution feeder performance. The commission will evaluate the performance of distribution feeders with ten or more customers after each reporting year. Each utility must maintain and operate its distribution system so that no distribution feeder with ten or more customers sustains a SAIDI or SAIFI value for a reporting year that is more than 300% greater than the system average of all feeders during any two consecutive reporting years.

(3) Enforcement. The commission may take appropriate enforcement action, including action against a utility, if the system and feeder performance is not operated and maintained in accordance with this subsection. In determining the appropriate enforcement action, the commission will consider:

(A) the feeder's operation and maintenance history;

(B) the cause of each interruption in the feeder's service;

(C) any action taken by a utility to address the feeder's performance;

(D) the estimated cost and benefit of remediating a feeder's performance; and

(E) any other relevant factor as determined by the commission.

(h) Critical natural gas facilities. In accordance with §3.65 of this title, critical natural gas standards apply to each facility in this state designated as a critical customer under §3.65 of this title. In this subsection, the term "utility" includes MOUs, electric cooperatives, and entities considered utilities under subsection (a) of this section.

(1) Critical customer information.

(A) In accordance with §3.65 of this title, the operator of a critical natural gas facility must provide critical customer information to the entities listed in clauses (i) and (ii) of this subparagraph. The critical customer information must be provided by email using Form CI-D and any attachments, as prescribed by the Railroad Commission of Texas.

(i) The utility from which the critical natural gas facility receives electric delivery service; and

(ii) For critical natural gas facilities located in the ERCOT region, the independent organization certified under PURA §39.151.

(B) The commission will maintain on its website a list of utility email addresses to be used for the provision of critical customer information under subparagraph (A) of this paragraph. Each utility must ensure that the email address listed on the commission's website is accurate. If the utility's email address changes or is inaccurate, the utility must provide the commission with an updated email address within five business days of the change or of becoming aware of the inaccuracy.

(C) Within ten business days of receipt, the utility must evaluate the critical customer information for completeness and provide written notice to the operator of the critical natural gas facility regarding the status of its critical natural gas designation.

(i) If the information submitted is incomplete, the utility's notice must specify what additional information is required and provide a deadline for response that is no sooner than five business days from when the critical natural gas facility receives the written notice. If the utility does not receive the additional information in a timely fashion, the utility may use its discretion to determine if it is possible to treat the natural gas facility as critical for load shed and power restoration purposes.

(ii) If the information submitted is complete, the utility's notice must notify the operator of the facility's critical natural gas status, the date of its designation, any additional classifications assigned to the facility by the utility, and notice that its critical status does not constitute a guarantee of an uninterrupted supply of energy.

(iii) A utility must provide an additional notice to the operator of the critical natural gas facility regarding any changes to the information provided in the notice required under clause (i) of this subparagraph. Notice must be provided within ten business days of the effective date of the change.

(D) A utility or an independent system operator receiving or sending critical customer information regarding a critical natural gas facility under this subsection must not release critical customer information to any person unless authorized by the commission or the operator of the critical natural gas facility. This prohibition does not apply to the release of such information to the commission, the Railroad Commission of Texas, the utility from which the critical natural gas facility receives electric delivery service, the designated transmission operator, or the independent system operator or reliability coordinator for the power region in which the critical natural gas facility is located. This prohibition also does not apply if the critical customer information is redacted, aggregated, or organized in such a way as to make it impossible to identify the critical natural gas facility to which the information applies.

(2) Prioritization of critical natural gas facilities. A critical natural gas facility is a critical load during an energy emergency. A utility must incorporate critical natural gas facilities into its load-shed

and restoration planning. For purposes of this paragraph, a utility may also treat a natural gas facility that self-designated as critical using the *Application for Critical Load Serving Electric Generation and Cogeneration* form as a critical natural gas facility, as circumstances require.

(A) A utility must prioritize critical natural gas facilities for continued power delivery during an energy emergency.

(B) A utility may use its discretion to prioritize power delivery and power restoration among critical natural gas facilities and other critical loads on its system, as circumstances require.

(C) A utility must consider any additional guidance or prioritization criteria provided by the commission, the Railroad Commission of Texas, or the reliability coordinator for its power region to prioritize among critical natural gas facilities and other critical loads during an energy emergency.

(D) Compliance with directives of a regional transmission organization having authority over a utility outside of the ERCOT power region will be deemed compliance for that utility.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER S. WHOLESALE MARKETS

16 TAC §25.505

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §25.505, relating to reporting requirements and the scarcity pricing mechanism in the Electric Reliability Council of Texas power region, with changes to the proposed rule as published in the October 22, 2021, issue of the *Texas Register* (46 TexReg 7130). The rule will be republished. These amendments modify the value of the high system-wide offer cap (HCAP) by lowering it from the current \$9,000 per megawatt-hour (MWh) and \$9,000 per megawatt (MW) per hour to \$5,000 per MWh and \$5,000 per MW per hour. In this adoption, citations to Public Utility Regulatory Act (PURA) §39.160 refer to that section of the Texas Utilities Code added by Senate Bill 3 §18, 87th Regular Session.

The commission received comments on the proposed amendment from Austin Energy, Hunt Energy Network, LLC (HEN), the City of Houston (Houston), Intersect Power, East Texas Electric Cooperatives, Inc. (ETEC), Jupiter Power LLC (Jupiter Power), Lower Colorado River Authority (LCRA), NextEra Energy Resources (NextEra), the Office of Public Utility Counsel (OPUC), South Texas Electric Cooperative, Inc. (STEC), Steering Committee of Cities Served by Oncor (OCSC), the Texas Advanced Energy Business Alliance (TAEBA), Texas Competitive Power Advocates (TCPA), Texas Electric Cooperatives, Inc. (TEC), Texas Industrial Energy Consumers (TIEC), Texas Public Power

Association (TPPA), the Texas Solar Power Association (TSPA), Vistra Corp. (Vistra). No party requested a hearing.

Recommendations for the Value of HCAP

Currently, the value of the HCAP is set at \$9,000 per MWh. The proposed amendment would lower this value to \$4,500 per MWh.

HEN, OCSC, OPUC, NextEra, ETEC, and Houston generally supported reducing the value of the HCAP to \$4,500 per MWh. NextEra stated that a \$4,500 per MWh HCAP strikes an adequate balance between creating incentives for generation and load to perform and limiting the financial risk to those purchasing energy at the HCAP. ETEC stated that lowering the value of the HCAP ensures energy prices remain affordable during the upcoming winter season. Houston commented that reducing the HCAP to \$4,500 per MWh would lessen the financial impact to customers during scarcity events.

TEC supported the commission's proposal to lower the HCAP, provided that the change is part of a broader initiative to move away from a crisis-based market model toward supply stability and an environment characterized by regulatory certainty. TEC also emphasized the importance of being mindful of how adjustments to the HCAP and the Value of Lost Load (VOLL) will interact with price-responsive demand. TPPA supported adjusting the HCAP downward to a value between \$4,500 per MWh and \$9,000 per MWh. Jupiter Power could support an HCAP value of \$4,500 per MWh or \$6,000 per MWh, depending on the outcome of the Brattle scenario analysis discussed at the October 21, 2021 Open Meeting and other wholesale market design changes made by the commission.

TIEC argued that the HCAP should be set at \$6,000 per MWh. TIEC expressed concern that reducing the HCAP to \$4,500 per MWh will dilute incentives for generator performance and demand response in the real-time market. TIEC explained that some of its members provide incremental demand response between \$4,500 and \$9,000 per MWh that will likely be lost if the HCAP is reduced to \$4,500 per MWh. TAEBA echoed the concerns raised by TIEC, recommending that the commission exercise caution when adjusting the HCAP, as too large of a reduction could result in a decline in participation in economic demand response in the ERCOT power region.

TIEC also contended that the risk of high real-time prices encourages forward hedging by market participants to manage real-time price exposure. Reducing the financial penalty for a resource that fails on a forward obligation in real time, or for a load serving entity that is not properly hedged during emergency conditions, could have adverse impacts on the long-term reliability and health of the ERCOT market. TIEC further stated that the lower the HCAP is set, the more pressure there will be to increase generator revenues from other sources, such as changing the parameters of the Operating Reserve Demand Curve (ORDC) to have a "longer fatter tail." TIEC argued that such changes could shift additional revenues to intermittent resources and impose an unjustified energy tax for consumers during times of sufficient real-time reserves.

STEC recommended that the commission refrain from modifying the HCAP until after the "Brattle Group's study" is completed. STEC maintained that wholesale changes to the market are best done with a comprehensive, holistic approach with input from stakeholders. STEC stated that constantly modifying the offer caps and ORDC parameters will be detrimental to the market, as it introduces additional regulatory uncertainty. Additionally, STEC expressed concern that any reduction in the HCAP without

a fuel cost recovery mechanism could exacerbate energy supply issues during scarcity events when natural gas prices are high. Under the right conditions, STEC continued, it may not be economically feasible for generators to offer capacity into the market as fuel costs would be unrecoverable. Rather than altering the HCAP in isolation, STEC recommended that the commission look to the customer protection rules to ensure consumers are protected from exposure to volatile electricity costs.

Intersect Power stated it is unwise to lower the HCAP to \$4,500 per MWh. TSPA commented that it will be difficult to raise the offer cap after lowering it. TSPA stated that the offer cap must be high enough for generators to have financial risk for outages and to encourage economic demand response when conditions warrant.

Commission Response

The commission modifies the language of §25.505(g)(6)(B) to set the HCAP at \$5,000 per MWh and \$5,000 per MW per hour.

After the extreme weather events of February 2021, the price cap of \$9,000 per MWh has proven to be a liability on market participants and customers of ERCOT. The commission agrees with HEN, OCSC, OPUC, NextEra, ETEC, and Houston that lowering the HCAP would help ensure prices remain affordable during the upcoming winter season and lessen the financial risk to customers during scarcity events. The commission also agrees with TIEC and TAEBAA that lowering the HCAP too much would reduce the incentives for economic demand response.

Setting the HCAP at \$5,000 per MWh and \$5,000 per MW per hour strikes the best balance of ensuring appropriate generation is brought to the market using market-based mechanisms and incentivizing demand response during scarcity events while limiting extraordinary financial liability for all market participants and customers during such events. Additional changes to the wholesale market design are being considered in Project Number 52373.

Coordination Between Modifying the Value of HCAP and ORDC Changes

Nearly every commenter recognized the importance of aligning any changes to the value of the HCAP with any other changes made by the commission to the ERCOT wholesale market design.

OCSC and OPUC acknowledged that adjusting the HCAP is only one component of the needed comprehensive and holistic review of the ERCOT wholesale market design. TPPA acknowledged that the commission is simultaneously working on changes to ORDC in Project Number 52373, and TPPA encouraged the commission to carefully consider how modifications to the HCAP may affect the ORDC going forward. TEC supported lowering the HCAP with the understanding that this change will be done in concert with other market modifications, including changes to parameters of the ORDC, new ancillary service products, and other changes that support reliable fuel supply and system resilience. TSPA encouraged the commission to consider any changes to the HCAP in concert with modifications to the ORDC, as these matters are inextricably intertwined.

TCPA and Vistra supported a lower HCAP but stated that the HCAP reduction needs to be implemented in conjunction with the commensurate ORDC reforms needed to maintain existing revenues and provide investment signals to existing and new generation resource owners. TCPA and Vistra stated that the ORDC reforms need to incentivize economic commitment of

the desired level of real-time operating reserves so that ERCOT does not have to rely on out-of-market commitment of resources to achieve the desired operating reserves. TCPA stated that this includes, at a minimum, increasing the probability of reserves falling below the minimum contingency level within the ORDC. TCPA recommended that the commission adopt all required ORDC changes prior to the end of 2021 so that such changes can become effective simultaneously with the lowered HCAP value. Vistra recommended modifications that include increasing the minimum contingency level and shifting the ORDC standard deviation parameter. Additionally, Vistra emphasized the importance that any ORDC changes need to be examined in light of the historical levels of offline reserves, which Vistra stated have been at about 33% of the online reserve levels.

STEC argued that reducing the HCAP in isolation would further degrade resource adequacy and reliability. LCRA agreed with STEC, commenting that a reduction in the HCAP should only be implemented in concert with corresponding ORDC changes to ensure the HCAP change will not harm the existing wholesale market. TAEBAA averred that reducing the HCAP without simultaneously considering changes to other key components of the wholesale energy market and evaluating the financial impact of all changes together poses significant regulatory risk. Intersect Power specifically mentioned increasing the minimum contingency level and encouraged the commission to make this adjustment regardless of a decision to reduce the HCAP. Austin Energy suggested that the commission pause this rulemaking to allow for adequate time to analyze the impacts from changes to the HCAP. Austin Energy recommended that changes to the value of the HCAP be incorporated into the broader wholesale market design changes in Project Number 52373, because the appropriate HCAP level will be determined by other decisions regarding the market design construct.

HEN contended that the commission should take a holistic approach to reviewing the HCAP, VOLL, ORDC, Ancillary Service demand curves, and the power balance penalty curve. In the view of HEN, the current ORDC does not send the appropriate price signals, because the parameters have not been adjusted to reflect the recent discussion to procure 6,500 MW of reserves from generation resources. A lower value for VOLL could exacerbate this problem. HEN recommends, in conjunction with a \$4,500 per MWh HCAP, setting VOLL at \$9,000 per MWh, the minimum contingency level at 3,000 MW, and increasing the ORDC standard deviation parameter. NextEra strongly argued that any reduction in the HCAP needs to be offset by changes to the ORDC parameters that will shift the ORDC to the right so that the revised curve causes scarcity pricing to occur at higher reserve margins. NextEra recommended the following ORDC parameters to avoid a reduction in generation revenues: HCAP at \$4,500 per MWh, VOLL at \$15,000 per MWh, minimum contingency level at 2,300 MW, and shifting the ORDC to cause scarcity pricing to occur at higher reserve margins. Jupiter Power posited that a downward change in the HCAP necessitates changes to the ORDC curve, including lifting the minimum contingency level from 2,000 MW.

Commission Response

The commission declines to delay modifying the value of the HCAP. The system-wide offer cap begins each calendar year set to the HCAP. Then, if the peaker net margin exceeds three times the cost of new entry of a generation plant, as it did during Winter Storm Uri, the system-wide offer cap drops from the HCAP to the low system-wide offer cap (LCAP), which is substantially

lower and serves as an important customer protection against high prices. The system-wide offer cap is set to the LCAP for the remainder of 2021, but it will revert to the HCAP on January 1, 2022. It is the intent of the commission that the lowered HCAP take effect before this date to maintain a degree of protection against high prices. However, the commission will consider additional market design changes in a future rulemaking project, informed by the requested analysis by Brattle.

Decoupling VOLL from the System-Wide Offer Cap in Effect

Several parties recommended that the commission consider decoupling VOLL from the system-wide offer cap in effect, as is currently required by §25.505(g)(6)(E). While not taking a position in its comments, Austin Energy recommended that the commission make a determinative decision as to whether the VOLL in the ORDC should be coupled to the system-wide offer cap or otherwise decoupled. HEN supported severing the link in §25.505(g)(6)(E) and keeping VOLL at \$9,000 per MWh when the HCAP is in effect. Vistra recommended that the commission consider striking the provision in §25.505(g)(6)(E) that equates the value of VOLL to the system-wide offer cap that is in effect. Vistra stated that doing so will give the commission needed flexibility to study other proposals affecting VOLL that are already being discussed in Project Number 52373. NextEra encouraged the commission to evaluate decoupling the HCAP from VOLL to ensure that price-suppressing impacts of a reduced HCAP do not cause dispatchable generation revenues to decrease. Intersect Power stated that as the Texas economy and Texas residents' quality of life is increasingly dependent on electric and digital infrastructure, VOLL should be increasing, not decreasing. If the commission chooses to reduce the HCAP, Intersect Power requested that it decouple the HCAP from VOLL and increase VOLL to \$20,000 per MWh as recommended by the Independent Market Monitor.

Commission Response

For purposes of this rulemaking, the commission retains the language in §25.505(g)(6)(E) that sets VOLL equal to the system-wide offer cap in effect. The commission will review alternative values of VOLL in Project Number 52373 and may reconsider this issue in a future rulemaking.

Emergency Pricing Program

Austin Energy, HEN, TIEC, ETEC and Houston all referenced either the emergency pricing program in PURA §39.160 or the need for an additional circuit breaker during extended periods of high prices, as experienced during Winter Storm Uri. Austin Energy encouraged the commission to consider the design of the emergency pricing program, given the dependence of this new pricing mechanism on the value of the HCAP. HEN and TIEC both commented that the commission should implement the emergency pricing programs in accordance with PURA §39.160 to protect the market from sustained scarcity prices over a long duration and limit the financial risk exposure of extended real-time price excursions during extreme weather events. ETEC argued that implementing the additional measures recently put in place by the legislature in PURA §39.160 will help prevent extreme pricing events, like the one experienced during Winter Storm Uri. Houston pointed out that the lack of an effective circuit breaker during Winter Storm Uri contributed to the impacts felt by customers in Texas as much as the absolute level of the HCAP. Houston recommended that the commission add in a circuit breaker that would cap prices at

the LCAP when the HCAP price signal no longer provides any material benefit to real-time resource adequacy or reliability.

Commission Response

The commission makes no changes in response to these comments. The emergency pricing program is beyond the limited scope of this rulemaking. The commission will establish the emergency pricing program as required in PURA §39.160 in a future rulemaking.

Additional Comments

Jupiter Power commented that the commission should consider seasonal ORDC curves and seasonal values for the HCAP and VOLL. It also recommended that the commission evaluate any changes to the HCAP one year from now, with additional reviews on a periodic basis to ensure the wholesale energy market is signaling investment in resources ensuring resource adequacy.

Austin Energy recommended that the commission consider expanding the scope of the cost recovery provision in §25.505(g)(7), which allows a resource entity to be reimbursed for operating losses when the LCAP is in effect, to apply to periods when the HCAP is in effect.

Vistra recommended the approval of a mechanism, such as the Dispatchable Standby Reserve product they recommended in Project 52373, by which additional resources are retained and available to the market as insurance when needed. Vistra argued this new product is complementary to the ORDC improvements and encouraged the commission to work towards concurrent or near-concurrent approval of all of the associated market design elements.

Commission Response

The commission declines to make changes in response to these comments. These recommendations are beyond the scope of this rulemaking. However, the commission encourages commenters to participate in Project Number 52373, which is evaluating market design issues more broadly.

Statutory Authority

These amendments are adopted under §14.002 of the Public Utility Regulatory Act, (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §39.101, which establishes that customers are entitled to safe, reliable, and reasonably priced electricity and gives the commission the authority to adopt and enforce rules to carry out these provisions; and PURA §39.151, which grants the commission oversight and review authority over independent organizations such as ERCOT, directs the commission to adopt and enforce rules relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants, and authorizes the commission to delegate to an independent organization such as ERCOT responsibilities for establishing or enforcing such rules.

Cross reference to statutes: PURA §14.002, §39.101, and §39.151.

§25.505. Reporting Requirements and the Scarcity Pricing Mechanism in the Electricity Reliability Council of Texas Power Region.

(a) General. The purpose of this section is to prescribe reporting requirements for the Electric Reliability Council of Texas (ERCOT) and market participants, and to establish a scarcity pricing mechanism for the ERCOT market.

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

(1) Generation entity -- an entity that owns or controls a generation resource.

(2) Load entity -- an entity that owns or controls a load resource. A load resource is a load capable of providing ancillary service to the ERCOT system or energy in the form of demand response and is registered with ERCOT as a load resource.

(3) Resource entity -- an entity that is a generation entity or a load entity.

(c) Resource adequacy reports. ERCOT must publish a resource adequacy report by December 31 of each year that projects, for at least the next five years, the capability of existing and planned electric generation resources and load resources to reliably meet the projected system demand in the ERCOT power region. ERCOT may publish other resource adequacy reports or forecasts as it deems appropriate. ERCOT must prescribe requirements for generation entities and transmission service providers (TSPs) to report their plans for adding new facilities, upgrading existing facilities, and mothballing or retiring existing facilities. ERCOT also must prescribe requirements for load entities to report their plans for adding new load resources or retiring existing load resources.

(d) Daily assessment of system adequacy. Each day, ERCOT must publish a report that includes the following information for each hour for the seven days beginning with the day the report is published:

(1) System-wide load forecast; and

(2) Aggregated information on the availability of resources, by ERCOT load zone, including load resources.

(e) Filing of resource and transmission information with ERCOT. ERCOT must prescribe reporting requirements for resource entities and TSPs for the preparation of the assessment required by subsection (d) of this section. At a minimum, the following information must be reported to ERCOT:

(1) TSPs will provide ERCOT with information on planned and existing transmission outages.

(2) Generation entities will provide ERCOT with information on planned and existing generation outages.

(3) Load entities will provide ERCOT with information on planned and existing availability of load resources, specified by type of ancillary service.

(4) Generation entities will provide ERCOT with a complete list of generation resource availability and performance capabilities, including, but not limited to:

(A) the net dependable capability of generation resources;

(B) projected output of non-dispatchable resources such as wind turbines, run-of-the-river hydro, and solar power; and

(C) output limitations on generation resources that result from fuel or environmental restrictions.

(5) Load serving entities (LSEs) will provide ERCOT with complete information on load response capabilities that are self-arranged or pursuant to bilateral agreements between LSEs and their customers.

(f) Publication of resource and load information in ERCOT markets. To increase the transparency of the ERCOT-administered

markets, ERCOT must post the information required in this subsection at a publicly accessible location on its website. In no event will ERCOT disclose competitively sensitive consumption data. The information released must be made available to all market participants.

(1) ERCOT will post the following information in aggregated form, for each settlement interval and for each area where available, two calendar days after the day for which the information is accumulated:

(A) Quantities and prices of offers for energy and each type of ancillary capacity service, in the form of supply curves;

(B) Self-arranged energy and ancillary capacity services, for each type of service;

(C) Actual resource output;

(D) Load and resource output for all entities that dynamically schedule their resources;

(E) Actual load; and

(F) Energy bid curves, cleared energy bids, and cleared load.

(2) ERCOT will post the following information in entity-specific form, for each settlement interval, 60 calendar days after the day for which the information is accumulated, except where inapplicable or otherwise prescribed. Resource-specific offer information must be linked to the name of the resource (or identified as a virtual offer), the name of the entity submitting the information, and the name of the entity controlling the resource. If there are multiple offers for the resource, ERCOT must post the specified information for each offer for the resource, including the name of the entity submitting the offer and the name of the entity controlling the resource. ERCOT will use §25.502(d) of this title (relating to Pricing Safeguards in Markets Operated by the Electric Reliability Council of Texas) to determine the control of a resource and must include this information in its market operations data system.

(A) Offer curves (prices and quantities) for each type of ancillary service and for energy in the real time market, except that, for the highest-priced offer selected or dispatched for each interval on an ERCOT-wide basis, ERCOT will post the offer price and the name of the entity submitting the offer three calendar days after the day for which the information is accumulated.

(B) If the clearing prices for energy or any ancillary service exceeds a calculated value that is equal to 50 times a natural gas price index selected by ERCOT for each operating day, expressed in dollars per megawatt-hour (MWh) or dollars per megawatt per hour, during any interval, the portion of every market participant's price-quantity offer pairs for balancing energy service and each other ancillary service that is at or above a calculated value that is equal to 50 times a natural gas price index selected by ERCOT for each operating day, expressed in dollars per megawatt-hour (MWh) or dollars per megawatt per hour, for that service and that interval must be posted seven calendar days after the day for which the offer is submitted.

(C) Other resource-specific information, as well as self-arranged energy and ancillary capacity services, and actual resource output, for each type of service and for each resource at each settlement point;

(D) The load and generation resource output, for each entity that dynamically schedules its resources; and

(E) For each hour, transmission flows, voltages, transformer flows, voltages and tap positions (i.e., State Estimator data). Notwithstanding the provisions of this subparagraph and the provisions

of subparagraphs (A) through (D) of this paragraph, ERCOT must release relevant State Estimator data earlier than 60 days after the day for which the information is accumulated if, in its sole discretion, it determines the release is necessary to provide a complete and timely explanation and analysis of unexpected market operations and results or system events, including but not limited to pricing anomalies, recurring transmission congestion, and system disturbances. ERCOT's release of data in this event must be limited to intervals associated with the unexpected market or system event as determined by ERCOT. The data released must be made available simultaneously to all market participants

(g) Scarcity pricing mechanism (SPM). ERCOT will administer the SPM. The SPM will operate as follows:

(1) The SPM will operate on a calendar year basis.

(2) For each day, the peaking operating cost (POC) will be 10 times the natural gas price index value determined by ERCOT. The POC is calculated in dollars per megawatt-hour (MWh).

(3) For the purpose of this section, the real-time energy price (RTEP) will be measured as an average system-wide price as determined by ERCOT.

(4) Beginning January 1 of each calendar year, the peaker net margin will be calculated as: $\Sigma((RTEP - POC) * (\text{number of minutes in a settlement interval} / 60 \text{ minutes per hour}))$ for each settlement interval when $RTEP - POC > 0$.

(5) Each day, ERCOT will post at a publicly accessible location on its website the updated value of the peaker net margin, in dollars per megawatt (MW).

(6) System-wide offer caps.

(A) The low system-wide offer cap (LCAP) will be set at \$2,000 per MWh and \$2,000 per MW per hour.

(B) The high system-wide offer cap (HCAP) will be \$5,000 per MWh and \$5,000 per MW per hour.

(C) The system-wide offer cap will be set equal to the HCAP at the beginning of each calendar year and maintained at this level until the peaker net margin during a calendar year exceeds a threshold of three times the cost of new entry of new generation plants.

(D) If the peaker net margin exceeds the threshold established in subparagraph (C) of this paragraph during a calendar year, the system-wide offer cap will be set to the LCAP for the remainder of that calendar year. In this event, ERCOT will continue to apply the operating reserve demand curve and the reliability deployment price adder for the remainder of that calendar year. Energy prices, exclusive of congestion prices, will not exceed the LCAP plus \$1 for the remainder of that calendar year.

(E) The value of the lost load will be equal to the value of the system-wide offer cap in effect.

(7) Reimbursement for operating losses when the LCAP is in Effect. When the system-wide offer cap is set to the LCAP, ERCOT must reimburse resource entities for any actual marginal costs in excess of the larger of the LCAP or the real-time energy price for the resource. ERCOT must utilize existing settlement processes to the extent possible to verify the resource entity's costs for reimbursement.

(h) Development and implementation. ERCOT must use a stakeholder process to develop and implement rules that comply with this section. Nothing in this section prevents the commission from taking actions necessary to protect the public interest, including actions that are otherwise inconsistent with the other provisions in this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 229. ACCOUNTABILITY SYSTEM FOR EDUCATOR PREPARATION PROGRAMS

19 TAC §§229.1, 229.4, 229.5

The State Board for Educator Certification (SBEC) adopts amendments to §§229.1, 229.4, and 229.5, concerning accountability system for educator preparation programs. The amendments are adopted without changes to the proposed text as published in the August 20, 2021 issue of the *Texas Register* (46 TexReg 5157) and will not be republished. Chapter 229 establishes the performance standards and procedures for educator preparation program (EPP) accountability. The adopted amendments provide for adjustments to the 2020-2021 *Accountability System for Educator Preparation (ASEP) Manual* due to the ongoing public health situation; implement House Bill (HB) 159, 87th Texas Legislature, Regular Session, 2021, to add students with disabilities to the student achievement ASEP performance indicator regarding student performance; provide additional clarity for certificate category calculations; and provide updates to the *ASEP Manual*.

BACKGROUND INFORMATION AND JUSTIFICATION: EPPs are entrusted to prepare educators for success in the classroom. The Texas Education Code (TEC), §21.0443, requires EPPs to adequately prepare candidates for certification. Similarly, TEC, §21.031, requires the SBEC to ensure candidates for certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state. TEC, §21.045, also requires the SBEC to establish standards to govern the continuing accountability of all EPPs. The SBEC rules in 19 Texas Administrative Code (TAC) Chapter 229 establish the process used for issuing annual accreditation ratings for all EPPs to comply with these provisions of the TEC and to ensure the highest level of educator preparation, which is codified in the SBEC Mission Statement.

At the April 2021 meeting, Texas Education Agency (TEA) staff presented draft rule text and received direction from the SBEC related to potential rule changes in Chapter 229. The SBEC directed staff to receive additional feedback on certificate category pass rates. Staff hosted a meeting with the Educator Prepara-

tion Advisory Committee (EPAC) on May 21, 2021, to receive feedback on the proposed text.

Following is a description of the adopted amendments to 19 TAC Chapter 229, including the Figure: 19 TAC §229.1(c), which is the *ASEP Manual*.

§229.1. General Provisions and Purpose of Accountability System for Educator Preparation Programs.

Update of *ASEP Manual*:

The adopted amendment to Figure: 19 TAC §229.1(c) provides the following updates to the *ASEP Manual*:

Updates to Chapter 3 include language to exclude candidates issued a probationary certificate under the condition of the waiver issued by the governor. These candidates are removed from the calculation per 19 TAC §229.4(a)(1)(D), therefore, this update clarifies this removal in the *ASEP Manual*. Chapter 3 is also updated to align with the pass rate approach for the 2020-2021 academic year (AY), per 19 TAC §229.4(a)(1)(B). This update aligns the *ASEP Manual* with existing rule language. Chapter 3 is further updated with clarification about the Core Subjects Adjustment, which is no longer needed due to changes in how data is reported to TEA but is still used for historic data. A new section, Disaggregation at the Certification or Category Level, is added to the *ASEP Manual*, providing clarity on the calculations for adopted new 19 TAC §229.5(c). These changes were prompted by feedback from the SBEC and stakeholders, as noted in the description of changes to 19 TAC §229.5(c) below. The old section, The Disaggregation at the Test Level, is removed. Finally, updates to the worked examples are made, removing old examples and providing new ones, to align with the text updates. The updates include a new example pertaining to 19 TAC §229.5(c).

Updates to Chapter 5 implement HB 159, 87th Texas Legislature, Regular Session, 2021, to clarify that all students, including students with disabilities, will be used in the calculation of the standard.

Updates to Chapter 8 provide the new focus area for the Innovative EPP commendation. This focus area was approved by the EPP commendation committee at its meeting on April 29, 2021.

Updates to Chapter 9 remove the date reference to streamline the text.

Updates throughout the *ASEP Manual* correct date references and correct minor technical errors as well as provide transparency to the field as to the calculations used to determine accreditation statuses.

§229.4. Determination of Accreditation Status.

The adopted amendment in §229.4(a) prescribes that due to the governor's ongoing disaster declaration, the 2020-2021 AY data for the performance indicators will be reported to EPPs but not be used for accountability purposes. Given that the governor declared a disaster during which many campuses, facilities, and services were closed, impacting the ability of EPPs to meet these accountability measures, this amendment prevents EPPs from receiving accountability ratings based on data that are partial or incomplete.

Determination of Accreditation Status

The adopted amendment to §229.4(b), (b)(1), and (b)(2) delays the implementation of the previously adopted index system. This will continue to provide a year in which the recommended accreditation status will be the more favorable outcome of the in-

dex system described in the §229.4(b)(1)(A)-(D) or the existing system in §229.4(b)(2)(A)-(D) for each EPP. This aligns with the previous approach to the implementation timeline as being the year immediately following the end of the *Not Rated: Declared State of Disaster* accreditation status.

The adopted amendment to §229.4(b)(4) extends the accreditation status of *Not Rated: Declared State of Disaster* to the 2020-2021 reporting year for all EPPs. This status is based on the governor's declaration of disaster on March 13, 2020, due to COVID-19. This status limits the continued impact of test center closures and local education agency (LEA) closures on EPP accreditation statuses. The adopted amendment to §229.4(b)(4) prescribes that the ASEP status that each EPP was assigned by the SBEC for the 2018-2019 reporting year will be the operative accreditation status for purposes prescribed in 19 TAC Chapter 228, Requirements for Educator Preparation Programs, for 2019-2020 and 2020-2021 AYs.

Adopted new §229.4(b)(4)(D) prescribes that EPPs that were not assigned an ASEP status of *Accredited* for the 2018-2019 AY and that meet the requirements to be assigned an ASEP status of *Accredited* for the 2020-2021 AY, as described in §229.4(b)(1)(A) or (2)(A), provides for a break in consecutively measured years or next most recent years as prescribed in §229.4(b)(1)-(3), and allows an EPP to be eligible for commendations as described in §229.1(d). Adopted new §229.4(b)(4)(D) allows an EPP, that has made program improvements during the pandemic that would have resulted in an *Accredited* status if ASEP was not paused, to break from the 2018-2019 ASEP status for purposes of determining future ASEP accreditation status based on consecutive years of poor performance and be eligible for a commendation.

Technical edits are made to §229.4(a) to apply *Texas Register* style requirements.

§229.5. Accreditation Sanctions and Procedures.

The adopted amendment to §229.5(c) clarifies that the determination of pass rates evaluated at the level of a certification class or category is calculated at the exam level and that all exams required for certification, as listed in Figure: 19 TAC §230.21(e), are included. This amendment requires EPPs to meet the performance standard for all non-PPR exams required for certification within a certification class or category. This aligns with the requirements for candidates to be certified.

At the May 21, 2021 meeting of the EPAC, there was discussion about the update to §229.5(c). Stakeholders noted the importance of using all tests available and ensuring specifically that results from the Science of Teaching Reading (STR) exam were able to be used. The group discussed a number of options, including combining pass rates and having each pass rate count separately. Stakeholders also noted that candidates are required to pass all exams for certification and that expectations for EPPs should be aligned. Adopted amendments in §229.5(c) and Chapter 3 of the *ASEP Manual* provides for this alignment.

Adopted new §229.5(c)(3) prescribes that EPPs that failed to meet the performance standard in subsection (c) regarding performance on a certification examination in the 2018-2019 AY and that would meet the requirements for the 2020-2021 AY will receive a break in consecutively measured years for that class or category for the purposes of determining future consecutive years of poor performance. This allows an EPP that has made program improvements in a certificate class or category that would have resulted in a reset if the calculation was not

paused to break from the 2018-2019 consecutively measured years.

The adopted amendment includes technical edits in §229.5(c) that renumbered paragraphs (1) and (2) and in §229.5 that relettered subsections (d) and (e).

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began August 20, 2021, and ended September 20, 2021. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the October 1, 2021 meeting in accordance with the SBEC board operating policies and procedures. The following is a summary of the public comments received on the proposal and the responses.

Comment: One individual commented in opposition to the proposed amendments, specifically about the extension of the status of *Not Rated: Declared State of Disaster* for the 2020-2021 reporting year and about the generated data not being used for accountability purposes.

Response: The SBEC disagrees. This amendment would prevent EPPs from receiving inaccurate accountability ratings based on data that are partial or incomplete due to the gubernatorially declared disaster during which many campuses, facilities, and services were closed. Further, guidance from the Educator Preparation Advisory Committee (EPAC) and feedback from other stakeholders has supported the continued pause in the accountability system.

Comment: Two individuals representing the Autism Society of Texas and one representing Texans for Special Education Reform commented in opposition to the proposed amendments, specifically asking that the *Accountability System for Educator Preparation (ASEP) Manual* be adjusted to require all respondents to complete the sections in the Principal Survey (ASEP Accountability Indicator 2) and in the New Teacher Survey (ASEP Accountability Indicator 5) related to preparedness to work with students with disabilities. Commentors argue that this requirement would be necessary to fully implement House Bill 159.

Response: The SBEC disagrees. The rationale for the optional nature of these survey sections related to students with disabilities is that it allows for flexibility to match the practical experience of new teachers in the field. As noted by the commentors, most teachers do work with students from these populations. This is reflected in the data, as these optional sections are completed on over 80% of surveys. This response rate provides evidence that principals and teachers recognize that it is highly common that they work with students with disabilities, even outside specific assignments. Consequently, EPPs are held accountable for preparing all candidates to meet the needs of students with disabilities through these surveys. Retaining the optional nature of these survey sections provides flexibility for the minority of teachers who do not work with this population. Additionally, the amendments for consideration apply to the 2020-2021 survey data, which has already been collected. While the SBEC could consider changing required sections for future surveys at a forthcoming meeting, retroactively requiring that these sections be completed is out of the scope for the amendments adopted at the October 2021 SBEC meeting.

The State Board of Education (SBOE) took no action on the review of amendments to §§229.1, 229.4, and 229.5 at the November 19, 2021 SBOE meeting.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.041(a), which allows the State Board of Educator Certification (SBEC) to adopt rules as necessary for its own procedures; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; TEC, §21.041(d), which states that the SBEC may adopt a fee for the approval and renewal of approval of an educator preparation program, for the addition of a certificate or field of certification, and to provide for the administrative cost of appropriately ensuring the accountability of educator preparation program (EPPs); TEC, §21.043(b) and (c), which require the SBEC to provide EPPs with data, as determined in coordination with stakeholders, based on information reported through the Public Education Information Management System (PEIMS) that enables an EPP to assess the impact of the program and revise the program as needed to improve; TEC, §21.0441(c) and (d), which require the SBEC to adopt rules setting certain admission requirements for EPPs; TEC, §21.0443, which states that the SBEC shall propose rules to establish standards to govern the approval or renewal of approval of EPPs and certification fields authorized to be offered by an EPP. To be eligible for approval or renewal of approval, an EPP must adequately prepare candidates for educator certification and meet the standards and requirements of the SBEC. The SBEC shall require that each EPP be reviewed for renewal of approval at least every five years. The SBEC shall adopt an evaluation process to be used in reviewing an EPP for renewal of approval; TEC, §21.045, as amended by HB 159, 87th Texas Legislature, Regular Session, 2021, which states that the SBEC shall propose rules establishing standards to govern the approval and continuing accountability of all EPPs; TEC, §21.0451, which states that the SBEC shall propose rules for the sanction of EPPs that do not meet accountability standards and shall annually review the accreditation status of each EPP. The costs of technical assistance required under TEC, §21.0451(a)(2)(A), or the costs associated with the appointment of a monitor under TEC, §21.0451(a)(2)(C), shall be paid by the sponsor of the EPP; TEC, §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an EPP and to assist school districts in making staffing decisions, the SBEC shall make certain specified information regarding EPPs in this state available to the public through the SBEC's Internet website.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§21.041(a), (b)(1), and (d); 21.043(b) and (c), 21.0441(c) and (d); 21.0443; 21.045, as amended by HB 159, 87th Texas Legislature, Regular Session, 2021; 21.0451; and 21.0452.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 4, 2021, adopted the repeal of 31 TAC §65.99, amendments to §§65.80 - 65.83, 65.88, 65.90 - 65.98, and new §65.99 and §65.100, concerning Disease Detection and Response. Sections 65.83, 65.90 - 65.95, and 65.97 - 65.99 are adopted with changes to the proposed text as published in the October 1, 2021, issue of the *Texas Register* (46 TexReg 6507). The rules will be republished. Sections 65.80 - 65.82, 65.88, 65.96, and 65.100, and the repeal of §65.99, are adopted without changes and will not be republished.

The rules impose new testing requirements for deer breeding facilities and incorporate the provisions of an emergency rule adopted on June 22, 2021 (46 TexReg 3991) in response to multiple detections of chronic wasting disease (CWD) earlier this year in additional deer breeding facilities. The intent of the rules is to reduce the probability of CWD being spread from facilities where it exists and to increase the probability of detecting and containing CWD.

The change to proposed §65.83, concerning Special Provisions, adds language to paragraph (3) to stipulate that in addition to the breeding facility that is the source of deer released to adjoining acreage within a surveillance or containment zone designated by the department, the adjoining acreage itself must also be in compliance with the testing provisions of the subchapter. The current rules governing deer movement by deer breeders within surveillance and containment zones are predicated on the assignment of various categorical distinctions related to disease risk. Those distinctions are no longer necessary and one of the goals of the rules as proposed is to eliminate references to and provisions regarding them in the interests of removing regulatory language that is no longer relevant. In the process, the rule as proposed inadvertently omitted a reference to disease-testing requirements on release sites adjoining breeding facilities. The change remedies that oversight.

The change to §65.90, concerning Definitions, adds language to paragraph (11)(C) to clarify that the definition applies to the history of a deer's residency and not solely to the present location of residence. The change is nonsubstantive and necessary to maintain parallel construction with the language in subparagraphs (A) and (B). The change also adds a new definition for "Trace-in breeding facility." Under current rule §65.95(b)(3), a Transfer Category 3 (TC 3) facility is a breeding facility that has within the previous five years received deer from a CWD-exposed facility, transferred deer to a CWD-positive facility, or possessed deer that were in a CWD-positive facility. These facilities present the highest risk of being a mechanism for transmitting CWD to other breeding facilities and free-ranging deer population. The rules as proposed subsume these facilities under the rubric of "trace" facilities - breeding facilities that have been epidemiologically connected to other breeding facilities where CWD

has been discovered ("CWD-positive facilities" or "positive facilities") and prescribe disease management standards for those facilities. As noted previously, one of the goals of the rules as proposed was to "clean up" the division by removing regulatory provisions that are no longer relevant, primarily concerning defunct categories related to transfer and release requirements for breeding facilities. The proposal preamble stated the department's intent in the proposed amendment to §65.99 to "set forth provisions that would apply to those deer breeding facilities that epidemiological investigations reveal are connected to positive facilities, either directly or indirectly." In the process of preserving the provisions of current rule regarding deer movements involving TC 3 facilities within the proposed provisions governing trace facilities, the department identified "trace-out" facilities (facilities that received deer *from* a positive facilities) and inadvertently failed to preserve the contents of current §65.95(b)(3)(ii), which addresses facilities that transferred deer *to* a positive facility. The change adds new paragraph (39) to remedy that oversight and alters references as necessary to accommodate the change.

The change to §65.91, concerning General Provisions, adds language to comport the provisions of subsection (c) with provisions of current rules that allow the transfer of deer to or from TC 3 facilities under a herd plan, for the same reasons set forth in the discussion of changes regarding trace-in facilities. The change also implements redesignations as necessary to accommodate changes made to §65.99 regarding trace-in facilities as noted elsewhere in this preamble.

The change to §65.92, concerning CWD Testing, adds language to subsection (d) to clarify that the limitations on the use of ante-mortem testing provided by the subsection apply only to the use of ante-mortem test results to substitute for missed mortalities and does not apply to the use of ante-mortem testing to satisfy the minimum annual testing standards established in §65.94(a)(1)(C). The annual testing requirements establish the minimum statistical basis for assurance that continuous efficacious disease monitoring is occurring, while the provisions allowing the substitution of ante-mortem test results are intended only to provide an acknowledgment that a mortality may be missed under extraordinary circumstances.

The change to §65.93, concerning Harvest Log, alters subsection (b)(5) to replace the word "any" with the word "the" to reflect the change in case created by the removal of references to NUES tags.

The change to §65.94, concerning Breeding Facility Minimum Movement Qualification, adds language to subsection (a)(1)(B) to clarify that the testing requirement imposed by the provision is an annual requirement, not a cumulative requirement. Under current rule, this intent is clear; however, the language of the rule as proposed could be construed to mean having tested 80% of eligible mortalities across the life of the permit is sufficient, which is not the case. The change also removes subsection (d)(5)(B), which the department has determined is now superfluous in light of the provisions of the rules as adopted that lower the test-eligible age for breeder deer from 16 months of age to 12 months of age. Additionally, and for reasons identified earlier in this preamble, the change adds language to subsection (g) to clarify that the limitations on the use of ante-mortem testing provided by the subsection apply only to the use of ante-mortem test results to substitute for missed mortalities and does not apply to the use of ante-mortem testing to satisfy the minimum annual testing standards established in §65.94(a)(1)(C).

The change to §65.95, concerning Movement of Breeder Deer, adds language to subsection (a)(2) to comport with style requirements and to subsection (b)(5) in the interests of precision to clarify that the provisions of the paragraph apply to any deer received from a CWD-positive facility rather than just to positive deer. The provision establishes documentation requirements for release sites where deer from breeding facilities epidemiologically linked to CWD-positive facilities have been released, which would include exposed deer in addition to positive deer. The change also adds clarifying language to paragraph (6) to reflect changes made elsewhere to provisions governing the use of ante-mortem test results. Additionally, the change adds language to ensure that in addition to any testing requirements imposed by the department at a breeding facility pursuant to the section, the testing requirements at release sites must be met as well in order to have Movement Qualified (MQ) status restored. It is axiomatic that deer at the places where breeder deer from trace and positive facilities have been released should be sampled to determine if the releases have spread CWD to new environments. Finally, the change imposes a three-year period of effectiveness for the provisions of paragraph (6). The department has determined that ante-mortem pre-release testing of breeder deer is necessary to detect CWD where it currently exists and in the event that a continuation of ante-mortem pre-release testing is necessary to further the department's disease management strategies, that decision should be made through future rulemaking by the commission. The change also makes necessary redesignations of internal references.

The change to §65.97, concerning Testing and Movement of Deer Pursuant to a Triple T or TTP Permit, retains the language of current subsection (a)(2)(A). In light of the temporary moratorium imposed by the section on the issuance of Triple T permits and commission direction to develop Triple T rules that provide assurances that CWD is not spread by Triple T activities, the proposed amendment is moot.

The change to §65.99, regarding Breeding Facilities Epidemiologically Connected to Deer Infected with CWD, adds language to clarify that trace-in facilities are included in the applicability of the section, as discussed earlier in this preamble. The change also eliminates a deadline for sample submissions in subsection (e)(2)(E) that is no longer applicable or necessary and alters subsection (e)(4) to clarify that the 45-day clock for sample submissions imposed by the paragraph begins on the last known exposure date or from the date the department notifies the permittee of trace status, whichever is later, which is intended to allow permittees additional time to submit samples. Additionally, the change inserts a specific reference to subsection (h) in subsection (f)(3)(D) and (E) to be consistent with the structure of other references to the rules regarding custom testing plans. Finally, the change adds subsection (g) to prescribe requirements for breeding facilities epidemiologically connected to a CWD-positive breeding facility as a consequence of being a trace-in facility. Those requirements are the same as those prescribed by the rules for other types of trace facilities, consisting of requirements to inspect the facility daily for mortalities, immediately report all test-eligible mortalities that occur within the facility, and immediately collect test samples from all test-eligible mortalities that occur within the facility and submit the samples for post-mortem testing within one business day of collection; provisions for the restoration of MQ status upon submission of post-mortem test results of "not detected" for all mortalities; testing provisions for facilities that for whatever reason cannot test trace deer as required; and provisions prescribing the process

for requesting and accepting or declining a custom testing plan developed by the department in lieu of the provisions set forth in the rules. The change also makes additional alterations where necessary to indicate the applicability of the rules to trace-in facilities.

CWD is a fatal neurodegenerative disorder that affects cervid species such as white-tailed deer, mule deer, elk, red deer, sika, and others (susceptible species). CWD is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep) and bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans. CWD is transmitted both directly (through deer-to-deer contact) and indirectly (through environmental contamination).

White-tailed deer and mule deer are indigenous species authorized to be regulated by the department under the Parks and Wildlife Code. Under Parks and Wildlife Code, Chapter 43, Subchapter E, the department may issue permits authorizing the trapping, transporting, and transplanting of game animals and game birds for better wildlife management (popularly referred to as "Triple T" permits). Under Parks and Wildlife Code, Chapter 43, Subchapter L, the department regulates the possession of captive-raised deer for breeding purposes. A deer breeder permit affords deer breeders certain privileges, such as (among other things) the authority to buy, sell, transfer, lease, and release captive-bred white-tailed and mule deer, subject to the regulations of the commission and the conditions of the permit. Breeder deer may be purchased, sold, transferred, leased, or received only for purposes of propagation or liberation. Under Parks and Wildlife Code, Chapter 43, Subchapters R and R-1, the department may issue a Deer Management Permit (DMP) allowing the temporary possession of free-ranging white-tailed or mule deer within an enclosure on property surrounded by a fence capable of retaining white-tailed deer (under reasonable and ordinary circumstances) for propagation purposes. At the current time, there are no rules authorizing DMP activities for mule deer.

The department, along with the Texas Animal Health Commission (TAHC), has been engaged in an ongoing battle against CWD in Texas since 2002, including in response to repeated detections within deer breeding facilities. Since 2002, more than 130,000 "not detected" post-mortem CWD test results have been obtained from free-ranging (i.e., not breeder) deer in Texas, and deer breeders have submitted more than 47,000 "not detected" post-mortem test results as well. The recent detections of CWD in seven additional breeding facilities create an unprecedented situation because they are at a scale that is orders of magnitude greater than earlier instances of detection encountered by the department.

Much remains unknown about CWD. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. There is currently no scientific evidence to indicate that CWD is transmissible to humans; however, both the CDC and the World Health Organization strongly recommend testing animals from CWD Zones prior to consumption, and if positive, recommend not consuming the meat. What is known is that CWD is invariably fatal to cervids. Moreover, a high prevalence of the disease correlates with deer population decline in at least one free-ranging population in

the United States, and there is evidence that hunters tend to avoid areas of high CWD prevalence. Additionally, the apparent persistence of CWD in contaminated environments represents a significant obstacle to eradication of CWD from either captive or free-ranging cervid populations. The potential implications of CWD for Texas and its annual, multi-billion dollar ranching, hunting, real estate, tourism, and wildlife management-related economies could be significant, unless it is contained and controlled.

The department has engaged in frequent rulemaking over the years to address both the general threat posed by CWD and the repeated detection of CWD in deer breeding facilities. In 2005, the department adopted rules (30 TexReg 3595) that closed the Texas border to the entry of out-of-state captive white-tailed and mule deer and increased regulatory requirements regarding disease monitoring and record keeping. In 2012, based on recommendations from the department's CWD Task Force (an ad hoc group of deer management professionals, landowners, veterinarians, scientists, and deer breeders), the department adopted rules (37 TexReg 10231) to implement a CWD containment strategy in response to the detection of CWD in free-ranging mule deer located in the Hueco Mountains, the first detection of CWD in Texas. In 2015, the department discovered CWD in a deer breeding facility in Medina County and adopted emergency rules (40 TexReg 5566) to respond immediately to the threat, followed by rules (41 TexReg 815) intended to function through the 2015-2016 hunting season. Working closely with TAHC and with the assistance of the Center for Public Policy Dispute Resolution of the University of Texas School of Law, the department intensively utilized input from stakeholders and interested parties to develop and adopt comprehensive CWD management rules in 2016 (41 TexReg 5726), including provisions for live testing ("ante-mortem") of deer for CWD. Since 2002, the department has made a continuous, concerted effort to involve the regulated community and stakeholders in the process of developing appropriate CWD response, management, and containment strategies, including input from the Breeder User Group (an ad hoc group of deer breeders), the CWD Task Force, the Private Lands Advisory Committee (an advisory group of private landowners from various ecological regions of the state), and the White-tailed Deer and Mule Deer Advisory Committees (advisory groups of landowners, hunters, wildlife managers, and other stakeholders).

The department has also engaged in several rulemakings (via both emergency and normal rulemaking processes) to create containment and surveillance zones in response to CWD detections in both free-ranging and captive deer in various parts of the state. Those rules are contained in Division 1 of Chapter 65, Subchapter B.

The current rules in Division 2 of Chapter 65, Subchapter B have been referred to commonly as the "comprehensive" rules. The rules adopted in this rulemaking incorporate the word "comprehensive" in the title of the division for ease of reference and reduction of confusion. The references to "current rules" in this preamble do not include the emergency rule adopted on June 22, 2021.

The current rules can be generally described as functioning together to impose testing standards necessary to provide a statistically representative sampling effort within deer breeding facilities for purposes of minimally effective surveillance for CWD. The current rules set forth specific CWD testing requirements for deer breeders, which must be satisfied in order to transfer

deer to other deer breeders or for purposes of release. One of the most effective approaches to managing infectious diseases and arresting the spread of a disease is to segregate populations of unknown disease risk, suspicious individuals, and suspicious populations from unexposed populations. As a matter of epidemiological probability, when animals from a population at higher risk of harboring an infectious disease are introduced to a population of animals at a lower risk of harboring an infectious disease, the confidence that the receiving population will remain disease-free is reduced. The current rules implement such an approach, albeit at a level that the department unfortunately has concluded, based on the continued spread of CWD, is ineffective in sufficiently reducing the risk of transmission of CWD between breeding facilities or from breeding facilities to release sites. Under current rule, breeding facilities are classified into two broad categories: those facilities authorized to transfer deer (MQ facilities) and those facilities not authorized to transfer deer (NMQ facilities). MQ facilities are further subclassified according to the relative level of risk for the presence of CWD within each facility, based on the provenance of the deer within each facility and the results of continuous annual testing. Breeding facilities are classified as Transfer Category 1 (TC 1), Transfer Category 2 (TC 2), or Transfer Category 3 (TC 3). Similarly, release sites are classified as a Class I, Class II, or Class III. The rules adopted in this rulemaking act collectively to eliminate the concept of the "transfer category" and condition the movement of breeder deer solely on the movement status of deer breeding facilities. The former Transfer Category 3 facilities are those facilities in which CWD has been detected and are under TAHC quarantines, and those facilities that are under TAHC hold orders and have either received an exposed deer within the previous five years, transferred deer to a CWD-positive facility within the five-year period preceding the confirmation of CWD in the CWD-positive facility, or possessed a deer that was in a CWD-positive facility within the previous five years. Surveillance at those facilities would be governed under the amended rules and new §65.99, concerning Breeding Facilities Epidemiologically Connected to Deer Infected with CWD." In general, the amended and new rules are intended to address the various epidemiological implications resulting from the movement of deer into and out of positive breeding facilities.

To achieve or maintain MQ status under current rules, a facility must have achieved "fifth-year" or "certified" status in the TAHC CWD Herd Certification Program, or provide valid test results of "not detected" for at least 80 percent of the total number of eligible mortalities that occurred in the breeding facility in each reporting year. The department recognizes that if a breeding facility has an unusually low number of eligible mortalities, the requirement to submit post-mortem tests for 80 percent of all eligible mortalities during the year could result in a lower number of post-mortem tests than necessary to achieve adequate CWD surveillance. Therefore, a minimum number of post-mortem tests to be submitted each report year is required. That number is calculated as the sum of the eligible-aged population in the breeding facility at the end of each reporting year, plus the sum of the eligible mortalities that have occurred within the breeding facility during the previous reporting year, multiplied by 3.6 percent. To develop this number, the department considered, based on mortality data required to be reported by permittees, that the average natural mortality in a deer breeding facility was 4.5 percent of the eligible-aged deer population in the breeding facility each year. Therefore, if a deer breeding facility with an average number of natural mortalities among eligible-aged deer tested 80% of those mortalities, the breeding facility would

test 3.6 percent (i.e., 80% of 4.5%) of the eligible-aged population each year. This formula was developed with stakeholder input and was intended to create the least burdensome regulatory footprint possible.

Under current rule, when CWD is detected in a facility (a "positive facility"), that facility is immediately prohibited from transferring deer and the department and TAHC staff immediately begin epidemiological investigations to determine the extent and significance of possible disease transmission. Epidemiologically connected facilities, both trace in and trace out, identified by the department and TAHC are subject to quarantines (for positive facilities) and hold orders (for trace facilities) issued by TAHC. Current rule prohibits the transfer of deer to or from a facility if the transfer is prohibited by a TAHC herd plan associated with a quarantine or hold order.

With respect to the most recent detections in 2021 (necessitating the emergency action currently in effect), department records indicate that within the last five years, the seven positive facilities referenced earlier transferred a total of 2,525 deer to 138 deer breeding facilities and 118 release sites located in a total of 92 counties. These breeding facilities and release sites are therefore directly connected to at least one of the positive facilities and by current rule were designated "not movement qualified" (NMQ), which prohibits the transfer of deer. As a result of the ongoing epidemiological investigation and pursuant to existing regulations, 114 of the 138 directly connected breeding facilities have regained movement qualified status if otherwise eligible, leaving 24 facilities of epidemiological concern. An additional 214 deer breeding facilities received deer from one or more of those 72 directly connected breeding facilities; these facilities are indirectly connected to the positive facilities and are or were of epidemiological concern because it is possible that within the last five years any or all of them could have received CWD-infected deer. The five-year window is important because (based on the literature) it encompasses the time period from possible exposure to CWD, through the incubation period, to the time at which the disease can be transmitted to another animal or the environment. As a result of the ongoing epidemiological investigation and pursuant to existing emergency regulations, 185 of the 214 indirectly connected breeding facilities have regained movement qualified status if otherwise eligible, leaving 29 indirectly connected indirectly connected facilities of epidemiological concern.

The current comprehensive rules do not address disease response with respect to indirectly connected facilities (facilities that receive deer that were in the same facility with an exposed deer prior to being transferred to another facility). As noted previously, the recent discovery of CWD in seven more breeding facilities and the resultant extended network of epidemiological connectivity necessitated the adoption of an emergency rule on June 22, 2021 (46 TexReg 3993), which addressed the situation by imposing requirements for disease testing and movement of breeder deer to and from indirectly connected facilities. In addition, the emergency rule requires ante-mortem testing of all test-eligible deer prior to transfer to a release site. The department and TAHC have continued to conduct epidemiological investigations and this rulemaking is intended to implement the pertinent provisions of the emergency rule by way of the normal administrative process, including a minimum 30-day public comment opportunity.

The rules are necessary to protect the state's white-tailed and mule deer populations, as well as the long-term viability of as-

sociated hunting, wildlife management, and deer breeding industries. To minimize the severity of biological and economic impacts resulting from CWD, the rules implement a more rigorous testing protocol within certain deer breeding facilities and at release sites than was previously required. The rules allow for MQ deer breeders to continue to move and release breeder deer. The rules as adopted continue the existing extensive cooperation between the department and TAHC and the continued involvement of various stakeholder groups and interested parties.

The department notes that several types of alterations are made repeatedly in the amendments. Throughout Subchapter B there are references and provisions relating to "transfer category" and release-site "classes." Those terms reflect a regulatory structure that is no longer necessary because the current rules have been in place long enough that the distinctions they represent no longer exist. The amendments eliminate references to and provisions regarding those distinctions throughout the subchapter. The only distinction with respect to risk management at this time is MQ versus NMQ.

Similarly, the amendments and new section replace references to TAHC herd plans with the term "herd plan" in order to reflect the interagency cooperation between the department and TAHC. Those changes are also made throughout the rules.

In general, the amendments to sections within Division 1 comport the contents of that division with amendments to Division 2. The sections within Division 1 provide a regulatory structure for the creation of CWD management zones within which special provisions apply to the movement of live deer under department permits and deer carcasses following harvest by hunters.

The amendment to §65.80, concerning Definitions, eliminate definitions for terms that are no longer used in the rules and add a definition of "herd plan" to comport the division with changes adopted in Division 2.

The amendment to §65.88, concerning Deer Carcass Movement Restrictions, inserts clarifying language in subsection (b)(4) to emphasize that skull plates must be cleaned of internal soft tissue.

The terms "eligible mortality" and "adult deer" are being removed because those terms are artifacts of previous iterations of the rules and the current zone rules no longer employ them, as all CWD testing requirements are now contained in Division 2. The amendment defines "herd plan" as "a set of requirements for disease testing and management developed by the department and TAHC for a specific facility." Elsewhere in this rulemaking, the department eliminates specific references to TAHC herd plans and replaces them with generic references to herd plans to reflect the fact that herd plans are jointly developed by the department and TAHC.

As noted earlier in this preamble, the amendments remove references to the terms "transfer category," "release category," and various provisions associated with those terms throughout the division. The amendments to Division 2 implement an improved methodology for determining the risk of deer breeding facilities with respect to the spread of CWD by conditioning movement restrictions solely on MQ status, which makes the concepts of transfer category and release site class unnecessary. The amendment also references the provisions of new §65.99, concerning Breeding Facilities Epidemiologically Connected to Deer Infected with CWD, where necessary, to preserve current limitations on deer movement to and from deer breeding facil-

ities determined to present the highest risk of spreading CWD (currently referred to as "TC 3" facilities). The amendments also make nonsubstantive housekeeping-type changes in the interest of clarity and organization.

The amendments and new section within Division 2 incorporate the provisions of the current emergency rule in effect and comport the existing provisions of the division accordingly, with exceptions as noted.

The amendment to §65.90, concerning Definitions, eliminates definitions for "eligible-aged deer," "eligible mortality," "Interim Breeder Rules," "NUES tag," "originating facility," "status," "TAHC Herd Certification Program," and "TAHC Herd Plan," adds definitions for "exposure," "herd plan," "inconclusive," "insufficient follicles," "last known exposure," "release," "test-eligible," "Tier 1 facility," "trace deer," and "trace-out breeding facility," and modifies the definitions for "confirmed," "CWD-positive facility," "exposed deer," and "reconciled herd."

The definition of "eligible-aged deer" is being eliminated because the amendment replaces it with a new definition for "test-eligible."

The definition of "eligible mortality" is being eliminated because the term is no longer used in the rules.

The definition of "Interim Breeder Rules" is being eliminated because it existed only to provide a point of reference for the transition from a previous set of rules intended to contain and manage CWD in breeding facilities to the current rules implementing a comprehensive CWD management plan.

The definition of "NUES tag" is being eliminated because the retention and visibility of NUES tags is suboptimal.

The definition of "originating facility" is being eliminated because the rules eliminate the current structure based on transfer and release status assigned to individual breeding and release facilities based on their comparative risk of spreading CWD; thus, the term is no longer used and is therefore unnecessary.

The definition of "status" is being eliminated because the term no longer has a specific meaning in the context of transfer and release facility designations.

The definitions of "TAHC CWD Herd Certification Program" and "TAHC herd plan" are being eliminated because the rules acknowledge the cooperative nature of interagency planning and resource management activities between the department and the TAHC and the reality that the repeated emergence of CWD in deer breeding facilities has created operational stressors necessitating a shared burden in the development of plans for individual breeding facilities.

The amendment defines "exposure" as "the period of time that has elapsed following the introduction of an exposed deer to a breeding facility." Because individual deer that have been exposed to CWD can incubate the disease at different rates, it is epidemiologically critical to establish a timeline to determine the highest likelihood of early detection of the disease if it is present.

The amendment defines "inconclusive" as "a test result that is neither "positive" nor "not detected" on the basis of clinical deficiency." Current rules allow for the restoration of MQ status in certain situations on the basis of ante-mortem testing of an entire captive herd. Due to a number of factors, not all test samples are sufficient to test for CWD. The department acknowledges that fact; therefore, the rules as adopted allow a certain percentage of test results to be inconclusive without jeopardizing the adequacy of surveillance. The most common cause of inconclusive

test results is the failure of a sample to contain enough lymphoid follicles to produce a reliable test result, referred to as a result of "insufficient follicles." Therefore, the amendment includes a definition of "insufficient follicles" for clarity's sake. The term is defined as "a test result indicating that a tonsil or rectal biopsy sample contained an insufficient number of lymphoid follicles to produce a valid test result."

The amendment defines "last known exposure" as "the last date a deer in a trace-out breeding facility was exposed to a trace deer prior to the death or transfer of that trace deer." The definition is necessary because the CWD testing requirements imposed by new §65.99 are predicated upon the length of time since an exposed deer was in a facility.

The amendment defines "release" as "the act of liberating a deer from captivity. For the purposes of this division the terms "release" and "liberate" are synonymous." The definition is necessary because Parks and Wildlife Code, Chapter 43, Subchapter L uses the terms "release" and "liberation" interchangeably and the department intends to provide a definitive affirmation that the two terms are indeed synonymous.

The amendment defines "test-eligible" as "a deer at least 16 months of age prior to the effective date of the rules and following the effective date of the rules, a deer at least 12 months of age." The rules lower the minimum age at which deer may be tested; however, that change will take place during the reporting year. The definition is necessary to make that clear.

The amendment defines "Tier 1 facility" as "a breeding facility that has received an exposed deer that was in a trace-out breeding facility." The definition is necessary to acknowledge the epidemiological importance of exposed deer that were received indirectly via a Category A or Category B trace-out breeding facility.

The amendment defines "trace deer" as "a deer that the department has determined had been in a CWD-positive deer breeding facility on or after the date the facility was first exposed to CWD, if known; otherwise, within the previous five years from the reported mortality date of the CWD-positive deer, or the date of the positive ante-mortem test result." The definition is necessary because new §65.99 creates testing requirements for breeding facilities that have received deer epidemiologically connected to a positive facility.

The amendment defines "trace-out breeding facility" as "a breeding facility that has received an exposed deer that was in a CWD-positive deer breeding facility." The definition is necessary because new §65.99 creates testing requirements for breeding facilities that have received deer directly from a positive facility.

The amendment alters the definition of "confirmed" to include the Texas A&M Veterinary Medical Diagnostic Laboratory as a testing authority.

The amendment alters the definition of "CWD-positive facility" to include the term "positive facility" in order to reduce the repetition of an unwieldy term throughout the rules.

The amendment replaces the definition of "exposed deer" with a more nuanced definition that reflects the provisions of the emergency rule currently in effect that are incorporated in Division 2 by this rulemaking. The new definition is based on the importance of determining the extent to which any given deer breeding facility is epidemiologically connected to facilities where CWD is known to exist, which in turn determines the CWD testing requirements necessary to both determine the epidemiological status of the facility and the nature and extent of CWD testing necessary to

allow the resumption of transfers by the facility. The current definition states that an exposed deer is a deer that is in a CWD-positive facility or was in a CWD-positive facility within five years prior to the discovery of CWD in that facility. The new definition identifies an exposed deer as a deer meeting any of three criteria: the deer is or was in a breeding facility after the date that the facility held a CWD-positive deer, the deer is or was in a facility within five years preceding the discovery of a CWD-positive deer that was in the same facility, or the deer is in a facility as of a determination that either of the first two conditions exists with respect to a given facility. The definition is based on the epidemiological need to characterize the potential of any given breeder deer to have been in any facility where the possibility of contracting CWD could have existed.

The amendment to §65.91, concerning General Provisions, eliminates current subsections (e) and (f) because they relate to the transfer categories and release site classes of the current rule as discussed earlier in this preamble. The amendment also conforms language regarding herd plans as discussed previously and makes nonsubstantive housekeeping-type changes to standardize terminology (i.e., replacing phrases such as "introduce into or remove from" with "transfer," which means the same thing).

The amendment to §65.91 alters current subsection (g) to include exceptions for scientific research; current subsection (h) to include "reports" in the list of various communications with the department that are required to be made via the department's online system for deer breeder permit administration, which is necessary for the sake of thoroughness in describing the types of documentation affected by the rules; and adds new subsection (f), which is relocated from current §65.94(e) because it is generally applicable to all breeding facilities. The provision specifies that upon the determination that a facility has received a CWD "suspect" test result, all trace facilities that have been in possession of deer that was present within the CWD suspect facility within the previous five years shall be NMQ until it is determined that the facility is not epidemiologically linked to the CWD suspect deer or the CWD "suspect" test result is not confirmed positive. The intent of the new subsection is to prohibit the transfer of breeder deer from trace facilities to another facility between the time the initial CWD "suspect" test result is received and the result is confirmed.

The amendment to §65.92, concerning CWD Testing, consists of several substantive and nonsubstantive changes. Current rules require tissue samples for ante-mortem testing to be collected within six months of submission from deer at least 16 months of age that have not been the source of a "not detected" test within the previous 24 months. The amendment to subsection (b) changes that standard by requiring samples to be collected within eight months of submission from a deer at least 12 months of age that has not been the source of a "not detected" test result within the previous 12 months. Both the current rules and the rules as adopted reflect the agency's strategy to establish provisions for general surveillance of captive deer populations. Because other provisions of this rulemaking increase the minimum level of ante-mortem testing and require the testing of all mortalities occurring within breeding facilities, as well as the ante-mortem testing of all breeder deer prior to release, the department has determined that it is possible to allow test results from younger deer to be accepted, increase the frequency with which deer may be tested, and increase the interval between sample collection and sample submission. In addition, the change to subsection (b) includes references to other provi-

sions that create exceptions allowing for the testing of deer that had been the source of a "not detected" test result with the previous 12 months.

Current subsection (c) provides that a post-mortem test is not valid unless performed on the obex or medial retropharyngeal lymph node (RLN). The amendment requires the submission of the obex and the RLN. CWD in white-tailed deer and mule deer is typically detected in the RLN sooner than in the obex and the department therefore reasons that requiring the submission of the RLN in addition to the obex will result in earlier detection of CWD positive deer and increase the efficacy of post-mortem CWD testing. In addition, by requiring the submission of both tissues, the possibility of wasted test effort is reduced. For example, if an obex from a deer yields inconclusive post-mortem testing results, an RLN from the same animal may not.

The amendment to subsection (d) and new subsection (e) establish new standards regarding the use of ante-mortem tests to substitute for inadequate post-mortem testing and provide for a transition from the current rules to the rules as adopted. As described earlier in this preamble, the department determines any given breeding facility's MQ status on the basis of a series of calculations intended to provide assurance that the level of post-mortem CWD-testing in a breeding facility is sufficient to monitor for the presence of CWD in the facility. If a facility is unable to provide sufficient post-mortem test results to be designated MQ on that basis alone, the current rules allow ante-mortem testing to be utilized to make up for the inadequate post-mortem surveillance; however, because post-mortem tests are of extremely high epidemiological value, a higher number of ante-mortem substitution tests are required in order to provide a similar level of confidence that CWD can be detected. The amendments replace the testing rate in the current rules with a testing rate developed by the Center for Epidemiology and Animal Health (CEAH), which is an organization within the Animal Plant Health Inspection Service operated under the United States Department of Agriculture. Because ante-mortem substitution testing is a method of compensating for the lack of sufficient and more-desirable post-mortem testing and is calculated for each reporting year, the regulations must stipulate specific timeframes for the collection and submission of the samples in order to make substitution testing meaningful. In other words, MQ status in such situations, because it is dependent upon the herd collectively (rather than individual post-mortem samples) must be reflective of the herd over time within each reporting year. Therefore, the subsection stipulates that all provisions other than paragraphs (3) and (4), if adopted, take effect April 1, 2022, which is the beginning of the next reporting year. Paragraphs (3) and (4) take effect 20 days after the notice of adoption of these rules is filed with the Secretary of State. Subsection (d)(1) requires ante-mortem test samples to be collected within eight months of the end of the reporting year to match the eight-month submission window created in the amendment to subsection (b). Additionally, and for the same reasons, new subsection (e) accommodates the transition from the current rate at which ante-mortem test results may be substituted for post-mortem test results (3:1) to the new ratio (5:1) by allowing the 3:1 substitution ratio to remain until the end of the current permit year.

Subsection (d)(2) provides that the number of ante-mortem results may not exceed 30 percent of the total number of required post-mortem results (multiplied by five, to reflect the new substitution ratio imposed by the rules) in more than two reporting years. A post-mortem test conducted quickly after the death of a deer is the gold standard for CWD testing efficacy. Also (and de-

scribed in the discussion of the amendment to §65.94), the rules require deer breeders to test all mortalities instead of the current minimum of 80 percent. Because the department acknowledges the reality that it may not always be possible to locate a mortality quickly enough to extract a sample that will be valid, the rules as adopted, like the current rules, allow ante-mortem tests to be substituted for a portion of the required post-mortem test results. Because ante-mortem tests are less sensitive, however, the department believes that it would not be prudent to allow them to be substituted for post-mortem test results at either a high percentage or on a repeated basis. Therefore, the rules provide for what the department has determined, based on what is known about the incubation period and transmissibility of CWD, as well as the efficacy of ante-mortem testing compared to post-mortem testing, is a reasonable substitution standard and a limit on how frequently that standard may be exceeded. Similarly, the department considers that there will be circumstances in which a deer breeder may possess enough deer to make it possible to achieve MQ status, but is unable to meet the requirements of the rules because not enough time has elapsed since previous testing efforts on specific deer. Therefore, subsection (d)(3) allows test results from deer that were tested within the previous 12 months to be submitted, provided all test-eligible deer within the facility have been tested prior to the testing of deer that were tested within the previous 12 months. As explained above, because other provisions of this rulemaking increase the minimum level of ante-mortem testing and require the testing of all mortalities occurring within breeding facilities, as well as the ante-mortem testing of all breeder deer prior to release, subsection (d)(3) allows test results from deer six months of age or older, provided all test-eligible deer in the facility have been tested prior to the testing of any deer that is six months of age or older but younger than 12 months. Subsection (d)(4) establishes a limit of 10 percent on the number of "inconclusive" test results that may be submitted to satisfy the provisions of §65.94(d), excluding facilities that test fewer than ten deer. The provision in question pertains to a small number of NMQ breeding facilities that although unable to meet the testing requirements of §65.94(a), are in compliance with inventory and inspection requirements, haven't received exposed deer, and don't contain enough deer to meet ante-mortem substitution requirements. Current rules allow such facilities to be designated MQ following two rounds of "whole herd" ante-mortem tests 12 months apart, provided the first round of testing begins at least 12 months after being designated NMQ. It is not uncommon for test results to be inconclusive, which can happen for a variety of reasons; however, the department has determined that when the number of "inconclusive" results rises above 10 percent, confidence that the detection of CWD will be detected if it exists erodes significantly. Therefore, the department has determined that it is appropriate to limit the number of "inconclusive" test results that can be submitted for purposes of MQ designation, particularly in view of the fact that the facilities in question are unable to meet the testing requirements of §65.94(a). Subsection (d)(5) clarifies that permittees are required to test 100 percent of mortalities that occur within a facility and that no provision of the rules is to be construed to create an exception to that requirement. The amendment to §65.92 alters current subsection (e) and adds new subsections (g) and (h) to make it abundantly clear that test results are tied to the breeding facility in which the samples are taken, are valid only if the deer from which the sample was taken is still in the facility, and cannot be used more than once except as specifically provided by the division. The department seeks to avoid any misunderstandings or confusion regarding the utilization of test results.

The purpose of the testing requirements of the division is to provide a representative sampling frame that the department can use for determination of MQ status. An ante-mortem test result is a snapshot in time at the breeding facility where the deer resides and has an epidemiological value that is limited by a variety of factors, including how recently the test was performed. Allowing multiple breeders to re-utilize the same test results would mean that the results are no longer a statistically valid representation of the population of a single facility, meaning the surveillance value of the tests is compromised. Similarly, a test result cannot be used more than once for the same reason (with the sole exception of allowing sufficiently recent ante-mortem test results used for another purpose to be used to meet the ante-mortem testing requirements for release as provided in the amendment to §65.95). Therefore, the rules explicitly state those conditions.

Finally, the amendment alters the time periods within which permittees must report and submit samples for post-mortem testing. The current rules stipulate that mortalities must be reported within 14 days of detection; the rules also require samples from mortalities to be submitted within 14 days of collection. As has been noted at various points in this discussion, time is critical with respect to CWD testing. The department has determined that the efficacy of post-mortem testing would be significantly increased by reducing the timeframes for reporting, collection, and submission of post-mortem samples. Previous rules allowed samples to be submitted at any time within the reporting year; rules promulgated earlier this year imposed a 14-day requirement. The department concludes that imposing a seven-day requirement will result in improved surveillance as well as enhancing the likelihood of earlier detection and subsequent epidemiological investigation.

The amendment eliminates current subsection (g), which is no longer necessary because all breeder deer are required to be ante-mortem tested prior to release by §65.95 as adopted.

The amendment to §65.93, concerning Harvest Log, eliminates references to the NUES tag for reasons explained in the discussion of the amendment to §65.90, concerning Definitions.

The amendment to §65.94, concerning Breeding Facility Minimum Movement Qualification, requires permittees to post-mortem test all mortalities within a breeding facility to achieve MQ status. As noted earlier in this preamble, the calculations for MQ status under the current rules involve a benchmark requirement of "not detected" post-mortem test results for 80 percent of eligible mortalities within a breeding facility each year. The department has concluded that requiring 100 percent of test-eligible (the term replacing "eligible-aged," as noted in the discussion of the amendment to §65.90) mortalities to be tested is necessary to increase the confidence of early detection of CWD. Additionally, mortality data reported to the department following the promulgation of the current rules in 2016 indicate a higher average mortality rate for breeding facilities than what historical data indicated. This means that the original baseline of 4.5 percent average expected mortality rate employed in the calculations made under current rule is an under-representation of actual mortality rate, which in turn means that the current testing requirements are inadequate to provide the minimum acceptable confidence of detecting CWD, should it exist in any given breeding facility in the first year of testing under the rules as adopted, and an increasing probability of detection thereafter if the disease is present. On that basis, and in consultation with TAHC, the department has determined that to obtain an acceptable detection probability if CWD exists

in any given breeding facility, the combination of 100 percent post-mortem testing, a 5:1 ratio of ante-mortem to post-mortem substitution (with the limitations on the magnitude and frequency of ante-mortem substitutions), testing a minimum of five percent of the herd inventory, combined with ante-mortem testing of all breeder deer prior to release is required.

The amendment to §65.94 also adds new subsection (g) to provide for denial of permit renewal for a permittee who has exceeded the maximum utilization of the 30 percent provision in more than two years during the life of the permit. Parks and Wildlife Code, §12.603, allows the department to refuse to issue or renew a deer breeder's permit if the permittee fails to submit accurate applicable reports, which under the rules as adopted is not allowed for ante-mortem test results in excess of the 30 percent provision.

Provisions within the emergency rule currently in effect have been incorporated in the amendment to §65.94 in the form of new subsections (h) and (i), dealing with breeder deer reported to the department as escaped, and deer that cannot be confirmed as being present in a breeding facility. A persistent issue over the years has been the discrepancies between the inventories reported to the department and the actual number of deer present in facilities when inspections are conducted. A related issue is the number of deer reported by deer breeders as having escaped captivity. A third issue is the accuracy of mortality reporting. Department records indicate that for each of the last five years an average of 26 deer breeders have reported a shared total of 159 escapes. Department records for the same time period indicate that an average of 31 breeding facilities had a shared total of 825 missing deer (deer that department records indicate should be present in the facility, but cannot be located or verified as being present). The amendment stipulates that deer reported as escaped and deer that cannot be accounted for will be treated as mortalities for the purposes of the rules. The amendment also stipulates that lawfully recaptured deer will not be treated as mortalities.

Finally, the amendment to §65.94 implements transition provisions to provide for data and reporting integrity for the same reasons identified in the discussion of the amendment to §65.92.

The amendment to §65.95, concerning Movement of Breeder Deer, alters subsection (a) to incorporate provisions from the current emergency rule regarding fawns sent to nursing facilities. A popular practice with deer breeders is the transfer of fawns (young deer) to a nursing facility. The department believes that risk of disease transmission between facilities can be mitigated by prohibiting any nursing facility from receiving fawns from more than one breeding facility per year.

The amendment also adds provisions to current subsection (c) to require all breeder deer to be ante-mortem tested with "not detected" results prior to release, provided the deer is at least six months old and the test sample is collected within eight months of release. The department believes that it is imperative to test all breeder deer before they are released, in accordance with a testing protocol that provides an acceptable probability of detecting CWD if it exists in any given breeding facility. The amendment also creates an exception to the requirements of §65.92 regarding the utilization of ante-mortem test results more than once.

Finally, the amendment to §65.95 also removes provisions regarding transfer and release site classifications and effects various housekeeping-type changes.

The amendment to §65.96, regarding Movement of DMP Deer, removes testing requirements that are irrelevant in light of the adopted provisions that eliminate transfer category and release class provisions and prohibits the transfer of breeder buck deer from DMP facilities to deer breeding facilities, which is allowed under current rule. The amendment also incorporates provisions from the current emergency rule that prohibit the transfer of breeder deer to a DMP facility from a breeding facility that is subject to the provisions of new §65.99, concerning Breeding Facilities Epidemiologically Connected to Deer Infected with CWD or a trace release site.

The amendment to §65.97, concerning Testing and Movement of Deer Pursuant to a Triple T or TTP Permit, provides for the cessation of the issuance of Triple T permits until further notice. Although the rules as adopted are intended to provide assurance of early detection of CWD, they do not eliminate the risk for spreading CWD from sites where breeder deer releases have occurred in the past (including releases to properties adjacent to breeding facilities); therefore, release sites are intended to be terminal sites for breeder deer. The department strongly believes that, given the number of breeder deer that have been released in virtually every part of the state (more than 141,000 in the last five years), the practice of trapping and transporting deer should be paused on a temporary basis until the department is able to develop rules to provide sufficient assurance that CWD has not been spread as a consequence of previous deer releases. The amendment also makes numerous nonsubstantive, conforming and housekeeping-type changes as discussed previously in this preamble with respect to other sections.

The amendment to §65.98, concerning Transition Provisions, eliminates references to rules that either no longer exist or have no connection to the current or adopted rules and provides that a release site that was not in compliance with the applicable testing requirements of this division in effect between August 15, 2016, and the effective date of this section is required to comply with the applicable provisions of the division regarding CWD testing with respect to release facilities, which is necessary to provide for continuity of testing effort moving forward.

New §65.99, concerning Breeding Facilities Epidemiologically Connected to Deer Infected with CWD, consists of the provisions of the current emergency rule in effect, less those provisions with general applicability that have been located in other sections of the subdivision as noted. As discussed previously in this preamble, this rulemaking is necessary because of additional detections of CWD in deer breeding facilities, which, because the source facilities met the requirements of current rules to attain MQ status, indicates the current rules have not been effective in providing for early detection or containment of CWD. Indeed, the evidence suggests that CWD likely was present in at least three of the facilities for more than a year before being detected, which introduces the possibility that CWD could have been spread to hundreds of sites directly and to even more sites from those sites. In addition to the testing provisions discussed earlier in this preamble intended to increase the efficacy of surveillance in deer breeding facilities generally, new §65.99 sets forth provisions that apply to those deer breeding facilities that epidemiological investigations reveal are connected to positive facilities, either directly or indirectly, and thus present the highest likelihood of spreading CWD further.

New subsection (a) provides that in the event of conflicts with other rules, the provisions of new §65.99 prevail, which is necessary to prevent potential misunderstanding and confusion. The

new rule affects facilities that pose a demonstrably present threat to free-ranging and captive deer populations; therefore, the department must ensure that the threat is not exacerbated by conflicts with other regulations.

New subsection (b) prohibits the transfer of deer from a facility subject to the provisions of the section except as specifically provided in a herd plan. The facilities affected by the new rule are facilities that pose a demonstrably significant risk of harboring and spreading CWD; therefore, in consultation with TAHC, the department will prepare a herd plan for each affected facility to prescribe specific mitigation and surveillance measures necessary to achieve confidence that CWD is not present or being spread as a result of transfer or release.

New subsection (c) requires all deer transferred from an affected facility to be tagged with a button-type RFID tag, which is necessary to identify released breeder deer in the event that further epidemiological investigation is necessary.

New subsections (d) and (e) prescribe testing requirements to regain MQ status for directly connected trace-out facilities, of which there are two categories: those facilities in which all trace deer received by the facility are either alive and still in the facility or have died and been post-mortem tested with "not detected" results ("Category A" facilities), and those facilities where that is not the case (i.e., some or all trace deer have been transferred, released, or died without being tested post-mortem), "Category B" facilities. For Category A facilities, new subsection (d) would stipulate that the facility is immediately NMQ and require all trace deer to be euthanized and tested within seven days of the permittee being notified by the department of Category A status. Obviously, a facility that has received exposed deer poses a demonstrable threat of harboring and/or spreading CWD and should be prevented from transferring deer until a determination of disease status can be made. Requiring all trace deer to be euthanized and tested is necessary to gain the most immediate and definitive idea of the disease status of the exposed deer. The permittee is also required to inspect the facility daily for mortalities, immediately report all test-eligible mortalities, and collect and submit test samples for those mortalities. Again, post-mortem testing provides the best basis for determining whether CWD is present or absent; thus, in concert with the euthanization and testing of all trace deer, the immediate reporting and testing of test-eligible mortalities is the most direct and efficacious method of determining if MQ status can be restored. The new subsection also provides that in lieu of euthanizing all trace deer, a permittee could request a custom testing plan while inspecting the facility daily and testing mortalities as specified. The department recognizes that some permittees for whatever reason could be reluctant to euthanize deer; however, the department also cautions that a custom testing plan would likely include a much longer timeframe for restoration of MQ status. New subsection (d)(4) provides for the department in consultation with TAHC to decline to authorize a custom plan if an epidemiological assessment determines that a custom testing plan is inappropriate. The provision is necessary to address those situations in which there is simply no way to achieve statistical confidence that a captive population is free of CWD. New subsection (d)(5) requires, in addition to compliance with all applicable provisions of the subsection and the division, that all test results must be "not detected" in order for MQ status to be restored. Because the facilities affected by the new rule present a demonstrably higher risk of harboring and spreading CWD, it is prudent to require a perfect testing record.

New subsection (e) sets forth the requirements for those facilities designated as Category B. Because Category B trace-out facilities are not in possession of some or all trace-out deer that entered the facility, the testing regime necessary to restore MQ status is not as straightforward as with Category A trace-out facilities. As with Category A trace-out facilities, the new subsection provides for the automatic designation of NMQ status and requires the euthanization and testing of all trace deer in the facility, daily inspections for mortalities, and immediate reporting and testing of mortalities, for reasons explained in the discussion of new subsection (d). Additionally, the new subsection requires ante-mortem testing of all deer in the facility according to schedules based on the elapsed time since the last known exposure. The timing of the ante-mortem testing required by the new subsection is determined by what is known about the incubation time of CWD and the length of time between exposure and the ability of ante-mortem testing to detect CWD if it is present. As with new subsection (d), the new subsection would require all test results to be "not detected" and offer permittees the option of requesting a custom testing plan, providing also that the department could decline to authorize such a plan if in consultation with TAHC it is determined that it is inappropriate.

New subsection (f) would set forth requirements for Tier 1 facilities, those facilities that have received an exposed deer from a trace-out facility. As with Category A and Category B facilities, Tier 1 facilities are automatically NMQ upon notification by the department and are required to conduct daily inspections for mortalities and immediately report and test them. Additionally, the new subsection predicates the restoration of MQ status on the attainment of one of four possible scenarios: post-mortem results of "not detected" for every exposed deer received from a trace facility; restoration of MQ status by the department to all trace facilities from which exposed deer were received; ante-mortem testing as specified for Category B trace-out facilities in subsection (e)(2)(E); or compliance with the provisions of a custom testing plan. The intent of the department is to provide as many ways as possible, defensible within the precepts of sound biological and epidemiological science, to enable affected breeding facilities to regain MQ status.

New subsection (g) is added to address trace-in breeding facilities, for reasons discussed earlier in this preamble with respect to changes to the proposed text.

New subsection (h) sets forth the particular provisions affecting permittees who pursue the option of a custom testing plan in lieu of the testing requirements of subsections (d) - (f). The new subsection stipulates that within seven days of being notified of Category A trace-out facility, Category B trace-out facility, or Tier 1 facility status, a permittee could request the development of a custom testing plan approved by the department and TAHC. If the department in consultation with TAHC determines that a custom testing plan is feasible, the department will develop the plan and provide it to the permittee, who would then have seven days to decide whether to accept the plan or decline participation. Acceptance or refusal of the plan must be in writing. If a permittee chooses to accept the plan, the provisions of the subsection mandating the euthanasia of all trace deer do not apply; if the permittee declines participation in the plan, the requirements of the section resume applicability. The subsection also stipulates that a participating facility remains NMQ until the provisions of the plan are satisfied.

New subsection (i) prescribes the conditions under which deer younger than 120 days of age would be allowed to be transferred to a nursing facility.

New §65.100, concerning Violations and Penalties, contain the provisions of current §65.99, with the addition of herd plans and custom testing plans to the list of components regulated by the division, violations of which are an offense.

The department received 807 comments opposing adoption of all or part of the rules as proposed. Of those 807 comments, 512 articulated a specific reason or rationale for opposing adoption. Many comments were lengthy and contained impressions, narratives, and background or extraneous information that while certainly useful to the department in forming an understanding of the commenter's point of view, were not, strictly speaking, germane to specific provisions in the rules. The department has therefore categorized comments by the subject of opposition. The department believes that it is important to identify each specific rationale expressed in opposition to adoption and to respond to it. Therefore, rather than an exhaustive, lengthy, and repetitive verbatim comment-by-comment, point-by-point response format, the department has chosen to, where possible, separate comments into the specific reasons articulated for opposition to the rules and then respond to those comments in one statement. In some cases, the nature of the grammatical and syntactic construction of the comment or the organization of the comment make it difficult to categorize into constituent components. In those cases, the department has left the comment intact, with truncation as necessary to eliminate extraneous content. The department notes that this approach results in the number of responses being greater than the total number of commenters.

The department received 54 comments opposing adoption of the rules on the basis that the intent of the department is malicious or vindictive. The commenters stated, variously, that the rules are unfair, biased against deer breeders, an attempt to blame CWD on deer breeders, an attempt to put deer breeders out of business, a direct attack on deer breeders, biased, or otherwise motivated by ill will towards deer breeders. The department disagrees with the comments and responds that any assertion that the department in any way intends to vilify deer breeders or put deer breeders, individually or collectively, out of business is flatly untrue. No changes were made as a result of the comments.

Four commenters opposed adoption and specifically stated that the rules are unfair because only deer breeders are required to test for CWD. Similarly, 16 commenters specifically stated that the rules should require the testing of some or all hunter-harvested deer, including deer harvested on Managed Lands Deer Program (MLDP) properties. The department disagrees with the comments and responds that disease management is not a matter of fairness, but in any event, the epidemiological reality is that confined populations and free-ranging populations present very different environments with respect to disease propagation, transmission, and management efforts; therefore, the surveillance and sampling strategies for free-ranging versus captive populations are different. The department also responds that current surveillance efforts in free-ranging deer populations conducted within 41 geographically distinct deer management units are achieving their goals of providing statistical confidence that CWD would be detected in the free-ranging populations in those areas if present at a targeted prevalence in almost the entirety of the state. No changes were made as a result of the comments.

One commenter opposed adoption and specifically stated that department is destroying deer breeding because a few wealthy

influential people want to shut down deer breeders. Similarly, five commenters specifically stated that CWD is a "political" disease, two commenters specifically stated that powerful interests are trying to stop competition from deer breeders, one commenter specifically stated that the rules are intended to provide personal monetary benefit to unidentified influential persons, and one commenter stated that the rules are evidence of corruption. The department disagrees with the comments and responds that the rules as adopted were developed by the department in consultation with Texas Animal Health Commission with the assistance of the regulated community and other stakeholders. No changes were made as a result of the comment.

One commenter opposed adoption and stated "The commission that oversees TP&W I believe is the route [sic] of the problem and politics have now resulted in the effort to eliminate deer breeders as a viable economic industry." The department disagrees with the comment and responds that the Texas Parks and Wildlife Commission is guided by its primary statutory responsibility to protect the state's wildlife resources. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the rules are unfair because they are punishing the many for the mistakes of the few. Similarly, one commenter stated specifically that the previous rules were so lax that poorly managed deer breeding operations were allowed to avoid submitting test samples for long periods of time. The department disagrees with the comments and responds, first, that the rules are not intended to be punitive, and second, that the rules are necessary not because of "mistakes" but because CWD was detected in additional breeding facilities in spite of the rules in place, indicating that the rules were ineffective. The department also notes that the rules being replaced were the result of a negotiated process with the regulated community, many of whom strenuously resisted then, as they do now, measures advocated by the department to provide adequate assurance that CWD can be quickly detected before it can be spread. No changes were made as a result of the comment.

One commenter opposed adoption and specifically stated that the department's rules historically were designed to stop captive breeding by making it more difficult (tagging and reporting changes). The department disagrees with the comment and responds that such assertions are untrue. No changes were made as a result of the comment.

One commenter opposed adoption and specifically stated that the department seems to be trying to put deer breeders with small operations out of business because they don't have the financial resources for legal challenges or the proposed new testing requirements. The department disagrees with the comment and responds that no part of the proposed rules is intended or designed to force any permittee out of business, irrespective of the scale of operations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "TPWD and opponents of deer breeders continue to rely on subversion of the facts, bad data, and scare tactics to promulgate their propaganda campaign against deer breeders." The commenter further stated that CWD is not the threat to native or captive cervid herds that was once believed and that killing "thousands of healthy uninfected captive animals" is contradictory to the department's duty to protect wildlife resources. The department disagrees with the comment and responds that there is no conspiracy between the department and any other entity or individual to op-

pose deer breeding or deer breeders and that the department's efforts to manage CWD are and always have been above board, science-driven, and motivated by the desire and the duty to protect native wildlife resources from the unquestioned threat posed by CWD. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules are harsh for deer breeders who voluntarily accept a higher standard by participating in the TAHC herd certification program because they are being treated like the breeders who do not participate in the program. The commenter stated that deer breeders "not involved with a trace facility" should have the option of asking for a herd plan. The department disagrees that the TAHC herd certification is a higher standard than the rules as adopted and notes that five of the seven facilities where CWD has been discovered since March 23, 2021 were in at least the fourth year of that program, with two of those facilities having "Certified" status. Therefore, the rules as adopted impose additional testing requirements necessary to provide minimum assurance that CWD can be detected early in any deer breeding facility, including those participating in the TAHC herd certification program. In addition, the department notes that compliance with herd plans is required for the removal of TAHC-issued quarantines and hold orders and that herd plans are not required by the rules as adopted. No changes were made as a result of the comment.

Forty-seven commenters opposed adoption on the basis that the rules are excessive, unreasonable, onerous, a bureaucratic power grab, government overreach, overstep, overkill, overreaction, abuse of power, or otherwise some kind of unrestrained exercise of governmental action. The department disagrees with the comments and responds that in addition to being a discharge of the agency's statutory duty to protect and conserve the wildlife resources of the state, the rules are predicated on sound scientific principles and were validly promulgated in accordance with all applicable statutory authority granted to the agency, specifically or generally. No changes were made as a result of the comment.

Two commenters opposed adoption and specifically stated that rules are unconstitutional. The department disagrees with the comments and responds that the rules as adopted do not violate any provision of the federal or state constitutions. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules are aggressive and over burdensome for deer breeders with closed herds. The department disagrees with the comment and responds that the rules as adopted are not more burdensome for deer breeders with closed herds. In addition, the department notes that two of the facilities where CWD has been discovered were closed herds for at least five years. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are too many restrictions on breeders, that CWD testing "should have been done in the wild and check points 25 years ago," and that "CWD is in bordering states yet deer breeders are blamed for it." The commenter also stated that there is a live test that would prevent having to kill entire herds. The department disagrees with the comment and responds that the department promulgated rules in 2002 in response to the emergence of CWD in deer in other states and began surveillance of free-ranging deer shortly thereafter. The department also responds that CWD repeatedly has been found in Texas deer breeding facilities and the rules are not a matter of blame but of discharge of the agency's statu-

tory duty to protect and conserve public resources. No changes were made as a result of the comment.

One commenter opposed adoption and stated that CWD is a "small incident" and the department is overreacting to "a very minor" number of cases in a way that will have major implications for the development of quality deer herds across the state. The commenter also stated that because of department negligence following the elimination of screw worm "the genetic pool of Texas deer population has dramatically decreased due to hunting pressure but now hunters and land owners have educated themselves on the valuable resource a quality deer herd represents." The commenter stated that "deer breeding has been largely responsible for the development of the genetic pool and efforts to minimize that impact by the TWD is detrimental to rebuilding the gene pool in deer herds state wide [sic]". The department disagrees with the comment and responds that CWD is not "minor" or a "small incident." The department has determined, based on scientific evidence and the impacts of CWD in other parts of the country, that CWD is an existential threat to deer populations in Texas and the economies that depend on them. The department also disagrees that there is any connection between the eradication of screwworm and deer breeding as well as the claim that deer breeding exerts any appreciable effect on native deer populations. There is a common misconception that deer breeding produces deer that are genetically fitter than indigenous deer, simply because of greater antler mass. Antler mass is simply one characteristic and is not indicative of any trait related to survival or reproductive success (i.e., genetic fitness). In any case, breeder deer are the result of line breeding of non-indigenous deer (it has always been unlawful to use deer from populations indigenous to Texas in breeding facilities) that does not occur in nature and the phylogenetic implications of breeder deer introduction to native herds are questionable, as it is a biological fact that the characteristics of organisms tend to reflect the conditions or environments where the organism evolved and that once introduced, an organism is subject to those conditions and will evolve or adapt accordingly. No changes were made as a result of the comment.

One commenter opposed adoption and stated that ante-mortem testing is too excessive for deer breeders, who "only hold 2% of the total deer population." The department disagrees with the comment and responds the percentage of the total deer population held by deer breeders is not a relevant factor in determining the degree to which ante-mortem testing should or must be utilized to mitigate the risk of transmitting CWD. No changes were made as a result of the comment.

One commenter opposed adoption and stated that CWD has been around for many, many years and can be detrimental to deer, but that does not justify government overreach. The commenter also stated that recommendations are more effective than laws. The department disagrees with the comment and responds that CWD is demonstrably detrimental to deer and that the department has a statutory duty to protect this public resource. The department also responds that data obtained from the department's extensive CWD surveillance program strongly indicate that CWD, where it exists in Texas (with the possible exceptions being in the Hueco and Franklin ranges of the far-western Trans Pecos region), is a result of a recent introduction. In addition, the department disagrees that voluntary CWD surveillance would be more effective than mandatory. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that all breeder deer should be required to be visibly tagged or branded upon release. The department disagrees with the comment and responds that while visible identification of released breeder deer would facilitate epidemiological investigations and research, the regulated community adamantly opposes such measures and the department has determined visible identification, while helpful, is not absolutely critical to CWD management efforts. No changes were made as a result of the comments.

One commenter opposed adoption and stated that all movement of breeder deer should be prohibited. The department disagrees with the comment and responds that while in absolute terms such a measure would produce undeniable disease mitigation benefits, a substantial portion if not all of the regulated community depends upon the ability to move deer in order to be financially viable; thus, the department believes that the testing regime imposed by the rules as adopted, if complied with, in concert with the temporary moratorium on the issuance of Triple T permits, will be sufficient to provide for early detection of CWD before it can be spread. No changes were made as a result of the comment.

One commenter opposed adoption and stated that deer breeding should be prohibited. The department disagrees with the comment and responds that under Parks and Wildlife Code, Chapter 43, Subchapter L, the department is required to issue a deer breeding permit to a qualified individual. No changes were made as a result of the comment.

One commenter opposed adoption and stated that counting missing deer as mortalities will give irresponsible deer breeders an easy way out. The department disagrees with the comment and responds that the timelines for collection and submission of test samples set forth in the new rules are expected to greatly reduce the instances in which unscrupulous persons might be tempted to report a mortality as an escaped. No changes were made as a result of the comment.

One commenter opposed adoption and stated that although the rules are an improvement over the current rules, the fact that movement of breeder deer is still being allowed represents an unacceptable risk of spreading CWD. The department disagrees with the comment and responds that while in absolute terms prohibiting all movement of deer would produce undeniable disease mitigation benefits, a substantial portion if not all of the regulated community depends upon the ability to move deer in order to be financially viable; thus, the department believes that the testing regime imposed by the rules as adopted, if complied with, combined with the temporary cessation of the issuance of Triple T permits, will be sufficient to provide for early detection of CWD before it can be spread. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department's duty is to protect native deer and the department should prohibit all movement of white-tailed deer until a reliable ante-mortem test is developed that is capable of clearing individual animals. The department disagrees with the comment and responds that because the timeline for the development of an ante-mortem test capable of clearing individual animals is unknown and could be lengthy, the department believes that the testing regime imposed by the rules as adopted, if complied with, combined with the temporary cessation of the issuance of Triple T permits, will be sufficient to provide for early detection of CWD before it can be spread. No changes were made as a result of the comment.

One commenter opposed adoption and stated that breeder deer should not be released where they could mix with native deer. The department disagrees with the comment and responds that Parks and Wildlife Code, Chapter 43, Subchapter L requires the department to issue a deer breeding permit to a qualified applicant and provides that one of the privileges of a deer breeding permit is the ability to release deer, which the department allows, contingent on compliance with the statutory and regulatory requirements. No changes were made as a result of the comment.

One commenter opposed adoption and stated that breeding facilities are an insult to native game and hunters. The department disagrees with the comment and responds that under Parks and Wildlife Code, Chapter 43, Subchapter L, the legislature requires the department to issue a deer breeding permit to a qualified applicant, which the commission has no authority to eliminate. No changes were made as a result of the comment.

One commenter opposed adoption and stated that deer breeding is an embarrassment and the rules are just a solution to a problem created by the department decades ago in catering to special interests. The department disagrees with the comment and responds that under Parks and Wildlife Code, Chapter 43, Subchapter L, the legislature requires the department to issue a deer breeding permit to a qualified applicant, which the commission has no authority to eliminate. No changes were made as a result of the comment.

One commenter opposed adoption and stated that deer breeding should be illegal. The department disagrees with the comment and responds that under Parks and Wildlife Code, Chapter 43, Subchapter L, the department is required to issue a deer breeding permit to a qualified applicant, which the commission has no authority to eliminate or criminalize. No changes were made as a result of the comment.

The department received 48 comments opposing in some form or fashion the provisions of the rules that require testing of breeder deer prior to release. The general tenor of the comments was that because Movement Qualified (MQ) facilities have already conducted the testing required to attain MQ status, MQ facilities (and many commenters specifically cited MQ facilities that are "closed" or not epidemiologically connected to a CWD-positive facility) should be allowed to release deer to adjoining acreage without additional live testing because the release does not pose additional threat of spreading CWD. The department disagrees with the comments and responds that introducing breeder deer to any property, contiguous or non-contiguous with a deer breeding facility, presents CWD transmission risks. The larger the release site, the greater the number of exposed acres and the greater the exposure to a population that otherwise would not have been exposed. Geographically, the risk may be relatively localized, but containment of transmission risk can dramatically change between adjacent properties. In deer breeding facilities, this CWD transmission risk can be more easily addressed because the breeder deer are available for ante-mortem testing; this provides greater confidence that CWD is not being transferred to release sites through the liberation of breeder deer. The department also notes that the terms "closed" and "connected" have specialized meanings with respect to epidemiology and are often misunderstood by laypeople. Epidemiologically, captive populations are "closed" or "unconnected" only if there are no pathways, direct or indirect, to sources of disease. In point of fact, very few breeding facilities in Texas have zero connection to the positive

facilities discovered thus far. No changes were made as a result of the comment.

One commenter opposed adoption and specifically stated that deer breeders should be allowed to release breeder deer to their own personal property. The department agrees with the comment and responds that the rules as proposed do not prohibit the release of breeder deer to a permittee's personal property, provided the release site is in compliance with current rules and the breeder has complied with applicable testing requirements that allow release. No changes were made as a result of the comment.

One commenter opposed adoption and specifically stated that the increased surveillance achieved by lowering the test-eligible age, increasing the percentage of mortalities required to be tested, and increasing the minimum percentage of the herd required to be tested should provide risk mitigation of the inadvertent spread of CWD. The department disagrees with the comment and responds that reducing the test-eligible age to 12 months and requiring 100% mortality testing were already requirements of the TAHC herd certification program, but CWD was detected in participant breeding facilities anyway, two of which had the disease for more than a year prior to detection, according to diagnostic test results and other findings of the epidemiological investigation, including disease prevalence and transmission to other facilities. Increasing the minimum mortality rate from 3.6 to 5% provides no increase in detection probability for most herds because most will have experienced the minimum mortality rate and tested 100% of mortalities; the new minimum mortality rate is established to be consistent with TAHC rules and to remove a regulatory lacuna that allowed participants in the TAHC herd certification program to avoid minimum requirements established in TPWD rules. Finally, ante-mortem testing prior to release provides the most substantive increase in CWD detection probability because it provides additional herd surveillance that would have otherwise not occurred. No changes were made as a result of the comment.

One commenter opposed adoption and stated that it is hypocritical to allow the release of deer under a Triple T permit to contiguous acreage but prohibit release of breeder deer to contiguous acreage. The department disagrees with the comment and responds that the rules as adopted suspend the issuance of Triple T permits while continuing to allow the release of breeder deer, provided the permittee is in compliance with the rules. No changes were made as a result of the comment.

One commenter opposed adoption and stated that testing of all deer prior to release is a huge undertaking for deer breeders with zero evidence that a young deer can contract this disease. The department disagrees with the comment and responds that there is no correlation between the age at which deer can contract CWD and the need to test all deer prior to release in order to prevent the spread of CWD. There is evidence of CWD transmission in utero and deer as young as six months of age have tested positive for CWD, which strongly supports the wisdom of testing all deer prior to release. No changes were made as a result of the comment.

Twenty-six commenters opposed adoption on the basis that the rules do not require any persons other than deer breeders to test deer for CWD. The commenters stated, variously, that MLDP cooperators, low-fenced ranches, Triple T and TTP permit holders, and/or all hunters should be required to test harvested deer for CWD. Similarly, four commenters stated that CWD came from the wild and has been found in the wild but the department does

not mandate CWD testing for deer harvested from free-ranging populations. The department disagrees that the department's CWD surveillance strategy is inadequate with respect to deer populations other than those within breeding facilities and responds that the two are very different. In non-captive populations, every individual of the population typically remains within a small geographic range determined by the life history of the species and to some extent habitat and terrain, while breeder deer are a captive population that is highly interconnected across a huge geographical extent through human transport via trailers and from which individuals are released to the landscape. These two scenarios present very different surveillance challenges. The department's current surveillance efforts in free-ranging populations are designed to detect a diseased animal with statistical confidence at a targeted prevalence, which has been achieved in almost all regions of the state. Although testing every hunter-harvested deer would increase the number of deer sampled and tested for CWD, there is no scientific need to make such testing mandatory. The department also notes that within CWD management zones (demarcated areas where CWD has been detected in captive or free-ranging populations), all hunter harvested deer are required to be presented at check stations for CWD testing. No changes were made as a result of the comments.

Six commenters opposed adoption and stated that mandatory CWD testing on MLDP properties will cause people to terminate participation in that program. The department disagrees that any part of the rules as proposed or the rules as adopted requires or intends to require MLDP cooperators to perform mandatory CWD testing. No changes were made as a result of the comment.

One commenter stated that deer breeders have spent over \$4 million in testing for CWD at their own expense since 2015, tested 80-100% of all eligible mortalities in breeder pens, and tested near 100,000 deer to date while hunter harvest was over 900,000 and the department tested 13,000 of those animals, which indicates that deer breeders are doing more than anyone else to fight CWD. The department disagrees with the comment and responds that in light of continued detection of CWD in captive herds, testing in captive herds under the current rules is clearly ineffective at providing confidence of early detection, even assuming that all deer breeders are in compliance with testing requirements. The department also responds that direct comparison of raw testing numbers between captive populations (which are artificially concentrated in densities far higher than occur in nature) and free-ranging populations is meaningless from an epidemiological and scientific perspective. No changes were made as a result of the comments.

One commenter opposed adoption and stated that CWD testing should not be mandatory for MLDP cooperators. The department disagrees with the comment and responds that neither the rules as proposed or as adopted contemplate the mandatory testing of deer by MLDP cooperators. No changes were made as a result of the comment.

One commenter opposed adoption and stated that MLDP participants should be required to test a percentage of deer harvested on MLDP properties. The commenter stated that 22 of 49 positive samples for CWD in 2020 were free-ranging deer while CWD was detected in only six of 858 deer breeding facilities, which indicates that the department is biased because it is focused on deer breeders and not on all hunting. The department disagrees with the comment and responds that the conflation of

free-ranging populations with captive populations for purposes of comparing the epidemiological efficacy of regulations is misleading. The spread of CWD by the human-induced movement of deer from and between captive populations is a discrete epidemiological context that is completely dissimilar to the spread of CWD in free-ranging populations; thus, a comparison of aggregate testing numbers is meaningless. A deer in a natural population lives and dies within a certain geographical area, whereas breeder deer can and are moved by humans via trailers many dozens or even hundreds of miles between facilities. In each facility they come into contact with other deer, some or all of which may have been in other facilities and sometimes, multiple facilities, which significantly magnifies the chances of disease transmission. In fact, the department's statewide volunteer sampling effort across the state by individual landowners and hunters has been more efficacious, for purposes of achieving statistical confidence of disease prevalence, than testing within deer breeding facilities. The suggestion that MLDP properties - or any other properties, for that matter - are somehow being excluded from effective surveillance is simply not supported by facts or science. No changes were made as a result of the comment.

One commenter opposed adoption and stated that testing should be similar to what is required for populations on ranches. The department disagrees with the comment and responds that given the repeated detection of CWD within captive populations, voluntary surveillance efforts within breeding facilities could be expected to result in further spread of CWD to captive and free-ranging populations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that free ranging deer never get tested and have a higher rate. The department disagrees with the comment and responds that free-ranging populations are sampled at a sufficient rate to achieve statistical confidence that the disease would be detected where it exists at a targeted prevalence and the data indicate that there is an overall lower risk of CWD transmission from free-ranging populations than from captive herds. No changes were made as a result of the comment.

One commenter opposed adoption and stated that high fence ranches and hunting operations "have a bunch of feeders and cause high concentrations of deer" and that all hunter-harvested deer should be tested. The department agrees with the comment to the extent that any situation causing deer to come into contact with one another, especially in unnatural ways, increases the chances of disease transmission, but the fact remains that captive populations are kept in sustained contact, which is the optimum condition for disease propagation, and are widely dispersed across the landscape of the entire state as a result of human transport via trailers and release, which presents significantly higher disease transmission opportunity. No changes were made as a result of the comment.

Forty-three commenters opposed adoption and stated in some form or fashion that rules will result in undesired economic and financial outcomes. Commenters stated that the rules are costly, will put ranches out of business because they won't be able to provide hunts, will hurt the state's economy, reduce license revenue to the department, reduce hunting revenue for landowners, increase the cost of hunting opportunity because corporate hunting operations won't have access to trophy deer, lower land values, and kill job opportunities. The department disagrees with the comments and responds that although the rules will increase the cost of compliance, mainly via increased testing re-

quirements, those costs are the minimum necessary costs to prevent CWD from being spread to additional breeding facilities or free-ranging deer populations. The department also responds that breeder deer are a very small proportion of the total deer population in the state and the overwhelming majority of hunting opportunity in Texas occurs on properties and in deer populations to which breeder deer have never been released. In addition, the department responds that land values are far more likely to be affected by the discovery of CWD on the landscape and that since deer breeding involves an infinitesimally small proportion of the state's workforce, there will be little to no impact to job opportunities. The department also notes that although people buy and sell breeder deer, once a breeder deer has been released it cannot be sold or bought. No changes were made as a result of the comments.

Eighteen commenters opposed adoption and specifically stated the rules will cause all or some deer breeders to be put out of business. The department disagrees with the comment and responds that without the availability of specific and complete financial data, it is difficult to assess a claim that the rules will force any deer breeder out of business. The department has received similar claims in response to previous department rulemaking efforts to manage CWD and notes that, based on anecdotal and publicly advertised sale prices for breeder deer and the reputed profitability of deer breeding claimed by the regulated community, it is difficult to envision any scenario in which the rules as proposed would force any deer breeder out of business, unless the deer breeder either has purchased a CWD-positive deer from another breeder or has been designated Not Movement Qualified (NMQ) as a result of failing to comply with the regulatory requirements. The department believes that most if not all deer breeders will be able to remain in business. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules "are just one more step to encourage deer breeders to get out of business. Cwd [sic] is the tool they now have to justify to regulate deer breeders out of business." The department disagrees with the comment and responds that there is not now and has never been an effort on the department's part to encourage deer breeders to get out of business and that CWD would continue to be a serious concern even in the complete absence of deer breeding activities. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the increase in the substitution ratio for ante-mortem testing will have a direct financial impact on their business. The department agrees with the comment and responds that although there will be a financial impact resulting from increased testing requirements, that impact is unavoidable in light of the threat posed to captive and free-ranging deer populations by CWD. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the deer breeders contribute to the deer industry that brings money to the state and losing that revenue would be disastrous. The department disagrees with the comment and responds that most revenue from hunting in Texas is unrelated to deer breeding activities. No changes were made as a result of the comment.

One commenter opposed adoption and stated that it is "Too expensive with labor, with medicines, vet bills, death loss resulting from testing, limiting deer movement by not allowing flexibility to move deer unless tested 6-9 weeks prior, etc. " The department disagrees that the rules as adopted present an insuperable bar-

rier to continued participation in deer breeding operations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department "needs to work together in understanding both sides to achieve the end goal - with the current rules suggested, vets are making a bundle, farmers are being suppressed, and hunters and ranchers are gonna be suppressed in years to come as the expense has to get passed on." The department agrees that cooperative efforts are the most fruitful but responds that the department has been assiduous in its efforts to involve the regulated community and neither deer breeders nor anyone else is being suppressed. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules place an unnecessary and prohibitively costly burden on breeders whose ranches have no chance of having CWD in their deer or facilities. The department disagrees with the comment and responds that the rules are a necessary and reasonable response to the presence of a demonstrable threat that has been repeatedly detected in deer breeding facilities. No changes were made as a result of the comment.

Twenty-one commenters opposed adoption and stated that the current rules should be retained, offering, variously, that the current rules are effective or sufficient and there is no need for additional rules. The department disagrees with the comments and responds that the continuing discoveries of CWD in deer breeding facilities points to the conclusion that the current rules are not effective or sufficient. No changes were made as a result of the comments.

Three commenters opposed adoption and stated specifically that 14-day requirement in current rule would have caused all recent CWD detections to have been made earlier, had the requirement been in place prior to this year. The department disagrees with the comments and responds that the evidence suggests CWD was present for at least a year without being detected in at least one facility that had a history of prompt sample submission, and the department concludes that although the 14-day requirement is an improvement over the previous rules regarding sample submission times, it would not have allowed detection in some of the facilities that have since been declared positive facilities. No changes were made as a result of the comments.

Seventeen commenters opposed adoption and stated that 12,000 deer were tested under emergency rules without finding CWD. The department disagrees with the comment and responds that CWD was detected in one additional deer breeding facility under the emergency rules. The department also notes that less than 60% of breeding facilities are represented in the ante-mortem testing that occurred under the emergency rule, which means that the remaining deer breeding facilities were being inadequately surveilled. No changes were made as a result of the comments.

Ten commenters opposed adoption and stated that testing is costly and very stressful on animals, especially during the months that testing is required in order to transport deer before deadlines. The department agrees that testing is an expense and that it necessarily involves stress on breeder deer, but responds that the testing requirements of the current rules - which reflect the department's attempt to minimize such impacts in response to similar concerns from permittees, were demonstrably ineffective in both providing for adequate disease surveillance and preventing the spread of CWD to and from deer breeding facilities. The department also notes that testing

all mortalities reduces the number of ante-mortem tests needed and that the skill and experience of the practitioner are important factors in the outcome. The department also notes that neither the current rules nor the rules as proposed impose deadlines for the transport of deer, which can be moved at any time of the year provided the breeding facility is authorized to move deer, although by statute buck deer cannot be transported with antlers intact within 10 days of or during an open deer season. Finally, the rules as adopted allow for ante-mortem samples to be collected as much as eight months prior to the transfer of a breeder deer to a release site, which provides ample time to allow for sampling to occur without haste and during times of the year when cooler temperatures reduce stress on the deer. No changes were made as a result of the comment.

One commenter opposed adoption and stated that every time a live test is performed there is a chance of killing the test subject, for no better reason than to see if the animal is positive for CWD. The department agrees with the comment and responds that ante-mortem testing is allowed under the current rules at the specific request of the regulated community precisely because the only alternative is post-mortem testing, which is always fatal to the test subject. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules will put more stress on deer and increase the chances of infection. The department disagrees with the comment and responds that although stress to breeder deer is a consequence of live-animal testing required under the rules, the alternative is post-mortem testing which necessarily entails mortality of the test subject. The department was persuaded by comment from the regulated community during a previous rulemaking to allow ante-mortem testing and Texas remains the only state that accepts ante-mortem test results. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules should be tabled until less invasive testing procedures are developed and accepted. The department disagrees with the comment and responds that the department approved the use of ante-mortem testing at the request of the regulated community and remains the only state to do so. No changes were made as a result of the comment.

One commenter opposed adoption and stated that TPWD wants to require antemortem testing for deer as young as eight months of age. The commenter stated that there is no scientific evidence that a deer eight months of age would be a carrier of CWD and that most concerned individuals would consider it barbaric and potentially life threatening to subject a fawn to an antemortem rectal or tonsillar biopsy. The department disagrees with the comment and responds that CWD has been detected in deer as young as six months of age and that testing of such deer is necessary not only to provide additional assurance that CWD is not present in a breeding facility, but to provide an avenue for breeding facilities to continue to transfer deer. No changes were made as a result of the comment.

Four commenters opposed adoption and stated, variously, that the rules are not supported by science or have no scientific basis. The department disagrees with the comments and responds that the rules as adopted were developed by epidemiologists, veterinarians and biologists according to accepted and defensible methodologies for determining disease risk and appropriate mitigation strategies. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the department raises the possibility of a CWD pandemic as a scare tactic in order to justify efforts to marginalize deer breeders that "proved genetics out performed [sic] any management practice." The department disagrees with the comment and responds that the sole goal of the rules as proposed is to protect captive and free-ranging deer in Texas from a disease the empirical evidence proves has the potential to devastate those populations and the economies that depend upon them. The department also responds that it is not engaged in a competition with deer breeders to prove the virtue of any management practice. No changes were made as a result of the comment.

One commenter opposed adoption and stated that that live-animal tests are not accurate. The department disagrees with the comment and responds that live-animal tests, while not as accurate as post-mortem tests for the detection of CWD, are useful for detecting the presence of CWD in a captive population under certain circumstances. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should do a better job of testing for CWD in free-ranging populations because it is a fact that CWD exists in free-ranging populations in states where there are no breeding facilities. The department disagrees with the comment and responds that not only is the surveillance effort with respect to free-ranging populations meeting its goals of providing statistical certainty that CWD would be detected where present, the fact is that CWD has been repeatedly detected in breeding facilities in Texas, which are regulated by the department, and the department has a statutory duty to protect Texas' wildlife resources. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "TPWD continues to write rules and regulations for CWD monitoring that is antiquated based on current knowledge. Using research and data from across the nation it's easy to see that CWD is not the threat to humans or wildlife populations that TPWD proposes it to be. We have know [sic] CWD to exist for more than 50 years, yet there is not a single case of a human contracting it. There are more deer and Elk [sic] roaming the United States now than there was when CWD was first discovered." The department disagrees with the comment and responds that there is no question that CWD is in fact a threat and that the department is not aware of any research that would suggest otherwise. The department also notes that the rules are in no way predicated on a threat to human health and that the rules are intended to protect wildlife resources in Texas. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "[T]he entire premise is based on positive tests not deaths of deer ...many deer test positive but live until 6 plus years which most are harvested ...". The department disagrees with the comment and responds that the premise of the rules is that deer exposed to or infected with CWD are an existential threat to free-ranging and captive deer populations and therefore an effective surveillance effort is necessary. The department also responds that under current rule a breeding facility where a deer tests positive for CWD is automatically prohibited from releasing any deer and therefore there is no way for such deer to be harvested and that such release is a criminal act. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should look "at the gene research in sheep and new studies

in Alberta F and D genes ...those deer cant get CWD as research provesdeer breeders can help with that ...but NO Texas A&M needs testng \$\$\$ and biologists have to prove they are smarter than a dirty rotten deer breeder." The department disagrees with the comment and responds that there is no research the department is aware of that concludes or suggests the existence of genetic immunity to CWD in any population of susceptible species. The department also responds that it welcomes any contribution to research efforts from the regulated community and that the sole motivation for the rules as adopted is to protect captive and free-ranging deer in Texas from a disease the empirical evidence proves has the potential to devastate those populations and the economies that depend upon them. No changes were made as a result of the comment.

One commenter opposed adoption and, to the extent that the department is able to understand the comment, stated that the department's approach to CWD in deer breeding facilities is to kill all the deer rather than live-testing them, which is wrong and not based on science. The department disagrees with the comment and responds that the rules as adopted were developed by epidemiologists, veterinarians and biologists according to accepted and defensible methodologies for determining disease risk and appropriate mitigation strategies. The department also responds that it is a scientific fact that the detection of CWD within a captive population means that every deer within that facility has been exposed, potentially infected, and potentially capable of spreading CWD to unexposed populations. Because research demonstrates that CWD can take some time to become detectable and that CWD prions are known to be environmentally persistent, the optimal way to prevent CWD from being spread from a facility where it has been detected is to depopulate the facility and test every deer. No changes were made as a result of the comment.

One commenter opposed adoption and stated Texas A&M has made and will make significant revenue because of the testing requirements of the rules. The department neither agrees nor disagrees with the comment and responds that the financial particulars of Texas A&M University do not play a role in the department's formulations of disease management strategies. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "the deck is stacked against deer breeders" within the department's CWD Task Force, that the department knows it is unfair, and that comments are not sent to the commission. The department disagrees with the comment and responds that CWD is a threat to all deer in the state; therefore, the department's CWD Task Force represents a cross-section of interested parties, including landowners, hunters, veterinarians, and epidemiologists, as well as members of the deer breeding community, which the department believes is a rational approach that does not prejudice any point of view or perspective. The department further responds that the role of the CWD Task Force is strictly advisory and the ultimate decision with respect to the promulgation of regulations lies with the commission. Finally, the department notes that each member of the commission has received a verbatim copy of all public comment. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "TP&W can make up any statements or reports they want that fits their narrative. For example "There will be no adverse economic impacts on sales of deer for MQ facilities as a result of the proposed new rules." This is an absolute inaccurate statement even by their own admission for the added cost for all of the ante-mortem test-

ing. They try to down play the cost to do the testing by using the lowest possible numbers which are not realistic." The commenter continued in a similar vein, noting the difficulties in contracting veterinary services, issues with bad samples, bottlenecks at the labs, and obtaining medications and delivery instruments. The commenter stated that a doe currently sold for \$1,000 will now cost \$1,500 and mortalities occurring as a result of live-testing represent a complete sales loss. The department disagrees that there is any attempt to mislead or be deceptive with respect to the department's intent, goals, or statements. The statement in question is accurate. The department understands "adverse" to mean something that prevents or arrests an activity or makes it exceedingly difficult to continue. Deer breeders who comply with testing requirements and are cleared to transfer deer are free to buy and sell deer. From anecdotal evidence, publicly available information, and the claims of the regulated community regarding the sales prices of individual deer, the department concludes that although there will be economic impacts to MQ facilities as a result of the rules, those impacts will not prevent breeders from remaining in business. The department further responds that the various services and products needed to comply the rules as adopted are not ordinarily difficult to obtain in almost all parts of the state, but do vary in availability and cost from place to place and region to region. For instance, a facility in a county or locality with few veterinarians might have to contract with a veterinarian willing to travel; however, this would be true for any other person in need of veterinary services as well. The department further notes that it is not uncommon in most business models to base the sales price of goods and services on the cost of production, that many factors continuously impinge upon those costs, and that given the anecdotal evidence, publicly available information, and claims of the regulated community regarding the sales prices of individual deer, there continues to be a reasonable opportunity for MQ facilities to generate profit and maintain current profitability. No changes were made as a result of the comment.

Thirteen commenters opposed adoption and stated, variously, that more deer die of EHD, Blue Tongue, anthrax, pneumonia and/or cars every year than CWD. The department neither agrees nor disagrees with the comment and responds that the purpose of the rules is to protect free-ranging and captive deer populations from CWD and therefore the number of fatalities occurring in deer breeding facilities or in free-ranging populations as a result of other diseases, especially non-reportable diseases, and vehicles, is irrelevant with respect to the purpose of the rules. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the "idea of having space between pens is crazy, costly, misuse of land, abuse and unhealthy for fawns" and that "30 feet between pens is also a food source that the fawns will not have access to." To the extent that the department is able to determine the context of the comment, the department disagrees that the rules establish or require any sort of space between pens used to hold breeder deer. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules do not address exotics that carry CWD and implied that there should be an explanation for the department's lack of authority to do so. The department agrees that it has nonstatutory authority to regulate disease management in exotic livestock and responds that the Texas Legislature has delegated that authority to the Texas Animal Health Commission. No changes were made as a result of the comment.

One commenter opposed adoption and stated that elk, sika, and red deer are traded freely without testing. The department neither agrees nor disagrees with the comment and responds that the department's regulatory authority is restricted to white-tailed and mule deer; thus, while concerns regarding the ramifications associated with CWD in other susceptible species are certainly valid, the department does not possess the statutory authority to regulate those species. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the requirement for the submission of test samples from mortalities within seven days of discovery is not enough time for facilities that are "far away from town." The department disagrees with the comment and responds that even the most remote reaches of the state are within a day's drive of a post office or shipping facility. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the current requirement for mortalities to be tested within 14 days is sufficient to detect CWD without requiring the testing of deer prior to release. The department disagrees with the comments and responds that the evidence suggests that CWD likely had been in some of the positive facilities for multiple years, indicating a significant delay/failure in detection. As all of those facilities (like many breeder herds in Texas) had substantial portions of their inventories being released each year without any required testing, it is very likely that these large release populations hampered the department's efforts to detect CWD in these facilities in a timely fashion. The department believes that ante-mortem testing before release would have significantly improved the detection probability and help prevent the spread of CWD. The seven-day submission rule may have prevented two trace-out herds from becoming infected, but it would not have prevented a third CWD-positive trace-out herd. In one index facility CWD was detected via ante-mortem rectal biopsy testing, underscoring its utility as a general surveillance tool. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that requiring mortalities to be reported in one day is unreasonable and onerous because most deer breeders do not live on the premises. The department disagrees with the comments and responds that the provision the commenter refers to is applicable only to facilities that are epidemiologically connected to facilities where CWD has been found and therefore represent a significant risk of spreading CWD until they can be cleared. The department also responds that daily inspection of deer in permitted deer breeding facilities increases the probability that viable samples for CWD testing can be collected. No changes were made as a result of the comments.

One commenter opposed adoption and stated that it is unrealistic to expect all mortalities 12 months and older as well as all release deer be tested. The commenter stated that it is not physically possible to find dead deer in time to extract valid samples. The department disagrees with the comment and responds that it is reasonable to expect persons who hold deer in captivity under a permit to monitor those captive animals closely enough to discover mortalities promptly and that the rules allow for ante-mortem test results to be substituted for missed mortalities. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the "Public Benefit/Cost Notes" section of the proposed preamble is grossly inaccurate because it states that there will be no adverse economic impact on MQ facilities. The commenter continued

"If breeding pens become too populated, the new proposed rules require anti-mortem testing before the excess test eligible breeder deer can be released to adjoining property owned by the breeder. A realistic estimate of the total cost of the testing process would range between \$400-\$500 per animal unit. It is also common for a breeder to "'grow out' fawns so their survival rate is enhanced and a typical business model has been to retain doe fawns until they are yearlings and buck fawns until they are two years old." The commenter also stated that making the deer breeding business unprofitable because of unreasonable rules constitutes a government taking because "a breeder has invested accountable funds in developing his enhanced genetic breeding herd, constructed deer handling facilities and purchased equipment to efficiently maintain the health and wellbeing of the permitted breeder herd. Therefore both a taking of the breeder's investment by dramatically reducing its value and damages to the remainder could very well be claimed if the current proposed rules are adopted." The department disagrees with the comment and responds that, as noted in the proposed preamble, although the rules would result in an increased cost of compliance for deer breeders, the rules do not directly affect the sales prices of breeder deer, which are a business matter between buyer and seller; in most business models, increased operational costs are recovered by increasing the price of the good or service being offered, at the discretion of the operator. The department's estimates of the cost of testing are reasonably reflective of actual costs, which the department understands may vary. The department also responds it is the responsibility of individual deer breeders to determine the capacity of their facility and to avoid allowing deer within the facility to produce offspring in excess of what the breeder can responsibly manage or dispose of. Similarly, issues surrounding the practices of different breeders with respect to retention of deer and when or at what life stage a deer is transferred for whatever reason are solely the province of the permittee; the department's concern is that efficacious surveillance be maintained at all times within deer breeding facilities and especially prior to transfer. The department disagrees that the rules as adopted constitute a taking, as no component of the rule results in a governmental seizure of private property nor a restriction of the use of private property to the extent that the owner is effectively deprived of all economically reasonable use or value of their property. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there will be an adverse economic impact on persons required to comply with the rules as proposed. The department agrees that the rules will result in increased testing costs and may result in lost sales for deer breeders, but that impact will not prevent any deer breeder from continuation of deer breeding activities. No changes were made as a result of the comment.

One commenter opposed adoption and stated that under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses and that the impact of department rules has forced deer breeders out of business. The department agrees that an economic impact statement and a regulatory flexibility analysis are required for rules that may have a direct adverse economic impact on small and microbusinesses. The department has complied with that requirement. The department disagrees that the cost of compliance with the rules as adopted or previous rules have either forced deer breeders out of business or are the sole reason deer breeders have

chosen to stop deer breeding activities. The department considers that deer breeders, like all businesses subject to regulation, may choose to cease operations for a variety of reasons, including decisions to pursue other challenges, poor business management decisions, connectivity to CWD-positive herds, failure to remain competitive, and other factors. No changes were made as a result of the comment.

One commenter opposed adoption and stated disagreement with the department determination that "there will be no effect on rural communities." The commenter proceeded to enumerate the value of purchases at hardware and feed stores, the employment of "three families," and referenced the purchase of groceries, gas, supplies and meals in the locality, asserting the generation of greater than five million dollars of economic impact in the community. The commenter concluded by stating "[W]hen the majority of the breeders are forced out of business it will have a major impact on small communities around the state." The department disagrees that deer breeding is a generally significant driver of economic activity at either the micro or macro level in rural communities. Government Code, Chapter 2006 defines a rural community as "a municipality with a population of less than 25,000 people." There are over 1,000 such municipalities in Texas. There are 941 deer breeding facilities in Texas. Most are not located within a municipal jurisdiction and therefore do not meet the definition provided in Government Code. Nonetheless, the primary drivers of economic activity in rural communities are, according to various sources, accommodation and food service, retail trade, health care, government, natural resource extraction (mining, oil and gas, timber, etc.), construction, and professional, scientific, and technical services. The department also responds that the rules as adopted are not expected to cause a majority of deer breeders to cease operations. No changes were made as a result of the comment.

One commenter opposed adoption and stated the law should apply equally regardless of fence height. The department disagrees with the comment and responds that the rules are not predicated on fence height, but on the epidemiological dictates presented by captive populations possessed pursuant to deer breeding permits. No changes were made as a result of the comment.

One commenter opposed adoption and stated that testing shouldn't be mandatory. The department disagrees with the comment and responds that voluntary testing is highly unlikely to be efficacious and no testing would be disastrous, as there is definitive evidence that CWD is present in Texas breeder deer and has been spread. No changes were made as a result of the comment.

One commenter opposed adoption and stated that ear tags should not be required for released deer following ante-mortem testing because deer breeders are testing more than anyone else. The department disagrees with the comment and responds that the only tagging requirement imposed by the rules as adopted applies to deer being released to or from a facility that has been epidemiologically connected to a CWD positive facility, which is necessary to quickly identify such deer in the event that additional epidemiological investigations become necessary. The department also responds that, as noted elsewhere in this preamble, the level of CWD testing performed on captive herds has not been more effective in detecting CWD where it exists than the department CWD surveillance efforts

within free-ranging populations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the origins of CWD should be determined before rules are imposed. The department disagrees with the comment and responds that acting quickly to detect and contain the disease wherever it exists is far more important than determining the origin of the disease, which, although important, could take years. Without rules, especially rules governing the human-induced non-natural movement of live deer, the disease could spread with catastrophic effect. No changes were made as a result of the comment.

One commenter opposed adoption and stated that if deer breeders are forced to close the department will lose that surveillance effort. The department disagrees with the comment and responds that when a facility closes, there are no longer any deer to monitor within that facility. No changes were made as a result of the comment.

One commenter opposed adoption and stated that nothing should be done to stop CWD and that nature should be allowed to take its course. The department disagrees with the comment and responds that the department has a statutory obligation to protect wildlife resources and allowing CWD to spread unchecked will result in significant harm to captive and free-ranging deer population. No changes were made as a result of the comment.

One commenter opposed adoption and stated the rules are not justified given the minuscule positivity rate for CWD. The department disagrees with the comment and responds the presence of CWD in even one animal is a threat to captive and free-ranging cervid populations in the state and justifies a robust response to detect and contain it. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that CWD is actually or likely scrapie and not a distinctly separate disease. The department disagrees with the comment and responds that scrapie and CWD are similar but separate prion diseases. Regardless, the management strategies adopted are necessary to detect and contain the prion disease that has been detected in seven permitted deer breeding facilities thus far in 2021. No changes were made as a result of the comments.

One commenter opposed adoption and stated that "western blot should be required." The department disagrees with the comment and responds that the western blot test is not an appropriate or readily available diagnostic tool and that immunohistochemistry is the USDA-accepted confirmatory test for CWD. Nonetheless, the department has submitted samples, including many CWD-positive samples, for CWD-strain typing, which involves western blot. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "science shows not enough copper or the right kind of copper is what the problem is not some wild crazy disease that's going to kill all the deer." The department disagrees with the comment and responds that there is no scientifically accepted argument that CWD is related to the presence, absence, or type of copper in deer. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules will eliminate small operations and create "a more monopolistic market because you got rid of the small operation competition." The commenter further elaborated to suggest that only the super-

wealthy would be able to participate in a monopolized trophy market. The department disagrees with the comment and responds that deer breeders already have what amounts to a monopoly, as no other persons are legally able to buy and sell deer in Texas, and that the size of any given breeding operation is largely a matter of the degree to which a person desires or is able to finance such activities. The department also responds that many if not most hunters are interested in more aspects of deer hunting than the acquisition of trophies and many trophy hunters prefer deer that have not been produced by means of animal husbandry. No changes were made as a result of the comment.

One commenter opposed adoption and stated that that many deer breeders are motivated not by profit but by a desire to "keep the gene pool in balance." The department disagrees with the comment and responds that based on observed historical public comment, testimony, advertising, and anecdotal evidence, most if not all deer breeders desire to make a profit. The department also responds that the gene pool is the total genetic identity of a population and the addition of a few thousand individuals that have been line bred for a specific characteristic that does not provide any survival advantage (and in fact probably selects for a less than average lifespan) to a population of many millions is unlikely to result in any detectable contribution to the genetic diversity of the population. No changes were made as a result of the comment.

One commenter opposed adoption and stated that if deer breeding goes away there will be no more deer. The department disagrees with the comment and responds that deer breeding is unrelated to the survival of deer in Texas, except to the extent that the unchecked spread of CWD could adversely impact the health of free-ranging and captive deer populations in the state. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules amount to a tax on deer breeders. The department disagrees with the comment and responds the rules are not a tax but an effort to protect captive and free-ranging deer from the threat of CWD. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules shouldn't apply to breeders because deer are in a controlled environment, while free-range deer can go wherever they want and spread CWD. The department disagrees with the comment and responds that the fundamental difference between breeder deer and deer in free-ranging populations is that deer in free-ranging populations are delimited by the geographical extent that they are able to move on their own and their contact with other deer is delimited accordingly, whereas breeder deer are intermingled with other breeder deer and transported to hundreds if not thousands of locations where they are able to come into contact with other deer, which presents a significant increase in the probability of disease transmission. No changes were made as a result of the comment.

One commenter opposed adoption and stated that CWD should be managed by TAHC because TPWD doesn't manage disease in quail, exotics, turkey, wild horses or other animals. The department disagrees with the comment and responds that quail and turkey are species regulated by the department, while the other species mentioned by the commenter are not. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules will limit rancher's ability to improve genetics. The department dis-

agrees with the comment and responds that there is a common misconception that deer breeding produces deer that are genetically fitter than indigenous deer, simply because of greater antler mass. Antler mass is simply one characteristic and is not indicative of any trait related to survival or reproductive success (i.e., genetic fitness). In any case, breeder deer are the result of line breeding of non-indigenous deer (it has always been unlawful to use deer from populations indigenous to Texas in breeding facilities) that does not occur in nature and the phylogenetic implications of breeder deer introduction to native herds are questionable, as it is a biological fact that the characteristics of organisms tend to reflect the conditions or environments where the organism evolved and that once introduced, an organism is subject to those conditions and will evolve or adapt accordingly. No changes were made as a result of the comment.

One commenter opposed adoption and stated that ante-mortem testing should count towards MQ qualifications and release. The department agrees with the comment and responds that the rules allow ante-mortem test results to be used to satisfy release testing requirements within certain time parameters. No changes were made as a result of the comment.

One commenter opposed adoption and stated that deer breeders are already compliant. The department disagrees that the rules are necessary because of compliance issues and stresses that although there are unscrupulous persons who consciously violate and attempt to evade CWD detection, the more important issue is having effective rules that provide assurance of early detection of CWD in breeding facilities. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the terms "captive" and "free-ranging" are meaningless because all breeder deer came from wild populations. The department disagrees with the comment and replies that because it has never been lawful in Texas to capture and confine native deer for use in deer breeding facilities, all breeder deer have to have originated in wild populations, but in other states, making the distinction appropriate. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the preamble for the proposed rules didn't address the increase in cost of compliance associated with the increased ante-mortem substitution ratio, the decreased minimum eligible age for testing, or the required post-mortem testing in trace herds. The commenter also stated that the department did not address the cost of lost sales for breeding facilities designated NMQ. The department disagrees with the comment and responds that the preamble for the proposed rule did in fact address the increased cost of compliance associated with testing by estimating a 20 percent increase in cost, which refers to all testing required by the rules regardless of scenario. The preamble for the proposed rule did state that possible loss of sales could be anticipated for trace facilities designated NMQ and noted that the rules provided avenues for such facilities to gain MQ status. No changes were made as a result of the comments.

One commenter opposed adoption and stated that deer breeders treat the deer in their facilities like family and would do anything for them and "more rules just pushes [sic] these land stewards out of business." The department disagrees with the comment and responds that deer breeding is animal husbandry, not wildlife conservation and that the rules are necessary for the department to discharge its duty to protect wildlife resources. No changes were made as a result of the comment.

Four commenters opposed adoption and stated that wild deer movement should not be lumped in with breeder deer. The department is unable to ascertain the point of the comment, but disagrees that the rules conflate captive populations with free-ranging populations for disease management purposes. No changes were made as a result of the comment.

One commenter opposed adoption and stated that representatives of the regulated community offered proposed regulations that were totally ignored. The commenter stated "the Federal rule and its accompanying program standards were meant to control CWD, not eradicate it. Instead of a control program, TPWD is using it to eradicate deer breeders. If these proposed regulations are passed as written, Texas will have the distinction of possessing the most onerous rules in the deer industry, which again will not eradicate the disease but will most assuredly drive many breeders financially out of business." The department disagrees with the comment and responds, first, that the proposed regulation alluded to by the commenter were abjectly insufficient to provide assurances for the early detection and containment of CWD in breeding facilities, and second, that the department is obliged to comply with applicable federal law and adheres to the federal recommendations with respect to CWD program standards to guide epidemiological investigations and CWD response efforts. Those standards are used nationwide and are recommended by the USDA, but the situation (degree of deer breeding, environment, amount of hunters, deer population, etc.) in each state is very different; thus, the standards give significant latitude to states to determine response. In Texas, the overall prevalence (free-ranging or captive populations) of CWD is still low, unlike many other states. Consequently, the department prioritizes transmission mitigation strategies (ante-mortem testing prior to release, carcass movement restrictions, prohibition on importation of white-tailed and mule deer, etc.) and rapid CWD response (depopulation of positive herds, removal of trace animals, ante-mortem testing trace herds, etc.) to contain CWD and keep prevalence low. Actions that may be viewed as "eradication" efforts by deer breeders (such as depopulation, five-year quarantines, whole-herd ante-mortem testing, etc.) are performed because CWD has made recent incursions into areas where the disease has never been detected. By responding swiftly and aggressively to these incursions, the department hopes to extirpate CWD locally before it can propagate and affect captive or free-ranging populations. The department also notes that complete CWD eradication in Texas is not the department's goal and is not feasible with the CWD management tools currently available; however, the department has a statutory duty to protect wildlife resources, which is reflected in risk-based measures that mitigate CWD transmission, contain the disease where possible, and protect Texas' hunting heritage. No changes were made as a result of the comment.

One commenter opposed adoption and specifically stated that "very little is and has been done by law enforcement to "go after" the abusers or bad apples that create the problems. Sorry but TPWD law enforcement has continued to deteriorate." The department disagrees with the comment and responds that the rules are not necessary because of compliance issues and stresses that although there are unscrupulous persons who consciously violate and attempt to evade CWD detection, the more important issue is having effective rules that provide assurance of early detection of CWD in breeding facilities. The department also disagrees that there has been any deterioration or reduction in department law enforcement efforts with respect

to deer breeders. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should be focused on the "bad guys" instead of lumping all deer breeders together. The department disagrees with the comment and responds, first, that the rules apply to all deer breeders equally and are an attempt to manage the threat of a dangerous disease, not an attempt to persecute any deer breeder. The rules as adopted were promulgated because the previous rules were insufficient. Therefore, more stringent rules are necessary to protect captive and free-ranging deer populations from CWD. No changes were made as a result of the comment.

One commenter opposed adoption and stated that 97% of deer breeders are compliant with regulations and have "voluntarily enacted strict surveillance on our deer herds to position ourselves to survive in the industry and continue to protect CWD from our herds." The department disagrees with the comment and responds that the compliance figure cited even if accurate does not negate the fact that CWD continues to be detected in deer breeding facilities. No changes were made as a result of the comment.

Three commenters opposed adoption and stated, essentially, that it is impossible to protect free-ranging deer populations from CWD because CWD-positive deer can come across the borders of neighboring states. The department disagrees with the comment and responds that a robust, continuous surveillance effort has now been in place in Texas for many years, which enables the department to detect and respond to CWD emergence if and when it should occur. No changes were made as a result of the comment.

One commenter opposed adoption and stated that despite the department's claims that the rules are risk-based, they are not because "[R]isk based relies on two factors; consequence and likelihood. If you look at the breeding operations you will see that there are many breeders that are negatively affected by the new rule that are "no risk" to the state of Texas. However, your one size fits all approach is in direct conflict to risk based." The department disagrees with the comment and responds that there continues to be a persistent misunderstanding of the meanings of certain terms as they pertain to epidemiology. In an epidemiological context, risk is not a matter of calculated likelihood, as it is, for instance, with insurance for the purposes of transferring or distributing financial liability, but of the possibility that disease can be transmitted. Many people believe that there are a large number of deer breeding facilities that are "unconnected" to index and trace facilities, but due to several factors, including the extensive documented interconnectivity of deer breeding facilities, release sites, and veterinary practitioners, very few breeding facilities in the state have literally zero connection to all other breeding facilities. Additionally, two of the facilities in which CWD was detected in 2021 had not acquired deer from other facilities in more than five years, which the department assumes the commentor would consider "unconnected" to other facilities. No changes were made as a result of the comment.

One commenter opposed adoption and stated that deer older than the incubation period for CWD should not have to be euthanized. The commenter also stated that the incubation period should be 42 months instead of 36 months, which could save the lives of many deer and protect a lot of breeders from unnecessary death loss. The department disagrees with the comment and responds that the time between when a deer is exposed to CWD and the disease can first be detected if the deer is infected

(exposure period) can occur at any time during a deer's lifespan. In addition, the department believes 36-month exposure period is sufficient for the whole-herd ante-mortem test requirements for trace-out breeding facilities provided for in the rules as adopted. No changes were made as a result of the comment.

One commener opposed adoption and stated that the rule should require the submission of the retropharyngeal lymph node (RLN), accompanied by the obex if available. The commenter stated that the RLN is not as fragile as the obex tissue and that permittees should get credit for a post-mortem test if the RLN is viable but the obex is not. The department disagrees with the comment and responds that CWD in white-tailed deer and mule deer is typically detected in the RLN sooner than in the obex and the department therefore reasons that requiring the submission of the RLN in addition to the obex will result in earlier detection of CWD positive deer and increase the efficacy of post-mortem CWD testing. In addition, by requiring the submission of both tissues, the possibility of wasted test effort is reduced. For example, if an obex from a deer yields inconclusive post-mortem testing results, an RLN from the same animal may not. Finally, the department notes that making submission of the obex optional would likely result in permittees choosing not to submit the obex at all, which confounds the goal of the department. No changes were made as a result of the comment.

One commenter opposed adoption and stated that deer breeders have done everything asked of them and the state just responds with more rules and testing. The department disagrees with the comment and responds that the rules are not necessary because of compliance issues and stresses that although there are unscrupulous persons who consciously violate and attempt to evade CWD detection, the more important issue is having effective rules that provide assurance of early detection of CWD in breeding facilities. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should work with TAHC to develop individual herd plans for each deer breeder. The department neither agrees nor disagrees with the comment and responds that compliance with herd plans is required for the removal of TAHC issued quarantines and hold orders. No changes were made as a result of the comment.

One commenter opposed adoption and stated that instead of the proposed rules, the department should require testing "100% or a random selection in each pen as a audit every third year to spread out those costs to help the farmers. " The department disagrees with the comment and responds that random sampling is grossly ineffective at preventing the spread of disease in populations that are transferred as frequently as breeder deer are. No changes were made as a result of the comment.

One commenter opposed adoption and stated that it is not possible to collect samples and receive a "not detected" on 100% of eligible mortalities because the lab was unable to test them or "that they were eligible when they were. In each case, our veterinarian sent the entire heads in." The department disagrees that the rules are responsible for errors in collection or preparation of samples. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "the department is ruining things for people who are genuinely trying to do the right thing and improve wildlife." The department disagrees with the comment and responds that the rules as proposed are

designed to protect captive and free-ranging deer populations, are completely science-based, and are not motivated by any consideration other than the protection of indigenous public resources. No changes were made as a result of the comment.

The department received 48 comments opposing proposed provisions that implemented a moratorium on the issuance of Triple T permits. Of the 48 comments, 25 offered a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that Triple T is a useful tool and shouldn't be eliminated because of mismanagement by breeder facilities. The department agrees that Triple T is a valuable tool but disagrees that the department intends to eliminate it. The rule as adopted imposes a temporary moratorium on Triple T permit issuance until the department in cooperation with stakeholder groups is able to develop efficacious methodologies for assuring that deer movement under the permit is not inadvertently spreading CWD. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the Triple T program is an amazing tool and changing it will wipe out small businesses that serve hunters and result in massive destruction on ranches with surplus population that should be shared with those in need. The department agrees that the Triple T permit is a valuable tool but disagrees that a temporary moratorium on permit issuance will either wipe out small businesses, result in significant overpopulation issues, or "hurt those in need." The purpose of the Triple T permit is to allow adjustments in deer populations for better wildlife management and the permits may be issued only if recommended by wildlife stocking plans approved by the department for both the origin and the destination of the deer. It is not intended to function as a business enhancement tool or as a means of distributing deer to those who want deer. The moratorium imposed by the rules as adopted is intended to allow the department in cooperation with stakeholder groups to develop efficacious methodologies for assuring that deer movement under the permit is not spreading CWD. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the Triple T program is successful and increases the value and aesthetics of ranches. The department agrees that the Triple T program has been successful and neither agrees nor disagrees with the remainder of the comment. No changes were made as a result of the comment.

One commenter opposed adoption and stated that a property that properly tests for CWD should "face the same standards as a property allowed to transport deer." The department understands the intent of the comment to be that the disease management requirements should apply equally to both source and destinations for all deer transfers. The department agrees with the comment and responds that efficacious disease management protocols for both the source and the destination of deer are crucial to stopping the spread of CWD. No changes were made as a result of the comment.

One commenter opposed adoption and stated that suspension of the Triple T program is a "taking of land rights and values without proper representation" and has nothing to do with breeder deer. The department agrees that the Triple T program is not related to deer breeding but disagrees that the rules as adopted constitute a taking of land rights and values, as the rules do not restrict or limit a landowner's right to the property that would otherwise

exist in the absence of the rules. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "deer moved by TTT are tested and clean of any TSE or other malady." The commenter further stated that landowners need Triple T deer for management. The department agrees that the Triple T program is a valuable deer management tool, but disagrees that under current rule there is sufficient assurance that transplanted deer are free of TSEs. The purpose of the temporary moratorium on Triple T permit issuance is to allow time for the department in cooperation with stakeholder groups to develop efficacious methodologies for assuring that deer movement under the permit is not spreading CWD. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the Triple T program has been very important and is beneficial to landowners as well as the companies that raise and sell deer. The department agrees that the Triple T program is useful to landowners but disagrees that there is or can be any buying or selling of deer under a Triple T permit, which by statute is criminal conduct. No changes were made as a result of the comment.

One commenter opposed adoption and stated that Triple T should not be eliminated because "[T]hose ranches that have never introduced genetics to their ranch and have 100% native herds under high fence should still be permitted to donate deer to other ranches that wish to also maintain 100% native herds." The department disagrees that the rule as adopted eliminates the Triple T program. Instead, it provides for a temporary moratorium to allow the department in cooperation with stakeholder groups to develop efficacious methodologies for assuring that deer movement under the permit is not spreading CWD. No changes were made as a result of the comment.

One commenter opposed adoption and stated that Triple T permits should be suspended for one year to allow time for more research and study, not done away with. The department disagrees that it intends or ever intended to eliminate the Triple T program. No changes were made as a result of the comment.

One commenter opposed adoption and stated that Triple T is the safest and most native way to enhance deer herds and that eliminating the ability to Triple T will greatly hurt ranch owners. The department disagrees that the rule as adopted eliminates Triple T permits or that the department intends to eliminate the Triple T program. No changes were made as a result of the comment.

One commenter opposed adoption and stated that it makes no sense to stop the movement of healthy deer from one property to another and the deer are being moved to high fence ranches so there is no mixture with the states [sic] free range deer herd. The commenter further stated "[E]ven if there was a problem it would be isolated to that one property and the program is necessary as an alternative to having to buy expensive deer from breeders." The department disagrees with the comment and responds that all deer moved under Triple T permits are the property of the people of the state and that human-induced artificial movement of deer is a known factor in the spread of CWD, which is why the rule as adopted imposes a temporary moratorium on Triple T permit issuance to allow the department in cooperation with stakeholder groups to develop efficacious methodologies for assuring that deer movement under the permit is not spreading CWD. In addition, the department responds that there is no requirement

that a Triple T release site be high fenced. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the Triple T program should not be cancelled because it is very important and it will have a dire effect on herd management plans that have been working well. The department agrees that the Triple T program should not be cancelled and responds that the rule as adopted imposes a temporary moratorium on Triple T permit issuance to allow the department in cooperation with stakeholder groups to develop efficacious methodologies for assuring that deer movement under the permit is not spreading CWD. No changes were made as a result of the comment.

One commenter opposed adoption and stated that when Triple T is utilized on free ranging native deer, the danger of spreading CWD is minimal given the precautions that are now mandated. The department disagrees with the comment and responds that current rules are not sufficient to provide assurances that Triple T activities do not spread CWD, which is why the rule as adopted imposes a temporary moratorium on Triple T permit issuance to allow the department in cooperation with stakeholder groups to develop efficacious methodologies for assuring that deer movement under the permit is not spreading CWD. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules should only apply to deer breeders, movement of wild deer already has plenty of testing requirements as is, and the department is being secretive and dishonest by including Triple T permits in the rulemaking. The department disagrees with the comment and responds that the rules are a comprehensive regulatory strategy for minimizing the risk of further spread of CWD in captive and free ranging herds. The department also responds that the rules were validly promulgated and well publicized, including the required publication in the *Texas Register* 30 days prior to commission action, solicitation of public comment on the department's website, and numerous press releases. No changes were made as a result of the comment.

One commenter opposed adoption and stated that CWD testing has already been imposed on trap sites for the last couple of years and that suspension of the Triple T program will hurt landowners' ability to manage their white-tailed deer population because the deer that could be transferred using the Triple T permit will now need to be removed by hunting and are no longer available to assist other landowners in improving their white-tailed deer herds. The department disagrees with the comment and responds that current rules are insufficient for providing assurance that CWD is not spread via Triple T permit activities and that the permit was never intended to function purely as a means of removing surplus populations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the Triple T Permit is the most valuable permit offered to landowners and "is being lumped erroneously and dishonestly in with breeder deer." The department agrees that the Triple T program is valuable but disagrees that the department is either in error or being dishonest in determining that the current CWD management rules are insufficient for providing assurance that CWD is not spread via Triple T permit activities. No changes were made as a result of the comment.

One commenter opposed adoption and stated that without the Triple T program there is no way to make a living and support a family. The commenter also stated that the department's con-

stant attack on the hunting industry has damaged or destroyed folks livelihoods. The department disagrees with the comment and responds that the Triple T program is a game management tool, that the rules as adopted are intended to protect wildlife resources and that buying or selling deer pursuant to a Triple T permit is by statute criminal conduct. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules will prevent people from moving wildlife for population growth and the Triple T permits allow growth of ranches across Texas which in turn positively affects the agricultural growth and prosperity of the state. The commenter also stated that "[R]emoving the TTT permits will keep ranchers from buying breeding deer and thus improving the deer population in the state of Texas [sic]." The department disagrees with the comment and responds that the intent of the Triple T program is to allow for better game management and not to encourage population growth except in those instances where populations have been severely impacted following a disease event such as an outbreak of anthrax, and that buying or selling deer pursuant to a Triple T permit is by statute criminal conduct. No changes were made as result of the comment.

One commenter opposed adoption and stated that the ramifications of this action would/could be catastrophic to current or potential landowners, outfitters, and the cities and towns that rely on deer hunting and the herds that are required. The department disagrees with the comment and responds that a temporary moratorium on Triple T permit issuance will not be catastrophic to anyone. No changes were made as a result of the comment.

One commenter opposed adoption and stated that programs like Triple T have allowed deer to become plentiful again, there are many parts of the state that still struggle with deer numbers, and removal of Triple T opportunity forces people to use deer breeders as the source of deer. The department disagrees with the comment and responds that there are very few parts of the state where deer populations are not at or above carrying capacity and that a temporary moratorium on Triple T permit issuance should not result in the need to purchase breeder deer solely for the purpose of effective wildlife management. No changes were made as a result of the comment.

One commenter opposed adoption and stated the Triple T program should not be cancelled and the department "makes no effort to give strict options to safely continue the practice while it protects breeder facilities that have been a key problem for the spread of cwd [sic]". The commenter also stated that "there is no reason why a large ranch or high fenced non breeding [sic] ranch with no cwd [sic] history and a strict testing policy couldn't not responsibly participate." The department disagrees that there is any intent to cancel the Triple T program and that the temporary moratorium imposed by the rules is intended precisely for the purpose of allowing the department, with stakeholder participation, to develop Triple T rules that are sufficient for providing assurance that CWD is not spread via Triple T permit activities. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules with respect to Triple T activities are devastating to small economies and residual ranch values and that the department should be ashamed for hiding a rule so important inside a lengthy document. The department disagrees with the comment and responds that the Triple T program exists solely to enhance wildlife management activities for landowners and land managers, that subsidiary economic implications are indirect at best, and that

the department has hidden nothing with the respect to the rules, which were validly promulgated and well publicized, including the required publication in the *Texas Register* 30 days prior to commission action, solicitation of public comment on the department's website, and in numerous press releases. No changes were made as a result of the comment.

One commenter opposed adoption and stated that Triple T should be continued "for ranches that are not breeding and not penalize ranchers for transferring or receiving transfers of deer to improve their herds." The department disagrees that the rules as adopted are punitive or discontinue the Triple T program and responds that they impose a temporary moratorium on Triple T issuance to allow the department with the assistance of stakeholders to develop rules that are sufficient for providing assurance that CWD is not spread via Triple T permit activities. No changes were made as a result of the comment.

One commenter opposed adoption and stated that Triple T has been a major game changer for many landowners in anthrax endemic areas and that testing should be done at the trap site before deer are moved. The department agrees that the Triple T program is valuable and responds that the temporary moratorium on the issuance of Triple T permits imposed by the rules is intended to provide time for the department, with the assistance of stakeholders, to develop Triple T rules that are sufficient for providing assurance that CWD is not spread via Triple T permit activities. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "the ban of the TTT Permit will adversely affect our hunting operation and our land values. It also encroaches upon our property rights." The department disagrees with the comment and responds that the department does not intend to "ban" the Triple T program, only to temporarily cease permit issuance until the department, with the assistance of stakeholder groups, is able to develop Triple T rules that are sufficient for providing assurance that CWD is not spread via Triple T permit activities. The department also responds that the rules do not affect land values and are not an encroachment upon or infringement of any private property rights, as the deer are the property of the people of the state and by statute can only be moved subject an approved wildlife stocking plan approved by the department. No changes were made as a result of the comment.

The department received seven comments specifically opposing a proposed provision that would have prohibited the trapping of deer under a Triple T permit at any site that has ever been a release site for breeder deer. The department neither agrees nor disagrees with the comment and responds that the proposal to prohibit trapping of deer under a Triple T permit at any site that has ever been a release site for breeder deer was not adopted and the current language prohibiting Triple T trapping at sites that have received breeder deer within the previous five years is being retained.

One commenter opposed adoption and stated that landowners who have ever received breeder deer should not be punished if enough time has passed and testing requirements are met. The department neither agrees nor disagree with the comment and responds that the proposal to prohibit trapping of deer under a Triple T permit at any site that has ever been a release site for breeder deer was not adopted and current language prohibiting Triple T trapping at sites that have received breeder deer within the previous five years is being retained.

One commenter opposed adoption and stated that "[W]ith the required CWD testing that we have been doing for years there are ranches that could use the wild native deer and instead will now have to be shot. These changes only seem to help the deer breeders." The department disagrees with the comment and responds that the current rules do not provide sufficient confidence that CWD isn't being spread by Triple T activities and the commission has directed staff to work with stakeholder groups to develop Triple T rules that are sufficient for providing assurance that CWD is not spread via Triple T permit activities. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a time limit on when a Triple T release site is no longer ineligible to be a Triple T trap site if proper testing protocols are followed and the herd on that property is proven to be disease free. The department neither agrees nor disagrees with the comment and responds that the proposal to prohibit trapping of deer under a Triple T permit at any site that has ever been a release site for breeder deer was not adopted and the current language prohibiting Triple T trapping at sites that have received breeder deer within the previous five years is being retained.

One commenter opposed adoption and stated that the current rule addresses the concern of potential CWD spread and that prohibiting the Triple T from sites where breeder deer have ever been released denies others the opportunity to repopulate their ranches with superior Texas genetics with limited to no exposure to CWD. The department disagrees in part with the comment and responds that the current rules do not provide sufficient confidence that CWD isn't being spread by Triple T activities. The department neither agrees nor disagrees with the remainder of the comment and responds that the proposal to prohibit trapping of deer under a Triple T permit at any site that has ever been a release site for breeder deer was not adopted the current language prohibiting Triple T trapping at sites that have received breeder deer within the previous five years is being retained.

One commenter opposed adoption and stated that "[Not] allowing TTT from ranches that have had a breeding program ever is absolutely absurd." The commenter stated "They follow strict rules and are investigated. The ranches that the state should worry about are the ranches with no testing at all (non-breeding, low fence free range deer)." The department disagrees with the comment and responds that the proposed rules would have prohibited the trapping of deer for Triple T purposes at sites that have ever received breeder deer, not "ranches that have ever had a breeding program," whatever that means. The department also responds that no ranch is "investigated" unless the department has reason to believe that illegal acts have been committed there. The department further responds that its surveillance efforts for CWD with respect to free-ranging deer are meeting goals. The proposal to prohibit trapping of deer under a Triple T permit at any site that has ever been a release site for breeder deer was not adopted and the current language prohibiting Triple T trapping at sites that have received breeder deer within the previous five years is being retained.

One commenter opposed adoption and stated that the provision in question was "snuck in, not negotiated," and will hamper market value, resale demand and restrict the "bundle of rights" for landowners moving forward. The commenter stated that sellers will have to disclose this encumbrance prior to a sale or face legal action and that contrary to department claims, there will be negative economic impacts because real estate values, small town economies and deer management will change. The department

disagrees with the comment and responds that although the department is very committed to stakeholder input, the rules are not required to be the result of negotiation. In any case, the provision in question was, in fact, presented to department advisory groups and deliberated in open meetings. The department disagrees that the provision, if adopted, would restrict any person's lawful rights or necessarily require disclosure in the process of any real estate transaction. The department further responds that the Parks and Wildlife Code prohibits the commercial use of Triple T permits and that any economic benefits accruing to any person as a result of the use of Triple T permits is subsidiary to the purpose of the permit. The proposal to prohibit trapping of deer under a Triple T permit at any site that has ever been a release site for breeder deer was not adopted and the current language prohibiting Triple T trapping at sites that have received breeder deer within the previous five years is being retained.

One commenter opposed adoption and stated that there is no sound reason to stop the program of moving wild deer from ranches that have never received any breeder deer as long as there is a protocol to test those deer before being moved. The department neither agrees nor disagrees with the comment and responds that the current language prohibiting Triple T trapping at sites that have received breeder deer within the previous five years is being retained and the commission has directed staff to work with stakeholder groups to develop Triple T rules that are sufficient for providing assurance that CWD is not spread via Triple T permit activities.

The department received 22 comments opposing adoption of the rules as proposed on the basis that the moratorium on Triple T permit issuance did not also include the TTP (Trap, Transport, and Process) permit program as well. The commenters stated that any transportation of deer is a threat to spread CWD because of the presence and persistence of prions in or on equipment and trailers used to handle or transport deer and that the presence of such equipment is also a threat to populations that remain after deer are trapped. The department disagrees with the comments and responds that movement of deer and trailers housing deer are tangible, known threats that could aid the spread of CWD; however, Triple T activities move live deer from one property to another while TTP moves dead deer (in which prion replication, if present, has ceased), which means there is little to no risk of transmission to other live deer, provided the carcass is properly disposed of. The department also responds that transmission of CWD via TTP activities involving infected trailers is unknown but almost certainly exceedingly small. No changes were made as a result of the comments.

The department received four comments opposing adoption of the proposed provision to eliminate the temporary use of breeder deer under the Deer Management Permit (popularly referred to as "rent-a-buck"). Of the four comments, one offered a specific reason or rationale for opposing adoption. The commenter stated that if the DMP facility is on the same property as the breeding facility, the landowner should be able to "protect his investment and move the deer into a breeder pen" after testing. The department disagrees with the comment and responds that the provision as adopted was a recommendation emerging from discussions with stakeholder groups. The department determined that most if not all usage of breeder deer in the DMP program is done as a one-way movement, primarily due to concerns that breeder bucks could be exposed to CWD at some other location and then brought back to the source breeding facility. No changes were made as a result of the comment.

The department received 148 more-or-less identical form letters opposing adoption of the rules as proposed. That form letter is reproduced here, accompanied by the department's response.

"I oppose the following sections of the proposed rule package: §65.95. Movement of Breeder Deer. (b) [(c)] Release Sites; Release of Breeder Deer. (6) "No person" should be replaced with "No Tier 1 Facility" (Tier 1 Facility, as defined in §65.90) The exponential increase in surveillance across the entire industry coupled with the 7-day post-mortem testing submission requirement, ensures a herd surveillance program sufficient to detect and prevent the spread of CWD without the need for herds, other than Tier 1 Facilities, to be required to conduct ante-mortem testing prior to release. This issue was actually corrected March 14, 2021. Many breeders will be forced out of business because of the operational costs associated with the ante-mortem testing requirement prior to release. Smaller breeder operations will be more adversely affected than larger operations. The state's economy will be adversely impacted by the harm done to the deer breeding industry which represents an annual economic impact of \$1.6 billion. This will negatively affect rural economies who rely on employment opportunity and hunting opportunity created by breeders and release sites. §65.97. Testing and Movement of Deer Pursuant to a Triple T or TTP Permit. Maintain the period of five years to mirror the current trace-out timeframe - prohibiting Triple T permits for any site that has ever received breeder deer is too punitive. CWD testing is not required for deer trapped on any property if the deer are being moved to adjacent, contiguous tracts owned by the same person who owns the trap site property. (The current rule proposal mandates ante-mortem testing of breeder deer to be released onto adjacent, contiguous tracts owned by the same person who owns the breeding facility - inconsistent and unfair). Testing Requirements for TTP Permit. (1) "Not detected" test results for at least 15 test-eligible deer - why not test 100% of the test-eligible dead animals? §65.99. Breeding Facilities Epidemiologically Connected to Deer Infected with CWD. This section requires Trace Category A and B, and Tier 1 facilities to submit postmortem CWD samples for testing within one business day. We understand the need for early detection; however, one business day is not reasonable. The 7-day submission time frame for all postmortem samples is sufficient and reasonable. §65.100. Violations and Penalties. In some cases, a Trace or Tier 1 Facility may ask for a custom testing plan. This section of the rule criminalizes any negotiating process lasting longer than 7 days. Governmental agencies typically do not move that fast in any process, especially with negotiations. Criminalizing the negotiating process conflicts with the community oriented policing model outlined in the TPWD Law Enforcement General Orders."

The department disagrees with the comment and responds:

1. §65.95. Movement of Breeder Deer. (b) [(c)] Release Sites; Release of Breeder Deer. (6) "No person" should be replaced with "No Tier 1 Facility" (Tier 1 Facility, as defined in §65.90) The exponential increase in surveillance across the entire industry coupled with the 7-day post-mortem testing submission requirement, ensures a herd surveillance program sufficient to detect and prevent the spread of CWD without the need for herds, other than Tier 1 Facilities, to be required to conduct ante-mortem testing prior to release. This issue was actually corrected March 14, 2021. The department responds that evidence suggesting the disease likely has been in some of the CWD-positive facilities for multiple years indicates a significant delay/failure in detection. Because all of the facilities (like many breeder herds in Texas) had substantial portions of their inventories being released each

year without any required testing, it is very likely that these large release populations hampered the department's efforts to detect CWD in these facilities in a timely fashion. The department believes that ante-mortem testing before release would have significantly improved the detection probability and helped prevent the spread of CWD. The seven-day submission rule may have prevented two trace-out herds from becoming infected, but it would not have prevented a third positive trace-out herd. In one index facility CWD was detected via ante-mortem rectal biopsy testing, underscoring its utility as a general surveillance tool. No changes were made as a result of the comment.

2. *Many breeders will be forced out of business because of the operational costs associated with the ante-mortem testing requirement prior to release. Smaller breeder operations will be more adversely affected than larger operations. The state's economy will be adversely impacted by the harm done to the deer breeding industry which represents an annual economic impact of \$1.6 billion.* The department responds that without the availability of specific and complete financial data, it is difficult to assess a claim that the rules will force any deer breeder out of business. The department has received similar claims in response to previous department rulemaking efforts to manage CWD and notes that, based on anecdotal and publicly advertised sale prices for breeder deer and the reputed profitability of deer breeding claimed by the regulated community, it is difficult to envision any scenario in which the rules as proposed would force any deer breeder out of business, unless the deer breeder either has purchased a CWD-positive deer from another breeder or has been designated NMQ as a result of failing to comply with regulatory requirements. The department believes that most if not all deer breeders will be able to remain in business. The department also notes that the rules apply equally to all permittees. No changes were made as a result of the comment.

3. *This will negatively affect rural economies who rely on employment opportunity and hunting opportunity created by breeders and release sites.* The department responds that the rules as adopted will have very little effect on employment opportunities in rural economies and no effect on hunting opportunity. No changes were made as a result of the comment.

4. §65.97. *Testing and Movement of Deer Pursuant to a Triple T or TTP Permit. Maintain the period of five years to mirror the current trace-out timeframe - prohibiting Triple T permits for any site that has ever received breeder deer is too punitive. CWD testing is not required for deer trapped on any property if the deer are being moved to adjacent, contiguous tracts owned by the same person who owns the trap site property. (The current rule proposal mandates ante-mortem testing of breeder deer to be released onto adjacent, contiguous tracts owned by the same person who owns the breeding facility - inconsistent and unfair).* The department responds that the rules as adopted include a temporary moratorium on the issuance of Triple T permits and the commission has instructed staff to develop a regulatory response to CWD management with respect to Triple T permits. No changes were made as a result of the comment.

5. *Testing Requirements for TTP Permit. (1) "Not detected" test results for at least 15 test-eligible deer - why not test 100% of the test-eligible dead animals?* The department responds that the rules as adopted include a temporary moratorium on the issuance of Triple T permits and the commission has instructed staff to develop a regulatory response to CWD management with respect to Triple T permits. No changes were made as a result of the comment.

6. §65.99. *Breeding Facilities Epidemiologically Connected to Deer Infected with CWD. This section requires Trace Category A and B, and Tier 1 facilities to submit postmortem CWD samples for testing within one business day. We understand the need for early detection; however, one business day is not reasonable. The 7-day submission time frame for all postmortem samples is sufficient and reasonable.* The department responds that trace and tier facilities are the areas of greatest concern during an outbreak in captive facilities and that it is vital that these facilities submit post-mortem samples in an expedited manner compared to other facilities in order to account for this greater level of concern. Additionally, the importance of robust pen surveillance at high-risk facilities is necessary to prevent mortalities from being untested and to ensure that test samples are submitted in a timely fashion. No changes were made as a result of the comment.

7. §65.100. *Violations and Penalties. In some cases, a Trace or Tier 1 Facility may ask for a custom testing plan. This section of the rule criminalizes any negotiating process lasting longer than 7 days. Governmental agencies typically do not move that fast in any process, especially with negotiations. Criminalizing the negotiating process conflicts with the community oriented policing model outlined in the TPWD Law Enforcement General Orders.* The department responds that the process prescribed in the rules as proposed allows seven days following notification of trace facility status for a permittee to request the development of a custom plan in lieu of the requirements enumerated in the rules and clearly provides for the temporary suspension of testing requirements while the plan is being developed as well as while the permittee decides whether to agree to the terms of a plan or perform testing requirements specified in the rules. Therefore, there is no criminal liability attached to pursuing the herd plan option. No changes were made as a result of the comment.

The department received an additional 36 more or less identical form letters opposing adoption the rules as proposed. That form letter is reproduced here, accompanied by the department's response.

"These regulations are redundant and place an unreasonable financial hardship on permitted deer breeders who create massive hunting opportunities for our state. The state's economy will be adversely impacted by the harm done to the deer breeding industry, which represents an annual economic impact of \$1.6 billion. Many breeders will be forced out of business because of the operational costs associated with the antemortem testing requirement prior to release. Smaller breeder operations will be more adversely affected than larger operations. Under the emergency rules, approximately 12,000 deer were subject to antemortem testing for purposes of release. The results of those tests indicated zero positives at the cost of over \$3.5 million - 10 times the amount budgeted by TPWD for annual CWD surveillance of free-ranging cervids. 97% of deer breeders are compliant with regulations and have voluntarily enacted strict surveillance on our deer herds to position ourselves to survive in the industry and continue to protect CWD from our herd."

1. *These regulations are redundant and place an unreasonable financial hardship on permitted deer breeders who create massive hunting opportunities for our state.* The department disagrees with the comment and responds that the rules as adopted are not redundant, whatever is meant by that, and are considered by the department to be the minimally acceptable method of providing assurance that CWD will be detected early enough

in any population to prevent spread. No changes were made as a result of the comment.

2. *The state's economy will be adversely impacted by the harm done to the deer breeding industry, which represents an annual economic impact of \$1.6 billion. Many breeders will be forced out of business because of the operational costs associated with the antemortem testing requirement prior to release. Smaller breeder operations will be more adversely affected than larger operations.* The department responds that without the availability of specific and complete financial data, it is difficult to assess a claim that the rules will force any deer breeder out of business. The department has received similar claims in response to previous department rulemaking efforts to manage CWD, and notes that, based on anecdotal and publicly advertised sale prices for breeder deer and the reputed profitability of deer breeding claimed by the regulated community, it is difficult to envision any scenario in which the rules as proposed would force any deer breeder out of business, unless the deer breeder either has purchased a CWD-positive deer from another breeder or has been designated NMQ as a result of failing to comply with regulatory requirements. The department believes that most if not all deer breeders will be able to remain in business. The department also notes that the rules apply equally to all permittees. No changes were made as a result of the comment.

4. *Under the emergency rules, approximately 12,000 deer were subject to antemortem testing for purposes of release. The results of those tests indicated zero positives at the cost of over \$3.5 million - 10 times the amount budgeted by TPWD for annual CWD surveillance of free-ranging cervids. 97% of deer breeders are compliant with regulations and have voluntarily enacted strict surveillance on our deer herds to position ourselves to survive in the industry and continue to protect CWD from our herds.* The department agrees with the comment and responds that CWD was detected in one additional deer breeding facility under the emergency rules. The department also notes that less than 60% of breeding facilities are represented in the ante-mortem testing that occurred under the emergency rule, which means that the remaining deer breeding facilities were being inadequately surveilled. No changes were made as a result of the comments.

The Texas Deer Association, the Deer Breeders Corporation, and State Representative Bryan Slaton submitted comments opposing adoption of the rules as proposed.

The department received 1,204 comments supporting adoption of the rules as proposed.

Comments supporting adoption of the rules as proposed were received from the Texas Wildlife Association, the Texas Foundation for Conservation, the Texas and Southwestern Cattle Raisers Association, the National Deer Association, the Safari Club International - Austin Chapter, the Backcountry Hunters and Anglers - Texas Chapter, the Texas Conservation Alliance, The Nature Conservancy - Texas Chapter, the Texas Chapter of the Wildlife Society, the Texas Association of Bass Clubs, Texas Black Bass Unlimited, Texas Trappers Association, the Mule Deer Foundation - Lone Star Chapter, the Hill Country Conservancy, Environment Texas, the National Wildlife Federation, and the Devils River Conservancy.

DIVISION 1. CHRONIC WASTING DISEASE (CWD)

31 TAC §§65.80 - 65.83, 65.88

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter E, which authorizes the commission to make regulations governing the trapping, transporting, and transplanting of game animals; Parks and Wildlife Code, Chapter 43, Subchapter L; which authorizes the commission to make regulations governing the possession, transfer, purchase, and sale of breeder deer held under the authority of the subchapter; Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure; Subchapter R-1, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that mule deer may be temporarily detained in an enclosure (although the department has not yet established a DMP program for mule deer authorized by Subchapter R-1); and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

§65.83. Special Provisions.

A breeding facility that is located in a CZ or SZ and subject to the provisions of §65.99 of this title (relating to Breeding Facilities Epidemiologically Connected to Deer Infected with CWD) may release breeder deer to adjoining acreage under the same ownership, provided:

- (1) the title in the county deed records reflects that the surface of the release site and of the breeding facility is held by the same owner or owners;
- (2) the release is specifically authorized in a herd plan; and
- (3) the breeding facility that releases breeder deer under the provisions of this section and any sites to which the breeder deer are to be released are in compliance with all applicable provisions of this subchapter, including provisions relating to the testing of released breeder deer, except as specifically exempted under a herd plan.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



DIVISION 2. CHRONIC WASTING DISEASE - COMPREHENSIVE RULES

31 TAC §§65.90 - 65.100

The amendments and new sections are adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter E, which authorizes the commission to make regulations governing the trapping, transporting, and transplanting of game animals, Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, and sale of breeder deer held under

the authority of the subchapter; Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure; Subchapter R-1, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that mule deer may be temporarily detained in an enclosure (although the department has not yet established a DMP program for mule deer authorized by Subchapter R-1); and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

§65.90. Definitions.

The following words and terms shall have the following meanings, except in cases where the context clearly indicates otherwise.

(1) Accredited testing laboratory--A laboratory approved by the United States Department of Agriculture to test white-tailed deer or mule deer for CWD.

(2) Ante-mortem test--A CWD test performed on a live deer.

(3) Breeder deer--A white-tailed deer or mule deer possessed under a permit issued by the department pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter.

(4) Confirmed--A CWD test result of "positive" received from the Texas A&M Veterinary Medical Diagnostic Laboratory or the National Veterinary Service Laboratories of the United States Department of Agriculture.

(5) CWD--Chronic wasting disease.

(6) CWD-positive facility (positive facility)--Any facility in or on which CWD has been confirmed.

(7) Deer breeder--A person who holds a deer breeder's permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter.

(8) Deer breeding facility (breeding facility)--A facility authorized to hold breeder deer under a permit issued by the department pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter (Deer Breeder's Permit).

(9) Department (department)--Texas Parks and Wildlife Department.

(10) Deer Management Permit (DMP)--A permit issued under the provisions of Parks and Wildlife Code, Subchapter R or R-1 and Subchapter D of this chapter (relating to Deer Management Permit (DMP)) that authorizes the temporary detention of deer for the purpose of propagation.

(11) Exposed deer--A deer that meets any of the following criteria:

(A) the deer is or has been in a breeding facility where a CWD-positive deer has been kept following the date the facility was first exposed to CWD (if known);

(B) the deer is or has been in a breeding facility within the five-year period preceding the death date of any CWD-positive deer that was in the facility (or the date of a positive ante-mortem test result); or

(C) the deer is or has been in a breeding facility on or after the date that the facility received a deer under the circumstances described in subparagraph (A) or (B) of this paragraph.

(12) Exposure--The period of time that has elapsed following the introduction of an exposed deer to a breeding facility.

(13) Facility--Any location required to be registered in TWIMS under a deer breeder's permit, Triple T permit, TTP permit, or DMP, including release sites and/or trap sites.

(14) Herd Plan--A set of requirements for disease testing and management developed by the department and TAHC for a specific facility.

(15) Hunter-harvested deer--A deer required to be tagged under the provisions of Subchapter A of this chapter (relating to Statewide Hunting Proclamation).

(16) Hunting year--That period of time between September 1 and August 31 of any year when it is lawful to hunt deer under the provisions of Subchapter A of this chapter (relating to Statewide Hunting Proclamation).

(17) Inconclusive--A test result that is neither "positive" nor "not detected" on the basis of clinical deficiency.

(18) "Insufficient follicles"--A test result indicating that a tonsil or rectal biopsy sample contained an insufficient number of lymphoid follicles to produce a valid test result.

(19) Landowner (owner)--Any person who has an ownership interest in a tract of land and includes landowner's authorized agent.

(20) Landowner's authorized agent (agent)--A person designated by a landowner to act on the landowner's behalf.

(21) Last known exposure--The last date a deer in a trace-out or trace-in breeding facility was exposed to a trace deer prior to the death or transfer of that trace deer, or the last date an exposed deer entered a Tier 1 facility.

(22) Liberated deer--A free-ranging deer that bears evidence of having been liberated including, but not limited to a tattoo (including partial or illegible tattooing) or of having been ear-tagged at any time (holes, rips, notches, etc. in the ear tissue).

(23) Movement Qualified (MQ)--A designation made by the department pursuant to this division that allows a deer breeder to lawfully transfer breeder deer.

(24) Not Movement Qualified (NMQ)--A designation made by the department pursuant to this division that prohibits the transfer of deer by a deer breeder.

(25) Post-mortem test--A CWD test performed on a dead deer.

(26) Properly executed--A form or report required by this division on which all required information has been entered.

(27) Reconciled herd--The breeder deer held in a breeding facility for which every birth, mortality, and transfer of breeder deer has been accurately reported as required by this division.

(28) Release--The act of liberating a deer from captivity. For the purposes of this division the terms "release" and "liberate" are synonymous.

(29) Release site--A specific tract of land to which deer are released, including the release of deer under the provisions of this chapter or Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, or R-1.

(30) Reporting year--For a deer breeder's permit, the period of time from April 1 of one calendar year through March 31 of the next calendar year.

(31) RFID tag--A button-type ear tag conforming to the 840 standards of the United States Department of Agriculture's Animal Identification Number system.

(32) Submit--When used in the context of test results, provided to the department, either directly from a deer breeder or via an accredited testing laboratory.

(33) Suspect--An initial CWD test result of "detected" that has not been confirmed.

(34) TAHC--Texas Animal Health Commission.

(35) Test-eligible--

(A) Until the effective date of these rule amendments, a deer at least 16 months of age; and

(B) Beginning with the effective date of this rule, a deer at least 12 months of age.

(36) Test, Test Result(s), or Test Requirement--A CWD test, CWD test result, or CWD test requirement as provided in this division.

(37) Tier 1 facility--A breeding facility that has received an exposed deer that was in a trace-out breeding facility.

(38) Trace deer--A deer that the department has determined had been in a CWD-positive deer breeding facility on or after the date the facility was first exposed to CWD, if known; otherwise, within the previous five years from the reported mortality date of the CWD-positive deer, or the date of the ante-mortem test result.

(39) Trace-in breeding facility - A breeding facility that meets either of the following criteria:

(A) the facility has transferred a deer directly to a CWD-positive facility within the five-year period preceding the reported mortality date of a CWD-positive deer in the facility (or the date of the positive ante-mortem test result); or

(B) the facility has possessed a deer that was transferred indirectly (i.e., by way of an intermediary breeding facility or facilities) to a CWD-positive facility within the five-year period preceding the reported mortality date of a CWD-positive deer in the facility, or the date of the positive ante-mortem test result.

(40) Trace-out breeding facility--A breeding facility that has received an exposed deer that was in a CWD-positive deer breeding facility.

(41) Trap Site--A specific tract of land approved by the department for the trapping of deer under this chapter and Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, and R-1.

(42) Triple T permit--A permit to trap, transport, and transplant white-tailed or mule deer (Triple T permit) issued under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter E, and Subchapter C of this chapter (relating to Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds).

(43) Trap, Transport and Process (TTP) permit--A permit issued under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter E, and Subchapter C of this chapter (relating to Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds), to trap, transport, and process surplus white-tailed deer (TTP permit).

(44) TWIMS--The department's Texas Wildlife Information Management Services (TWIMS) online application.

§65.91. *General Provisions.*

(a) To the extent that any provision of this division conflicts with any provision of this chapter other than Division 1 of this subchapter, this division prevails.

(b) Except as provided in this division, no live breeder deer or deer trapped under a Triple T permit, TTP permit or DMP may be transferred anywhere for any purpose.

(c) Except as provided in this division or as expressly authorized and in accordance with the provisions of a herd plan, no person shall transfer deer to or from any facility for which a CWD test result of "suspect" or "positive" has been obtained from an accredited testing laboratory, irrespective of how the sample was obtained or who collected the sample. The provisions of this subsection take effect immediately upon the notification of a CWD "suspect" test result, and continue in effect until the department expressly authorizes the resumption of permitted activities at that facility.

(d) Notwithstanding any provision of this division, no person may cause or allow breeder deer to be moved from a facility for any purpose if such movement is prohibited by a herd plan associated with a TAHC hold order or TAHC quarantine.

(e) Except as provided in §65.99(i) of this title (relating to Breeding Facilities Epidemiologically Connected to Deer Infected with CWD), no person may transfer deer to or from a facility that has been designated NMQ by the department unless specifically authorized by the department for the holder of a scientific research permit when the proposed research is determined to be of use in advancing the etiology of CWD in susceptible species.

(f) Immediately upon the notification that a facility has received a CWD "suspect" test result (a CWD suspect facility), all facilities that have been in possession of a deer that was held in the CWD suspect facility within the previous five years shall be designated NMQ by the department until it is determined that the facility is not epidemiologically linked to the CWD suspect deer, or it is determined upon further testing that the "suspect" deer is not a confirmed positive.

(g) Unless expressly provided otherwise in this division, all applications, reports, and notifications required by this division shall be submitted electronically via TWIMS or by another method expressly authorized by the department.

(h) In the event that technical or other circumstances prevent the development or implementation of automated methods for collecting and submitting the data required by this division via TWIMS, the department may prescribe alternative methods for collecting and submitting the data required by this division.

(i) Except as provided in this division, no person shall introduce into, remove deer from or allow or authorize deer to be introduced into or removed from any facility unless a georeferenced map (a map image incorporating a system of geographic ground coordinates, such as latitude/longitude or Universal Transverse Mercator (UTM) coordinates) showing the exact boundaries of the facility has been submitted to the department prior to any such introduction or removal.

§65.92. *CWD Testing.*

(a) All CWD test samples at the time of submission for testing shall be accompanied by a properly executed, department-prescribed form provided for that purpose.

(b) Except as provided in §65.95(b)(6) of this title (relating to Movement of Breeder Deer) or subsection (d) of this section, an ante-mortem CWD test is not valid unless it is performed by an accredited laboratory on retropharyngeal lymph node, rectal mucosa, or tonsillar tissue with at least six lymphoid follicles collected within eight months of submission by a licensed veterinarian authorized pursuant to statutes

and regulations governing the practice of veterinary medicine in Texas and regulations of the TAHC from a live deer that:

(1) is at least 12 months of age; and

(2) has not been the source of a "not detected" ante-mortem test result submitted within the previous 12 months.

(c) A post-mortem CWD test is not valid unless it is performed by an accredited testing laboratory on the obex and medial retropharyngeal lymph node of a test-eligible mortality, and may be collected only by a qualified licensed veterinarian, TAHC-certified CWD sample collector, or other person approved by the department.

(d) Except for the provisions of paragraphs (3) and (4) of this subsection, the provisions of this subsection take effect April 1, 2022. To meet the requirements of §65.94 of this title (relating to Breeding Facility Minimum Movement Qualifications), or §65.95 of this title, ante-mortem test results may be substituted for post-mortem test results at a ratio of five "not detected" ante-mortem test results for each required "not detected" post-mortem test result, provided:

(1) the ante-mortem test samples are collected within eight months of the end of the reporting year.

(2) The number of ante-mortem test results submitted for the purposes of satisfying the requirements of §65.94(a)(1)(C) of this title cannot exceed 30 percent of the total number of post-mortem results required by this division, multiplied by five, in more than two reporting years during the life of the permit. This paragraph does not apply to the use of ante-mortem test results to meet the provision of §65.94(a)(1)(C) of this title requiring that a minimum of five percent of the breeding facility inventory be tested annually.

(3) For a facility with sufficient deer to satisfy the ante-mortem substitution requirements of this subsection were it not for the testing frequency limitations imposed by subsection (b)(2) of this section, test results from deer at least six months of age at the time of testing may be submitted to satisfy the requirements of this subsection. The provisions of this paragraph do not apply unless all test-eligible deer in the facility have been tested prior to the testing of any deer that is six months of age or older but younger than 12 months of age.

(4) For a facility that must conduct ante-mortem testing of all test-eligible deer in the facility to regain MQ status, the department will not accept inconclusive ante-mortem test results (including, but not limited to "insufficient follicles") for more than 10 percent of the total number of deer tested. For facilities required to test less than ten deer, inconclusive ante-mortem test results (including but not limited to "insufficient follicles") will not be accepted.

(5) No provision of this subsection shall be construed as to relieve any permittee of the obligation to test every mortality that occurs within a breeding facility as required by §65.94 of this title.

(e) For purposes of satisfying the testing requirements of §65.94 or §65.95 of this title for the period of time between the reporting year that began April 1, 2017 and the reporting period ending March 31, 2022, ante-mortem test results may be substituted for post-mortem test results at a ratio of three "not detected" ante-mortem test results for each required "not detected" post-mortem test result.

(f) Except as specifically provided in this division, an ante-mortem test result may not be used more than once to satisfy any testing requirement of this division.

(g) No ante-mortem test result may be utilized by more than one permittee to satisfy any requirement of this division.

(h) An ante-mortem test result is valid only if the deer from which it was taken is still in the inventory of the facility in which the sample was taken.

(i) The testing requirements of this division cannot be altered by the sale or subdivision of a property to a related party if the purpose of the sale or subdivision is to avoid the requirements of this division.

(j) Deer breeders shall report all deer mortalities that occur within a breeding facility within seven days of detection.

(k) All CWD test samples shall be submitted to an accredited testing laboratory within seven days of collection.

§65.93. *Harvest Log.*

(a) When a release site is required by this division to maintain a harvest log, the harvest log shall be maintained daily and shall meet the requirements of this section.

(b) For each deer harvested on the release site the landowner must, on the same day that the deer is harvested, legibly enter the following information in the daily harvest log:

(1) the name and hunting license of the person who harvested the deer;

(2) the date the deer was harvested;

(3) the species (white-tailed or mule deer) and type of deer harvested (buck or antlerless);

(4) any alphanumeric identifier tattooed on the deer;

(5) the RFID tag number of any RFID tag affixed to the deer; and

(6) any other identifier and identifying number on the deer, including a description of any evidence or indication that the deer was a liberated deer including, but not limited to evidence of having been eartagged at any time (holes, rips, notches, etc. in ear tissue).

(c) The daily harvest log shall be made available upon request to any department employee acting in the performance of official duties.

(d) By not later than April 1 of each year, the owner of a release site shall submit the contents of the daily harvest log to the department via TWIMS or via another method specified by the department.

(e) The daily harvest log shall be on a form provided or approved by the department and shall be retained for a period of one year following submission and acceptance by the department.

§65.94. *Breeding Facility Minimum Movement Qualification.*

(a) Notwithstanding any other provision of this division, a breeding facility is designated NMQ and is prohibited from transferring breeder deer anywhere for any purpose if the breeding facility:

(1) has not:

(A) met the provisions of this subparagraph:

(i) had less than five eligible mortalities from May 23, 2006 through March 31, 2016; or

(ii) submitted CWD "not detected" test results for at least 20% of the total number of eligible mortalities that occurred in the facility since May 23, 2006; and

(B) beginning with the reporting year that starts April 1, 2017, and ending March 31, 2022, submitted CWD "not detected" test results for:

(i) at least 80% of test-eligible mortalities occurring in the facility during each reporting year before the effective date of this section; and

(ii) 100 percent of test-eligible mortalities occurring in the facility after the effective date of this subsection; provided, however, if the facility has been permitted for six months or more, the number of "not detected" test results submitted during the previous reporting year must be equal to or greater than the following number: the sum of the test-eligible deer reported in the breeding facility inventory on March 31 of the previous reporting year, plus the sum of the eligible mortalities that occurred within the breeding facility for the previous reporting year, multiplied by 3.6 percent; and

(C) beginning with the reporting year that starts April 1, 2022 and for each reporting year thereafter, submitted CWD "not detected" test results for 100 percent of eligible mortalities occurring in the facility during the previous reporting year; provided, however, if the facility has been permitted for six months or more, the number of "not detected" test results submitted during the previous reporting year must be equal to or greater than the following number: the sum of the test-eligible deer reported in the breeding facility inventory on March 31 of the previous reporting year, plus the sum of the eligible mortalities that occurred within the breeding facility for the previous reporting year, multiplied by five percent;

(2) is not authorized pursuant to a herd plan associated with a TAHC hold order or TAHC quarantine;

(3) does not have a reconciled herd inventory; or

(4) is not in compliance with the reporting and recordkeeping provisions of this division and §65.608 of this title (relating to Annual Reports and Records).

(b) A breeding facility that has been designated as NMQ for failure to comply with the testing requirements specified in subsection (a) of this section will be restored to MQ:

(1) when the required "not detected" test results prescribed by subsection (a) of this section are submitted; or

(2) the department has designated the breeding facility MQ under the provisions of subsections (d), (e), or (f) of this section.

(c) A breeding facility designated NMQ shall report all mortalities within the facility to the department immediately upon discovery of the mortality.

(d) Notwithstanding the applicable provisions of §65.92 of this title (relating to CWD Testing), a breeding facility that is designated NMQ and is unable to satisfy the requirements of subsection (a) of this section to achieve MQ status may be designated MQ by the department, provided:

(1) the facility has not received any exposed deer;

(2) there are no discrepancies between the deer physically present in the facility (number, sex, age, unique identifier) and the herd inventory reported in TWIMS;

(3) the department has determined that the number of test-eligible deer in the facility is not sufficient to provide the necessary ante-mortem test samples to substitute for post-mortem test results;

(4) a department herd inventory inspection has been completed at least 12 months prior to the initiation of any ante-mortem testing under paragraph (5) of this subsection;

(5) all test-eligible deer in the facility are subjected to ante-mortem testing two times at an interval of not less than 12 months, beginning not less than 12 months from being designated NMQ, provided

a deer that is not test-eligible when testing under this subsection begins but reaches test-eligible status during the 12-month interval stipulated by this paragraph is not required to be tested twice, but must be tested at least once during the 12-month interval stipulated by this paragraph. The test result must be "not detected"; and

(6) a test result of "not detected" for all tests required under paragraph (5) of this subsection is obtained and submitted for each test-eligible deer in the facility.

(e) The department may decline to designate a facility as MQ under subsection (d) of this section:

(1) if the department determines that a permittee has intentionally failed to test a test-eligible mortality; or

(2) upon the recommendation of a licensed veterinarian or epidemiologist employed by the department or TAHC. The recommendation must:

(A) be in writing and articulate the specific rationale supporting the recommendation; and

(B) may include specific additional testing protocols to be undertaken at the facility that the department considers to be acceptable for rectifying the epidemiological or veterinary deficiencies identified in the recommendation.

(f) Upon the successful completion of any additional testing requirements stipulated in the recommendation required by subsection (e) of this section, the department may designate a facility MQ.

(g) The department may deny permit renewal for any facility for which substitute ante-mortem test results are utilized for more than 30 percent of the required post-mortem test results, multiplied by five, pursuant to §65.92(d) of this title in more than two reporting years during the life of the permit. This paragraph does not apply to the use of ante-mortem test results to meet the provisions of subsection (a)(1)(C) of this section requiring that a minimum of five percent of the breeding facility inventory be tested annually.

(h) Deer required to be reported to the department under §65.605 of this title (relating to Holding Facility Standards and Care of Deer) are considered to be mortalities for the purposes of this division until lawfully recaptured. A deer that is not recaptured will be treated as a mortality that occurred within the facility from which the escape is required to be reported.

(i) Deer that according to department records should be present in a breeding facility but cannot be accounted for to the satisfaction of the department are considered to be mortalities for the purposes of this section.

§65.95. Movement of Breeder Deer.

(a) General. Except as otherwise provided in this division, a breeding facility may transfer breeder deer under a transfer permit that has been activated and approved by the department to:

(1) another breeding facility;

(2) an approved release site as provided in subsection (b) of this section;

(3) a DMP facility (however, deer transferred to DMP facilities cannot be recaptured and must be released as provided in the deer management plan); or

(4) a registered nursing facility, provided:

(A) the deer are less than 120 days of age;

(B) the facility from which the deer are transferred is MQ at the time of transfer; and

(C) no deer from any other breeding facility are or have been present in the nursing facility during the reporting year in which the transfer occurs.

(D) A registered nursing facility is prohibited from accepting deer from more than one breeding facility in one reporting year.

(E) No person may possess deer older than 120 days of age in a nursing facility.

(b) Release Sites; Release of Breeder Deer.

(1) An approved release site consists solely of the specific tract of land to which deer are released and the acreage is designated as a release site in TWIMS. A release site owner may modify the acreage registered as the release site to recognize changes in acreage (such as the removal of cross-fencing or the purchase of adjoining land), so long as the release site owner notifies the department of such modifications prior to the acreage modification. The release site requirements set forth in this division apply to the entire acreage modified under the provisions of this paragraph.

(2) Liberated breeder deer must have complete, unrestricted access to the entirety of the release site; provided, however, deer may be excluded from areas for safety reasons (such as airstrips) or for the purpose of protecting areas such as crops, orchards, ornamental plants, and lawns from depredation.

(3) All release sites onto which breeder deer are liberated must be surrounded by a fence of at least seven feet in height that is capable of retaining deer at all times under reasonable and ordinary circumstances. The owner of the release site is responsible for ensuring that the fence and associated infrastructure retain deer under reasonable and ordinary circumstances.

(4) No person may intentionally cause or allow any live deer to leave or escape from a release site onto which breeder deer have been liberated.

(5) The owner of a release site where deer from a facility subject to the provisions of §65.99 of this title (relating to Breeding Facilities Epidemiologically Connected to Deer Infected with CWD) or deer from a CWD-positive facility have been released shall maintain a harvest log at the release site that complies with §65.93 of this title (relating to Harvest Log).

(6) No person may transfer a breeder deer to a release facility or cause or allow a breeder deer to be transferred to a release facility unless:

(A) an ante-mortem test on rectal or tonsil tissue collected from the deer within the eight months immediately preceding the release has been returned with test results of "not detected"; and

(B) the deer is at least six months of age at the time the test sample required by this paragraph is collected.

(C) An ante-mortem test result of "not detected" submitted to satisfy the requirements of §65.92(d) of this title may be utilized a second time to satisfy the requirements of this paragraph, provided the test sample was collected as provided in subparagraph (A) of this paragraph.

(D) A facility from which deer are transferred in violation of this paragraph becomes automatically NMQ and any further transfers are prohibited until the permittee and the owner of the release site have complied with the testing requirements of the department, based on an epidemiological assessment as specified in writing.

(E) The provisions of this paragraph cease effect three years from the effective date of this section.

(c) Trace-out Release Site.

(1) A release site is a trace-out release site if it has:

(A) received deer directly or indirectly from a positive breeding facility; and

(B) it has not been released from a hold order or quarantine related to activity described in subparagraph (A) of this paragraph.

(2) The landowner of a trace-out release site must submit post-mortem CWD test results for one of the following values, whichever represents the greatest number of deer tested:

(A) 100 percent of all hunter-harvested deer; or

(B) one hunter-harvested deer per liberated deer released on the release site between the last day of lawful hunting on the release site in the previous hunting year and the last day of lawful hunting on the release site during the current hunting year; provided, however, this minimum harvest and testing provision may only be substituted as prescribed in a herd plan.

(3) No breeder deer may be transferred to a trace-out release site unless the deer has been tagged in one ear with a button-type RFID tag approved by the department.

§65.97. Testing and Movement of Deer Pursuant to a Triple T or TTP Permit.

(a) General.

(1) On the effective date of this paragraph the department will cease the issuance of Triple T permits for deer until further notice.

(2) The department will not issue a Triple T permit authorizing deer to be trapped at a:

(A) release site that has received breeder deer within five years of the application for a Triple T permit;

(B) release site that has failed to fulfill the applicable testing requirements of this division;

(C) any site where a deer has been confirmed positive for CWD;

(D) any site where a deer has tested "suspect" for CWD;

or

(E) any site under a hold order or quarantine.

(3) In addition to the reasons for denying a Triple T permit as provided in §65.107 of this title (relating to Permit Application and Processing) and §65.109 of this title (relating to Issuance of Permit), the department will not issue a Triple T permit if the department determines, based on epidemiological assessment and consultation with TAHC that to do so would create an unacceptable risk for the spread of CWD.

(4) All deer released under the provisions of this section must be tagged prior to release in one ear with a button-type RFID tag approved by the department, in addition to the marking required by §65.102 of this title (relating to Disease Detection Requirements). RFID tag information must be submitted to the department.

(5) Nothing in this section authorizes the take of deer except as authorized by applicable laws and regulations, including but not limited to laws and regulations regarding seasons, bag limits, and means and methods as provided in Subchapter A of this chapter (relating to Statewide Hunting Proclamation).

(6) Except for a permit issued for the removal of urban deer, a test result is not valid unless the sample was collected and tested

after the Saturday closest to September 30 of the year for which activities of the permit are authorized.

(7) For permits issued for the removal of urban deer, test samples may be collected between April 1 and the time of application.

(b) Testing Requirements for Triple T Permit.

(1) The department will not issue a Triple T permit unless "not detected" post-mortem test results have been submitted for 15 test-eligible deer from the trap site.

(2) CWD testing is not required for deer trapped on any property if the deer are being moved to adjacent, contiguous tracts owned by the same person who owns the trap site property.

(c) Testing Requirements for TTP Permit.

(1) "Not detected" test results for at least 15 test-eligible deer from the trap site must be submitted.

(2) The landowner of a trace-out release site must submit CWD test results for 100% of the deer harvested pursuant to a TTP permit, which may include the samples required under paragraph (1) of this subsection.

(3) Test results related to a TTP permit must be submitted to the department by the method prescribed by the department by the May 1 immediately following the completion of permit activities.

§65.98. *Transition Provisions.*

A release site that was not in compliance with the applicable testing requirements of this division in effect between August 15, 2016 and the effective date of this section shall be:

(1) required to comply with the applicable provisions of this division regarding CWD testing with respect to release facilities; and

(2) ineligible to be a release site for breeder deer or deer transferred pursuant to a Triple T permit or DMP until the release site has complied with paragraph (1) of this section.

§65.99. *Breeding Facilities Epidemiologically Connected to Deer Infected with CWD.*

(a) Effectiveness.

(1) To the extent that any provision of this section conflicts with any provision of this division, the provisions of this section prevail.

(2) The provisions of Division 1 of this subchapter apply to any facility designated by the department as a Category A or Category B trace-out breeding facility, Tier 1 breeding facility, or trace-in breeding facility subject to the provisions of this section.

(b) No deer from a facility subject to the provisions of this section may be transferred or liberated except as provided in this section or expressly authorized in a herd plan and then only in accordance with the provisions of this division and the herd plan.

(c) Deer transferred under the provisions of this section must be tagged in one ear with a button-type RFID tag approved by the department.

(d) Category A trace-out breeding facility.

(1) A Category A facility is a trace-out breeding facility:

(A) in which all trace deer are alive in the facility; or

(B) for which post-mortem test results of "not detected" have been returned for trace deer that have died and all other trace deer are alive and present in the facility.

(2) Immediately upon notification by the department of Category A status, a facility is automatically NMQ. Except as provided in paragraph (3) of this subsection, a permittee shall, upon notification by the department of Category A status:

(A) within seven days euthanize all trace deer in the breeding facility and submit test samples for each of those deer for post-mortem testing within one business day;

(B) inspect the facility daily for mortalities;

(C) immediately report all test-eligible mortalities that occur within the facility; and

(D) immediately collect test samples from all test-eligible mortalities that occur within the facility and submit the samples for post-mortem testing within one business day of collection.

(3) In lieu of the testing requirements prescribed in paragraph (2)(A) of this subsection, a permittee may request the development of a custom testing plan as provided in subsection (h) of this section; provided however, the permittee must comply with the requirements of paragraph (2)(B) - (D) of this subsection.

(4) The department in consultation with TAHC may decline to authorize a custom testing plan under subsection (h) of this section if an epidemiological assessment determines that a custom testing plan is inappropriate.

(5) The department will not restore MQ status unless CWD "not detected" test results are obtained for all required sample submissions and the permittee has complied with all applicable requirements of this subsection and this division.

(e) Category B trace-out breeding facility.

(1) A Category B facility is a trace-out breeding facility in which less than 100% of the trace deer that department records indicate were received by the facility are for whatever reason (including but not limited to transfer, release, or escape) available for testing.

(2) Immediately upon notification by the department of Category B status; a facility is automatically NMQ and the permittee shall:

(A) within seven days euthanize all trace deer in the breeding facility and submit test samples for each of those deer for post-mortem testing within one business day;

(B) inspect the facility daily for mortalities;

(C) immediately report all test-eligible mortalities that occur within the facility;

(D) immediately collect test samples from all test-eligible mortalities that occur within the facility and submit the samples for post-mortem testing within one business day of collection; and

(E) conduct ante-mortem testing of all test-eligible deer in the facility as specified in the following:

(i) for a facility for which the date of last known exposure is within the immediately preceding 18 months:

(I) submit rectal or tonsil biopsy samples; and

(II) submit tonsil biopsy samples collected no earlier than 24 months from the date of last known exposure;

(ii) for a facility for which the date of last known exposure is not within the immediately preceding 18 months and not at a time prior to the immediately preceding 36 months: collect and submit tonsil biopsy samples no earlier than 24 months from the date of last known exposure; and

(iii) for a facility for which the date of last known exposure occurred at a time after the immediately preceding 36 months: collect and submit rectal or tonsil biopsy samples collected no earlier than 36 months from the date of last known exposure.

(3) In lieu of the testing requirements prescribed by paragraph (2)(A) and (2)(E) of this subsection, a permittee may request the development of a custom testing plan as provided in subsection (h) of this section; provided, however, the permittee must comply with paragraph (2)(B) - (D) of this section.

(4) Samples required by paragraph (2)(E) of this subsection shall be submitted no later than 45 days after the applicable last known exposure period, or other date as determined by the department.

(5) The department in consultation with TAHC may decline to authorize a custom testing plan under subsection (h) of this section if an epidemiological assessment determines that a custom testing plan is inappropriate.

(6) The department will not restore MQ status unless CWD "not detected" test results are obtained for all required sample submissions and the permittee has complied with all applicable requirements of this subsection and this division.

(f) Tier 1 facility.

(1) Upon notification by the department of Tier 1 status, a facility is automatically NMQ and the permittee shall:

(A) inspect the facility daily for mortalities;

(B) immediately report all test-eligible deer mortalities that occur within the facility; and

(C) immediately collect test samples from all test-eligible deer mortalities that occur within the facility and submit for post-mortem testing within one business day of collection.

(2) A permittee may request the development of a custom testing plan as provided in subsection (h) of this section; provided, however, the permittee must comply with the provisions of paragraph (1)(A) - (C) of this subsection.

(3) The department will not restore MQ status unless the permittee has complied with all applicable requirements of this subsection and this division, and any one of the following:

(A) post-mortem results of "not detected" have been submitted for every exposed deer received from a trace facility; or

(B) the department has restored MQ status to all trace facilities from which deer were received; or

(C) the permittee has conducted ante-mortem testing as specified in subsection (e)(2)(E) of this section; or

(D) the permittee has conducted testing as specified in compliance with the provisions of a custom testing plan under the provisions of subsection (h) of this section to the satisfaction of the department and TAHC.

(4) The department in consultation with TAHC may decline to authorize a custom testing plan under subsection (h) of this section if an epidemiological assessment determines that a custom testing plan is inappropriate.

(g) Trace-in breeding facility. Immediately upon notification by the department of trace-in facility status, a facility is automatically NMQ.

(1) A permittee shall, upon notification by the department of trace-in facility status:

(A) inspect the facility daily for mortalities;

(B) immediately report all test-eligible mortalities that occur within the facility; and

(C) immediately collect test samples from all test-eligible mortalities that occur within the facility and submit the samples for post-mortem testing within one business day of collection.

(2) The department may restore MQ status to a trace-in facility if all trace deer have been post-mortem tested with results of "not detected."

(3) For a trace-in facility for which the provisions of paragraph (2) of this subsection cannot be satisfied, the department may restore MQ status upon:

(A) submission of tonsil biopsy ante-mortem test results of "not detected" for all test-eligible deer within the facility, provided the date of the last transfer to a positive facility occurred within the 36 months preceding notification of trace-in facility status by the department; or

(B) submission of tonsil or rectal biopsy test results of "not detected" for all test-eligible deer within the facility, provided the date of the last transfer to a positive facility occurred at a time greater than 36 months from notification of trace-in facility status.

(C) The test samples required to satisfy the requirements of this paragraph must be submitted within 45 days of notification by the department of trace-in facility status.

(4) In lieu of the testing requirements prescribed in this subsection, a permittee may request the development of a custom testing plan as provided in subsection (h) of this section; provided however, the permittee must comply with the requirements of paragraph (1) of this subsection.

(5) The department in consultation with TAHC may decline to authorize a custom testing plan under subsection (h) of this section if an epidemiological assessment determines that a custom testing plan is inappropriate.

(6) The department will not restore MQ status unless CWD "not detected" test results are obtained for all required sample submissions and the permittee has complied with all applicable requirements of this subsection and this division.

(h) Custom Testing Plan. Within seven days of being notified by the department that a breeding facility has been designated a Category A, Category B, trace-in facility, or Tier 1 facility, a permittee may, in lieu of meeting the applicable testing requirements of subsections (d) - (g) of this section, request the development of a custom testing plan by the department in consultation with TAHC based upon an epidemiological assessment conducted by the department and TAHC. A custom testing plan under this subsection is not valid unless it has been approved by the department and TAHC.

(1) The department shall temporarily suspend the applicable testing provisions of subsections (d)(2)(A), (e)(2)(A) and (E), and (g) of this section while the epidemiological assessment and custom testing plan development under this subsection take place.

(2) Upon the development of a custom testing plan under the provisions of this subsection, the department shall provide the permittee with a copy of the custom testing plan and the permittee shall, within seven days:

(A) agree in writing to comply with the provisions of the custom testing plan; or

(B) notify the department in writing that the permittee declines to participate in the custom testing plan.

(C) If a permittee chooses to decline participation in a custom testing plan under this subsection, the provisions of subsections (d)(2)(A), (e)(2)(A) and (E), and (g) of this section take effect as of the date of the notification required by subparagraph (B) of this paragraph and all time-dependent calculations of those subsections begin.

(D) If a permittee agrees in writing to comply with the provisions of a custom testing plan under this subsection, the custom testing plan replaces the testing provisions of subsections (d)(2)(A), (e)(2)(A) and (E), and (g) of this section.

(3) A breeding facility designated by the department as Category A, Category B, trace-in, or Tier 1 is NMQ as of the date of such notification and remains NMQ until the provisions of the custom testing plan under this subsection have been satisfied.

(4) If for any reason the permittee does not comply with the provisions of a custom testing plan under this subsection, the provisions of subsections (d) - (g) of this section resume applicability.

(5) The terms of a custom testing plan under this subsection are non-negotiable and final.

(i) Nursing facilities.

(1) Notwithstanding NMQ status, deer less than 120 days of age in any Category A, Category B, trace-in, and or Tier 1 facility may be transferred to a registered nursing facility, provided:

(A) the facility from which the deer are transferred was MQ at the time the facility was designated Category A, Category B, trace-in, or Tier 1; and

(B) no deer from any other breeding facility are or have been present in the nursing facility during the current reporting year.

(2) A registered nursing facility is prohibited from accepting deer from more than one breeding facility in one reporting year.

(3) No person may possess deer older than 120 days of age in a nursing facility.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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James Murphy

General Counsel

Texas Parks and Wildlife Department

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Proposal publication date: October 1, 2021

For further information, please call: (512) 389-4775



DIVISION 2. CHRONIC WASTING DISEASE - MOVEMENT OF DEER

31 TAC §65.99

The repeal is adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter E, which authorizes the commission to make regulations governing the trapping, transporting, and transplanting of game animals, Parks and Wildlife Code,

Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, and sale of breeder deer held under the authority of the subchapter; Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure; Subchapter R-1, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that mule deer may be temporarily detained in an enclosure (although the department has not yet established a DMP program for mule deer authorized by Subchapter R-1); and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER F. ADVISORY COMMITTEES

The Texas Department of Transportation (department) adopts amendments to §1.84, Statutory Advisory Committees, and §1.88, Duration of Advisory Committees, and the repeal of §1.90, Advisory Committees for Ports-to-Plains Corridor. The amendments to §1.84 and §1.88, and the repeal of §1.90 are adopted without changes to the proposed text as published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6228). The rules will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS AND REPEAL

Senate Bill No. 1474, Acts of the 87th Legislature, Regular Session, 2021, (SB 1474) adds Transportation Code, §201.623, under which it established the I-27 Advisory Committee to provide the department with information on concerns and interests along the Ports-to-Plains Corridor and advise the department on transportation improvements impacting the Ports-to-Plains Corridor. SB 1474 establishes the composition and purpose of the advisory committee and provides requirements for its meetings. Subsection (j) of that section authorizes the Texas Transportation Commission (commission) to adopt rules to govern the operations of the committee.

Senate Bill No. 763, Acts of the 87th Legislature, Regular Session, 2021, (SB 763) adds Transportation Code, §21.004, which

requires the commission to appoint an advisory committee to assess current state law and any potential changes to state law that are needed to facilitate the development of urban air mobility operations and infrastructure in this state.

Additionally, the department's rules provide, in accordance with Government Code, §2110.008, that each of the commission's or department's advisory committees created by statute or by the commission or department is abolished on December 31, 2021. The commission has reviewed the need to continue the existence of those advisory committees beyond that date. The commission recognizes that the continuation of some existing advisory committees is necessary for improved communication between the department and the public and this rulemaking extends the duration of specified advisory committees for that purpose.

Amendments to §1.84, Statutory Advisory Committees, add subsection (e), which provides information unique to the I-27 Advisory Committee relating to the purpose, membership, duties, meetings, and compensation of that committee, and subsection (f), which provides information unique to the Urban Air Mobility Advisory Committee relating to the purpose, membership, duties, and meetings of that committee. The amendments also correct the citation in subsection (d)(5) to remove the reference to §1.82(i), which was repealed in 2019.

Amendments to §1.88, Duration of Advisory Committees, extend the dates on which the various advisory committees will be abolished and provide the date on which the new Urban Air Mobility Advisory Committee will be abolished. The amendments also remove the Border Trade Advisory Committee from the list of advisory committees that will be abolished on December 31, 2021. The statutes that created the Border Trade Advisory Committee and the new I-27 Advisory Committee provide that Chapter 2110, Government Code, does not apply to those advisory committees. Therefore, the commission does not have authority to determine the duration of those statutorily created advisory committees.

Section 1.90, Advisory Committees for Ports-to-Plains Corridor, is being repealed because its provisions have been executed. The legislature, by House Bill No. 1079, Acts of the 86th Legislature, Regular Session, 2019, (HB 1079), required the department to establish the Ports-to-Plains Advisory Committee to assist the department in conducting a comprehensive study of the Ports-to-Plains Corridor in accordance with that Act. That Act expires August 31, 2021. The committee has completed its work.

COMMENTS

No comments on the proposed amendments and repeal were received.

43 TAC §1.84, §1.88

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.117, which provides the commission with the authority to establish, as it considers necessary, advisory committees on any of the matters under its jurisdiction, Transportation Code, §201.623(j), which provides the commission with the authority to adopt rules to govern the operations of the I-27 Advisory Committee, and Government Code, §2110.008, which provides that a state agency by rule may designate the date on which an advisory committee will automatically be abolished.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Government Code, Chapter 2110, and Transportation Code, §§21.004, 201.114, 201.117, and 201.623.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 30, 2021.

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Texas Department of Transportation

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For further information, please call: (512) 463-8630



43 TAC §1.90

STATUTORY AUTHORITY

The repeal is adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.117, which provides the commission with the authority to establish, as it considers necessary, advisory committees on any of the matters under its jurisdiction, Transportation Code, §201.623(j), which provides the commission with the authority to adopt rules to govern the operations of the I-27 Advisory Committee, and Government Code, §2110.008, which provides that a state agency by rule may designate the date on which an advisory committee will automatically be abolished.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Government Code, Chapter 2110, and Transportation Code, §§21.004, 201.114, 201.117, and 201.623.

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CHAPTER 15. FINANCING AND CONSTRUCTION OF TRANSPORTATION PROJECTS

SUBCHAPTER L. STATE SCENIC BYWAYS PROGRAM

43 TAC §§15.140 - 15.147

The Texas Department of Transportation (department) adopts new §§15.140 - 15.147 concerning State Scenic Byways Program. The new §§15.140 - 15.147 are adopted with changes to the proposed text as published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6232). The rules will be republished.

EXPLANATION OF ADOPTED NEW SECTIONS AND AMENDMENTS

Senate Bill No. 941, 87th Legislature, Regular Session, 2021, (SB 941) amended Transportation Code, Chapter 391, for the department to create plan, design, and establish a program for designating highways as State Scenic Byways. New §§15.140 - 15.147 add provisions to Title 43, Chapter 15 that set forth how the department will implement the program.

The rules were written in a manner to provide the department with maximum flexibility due to the uncertainty surrounding the federal program. For example, at this time, the Federal Highway Administration (FHWA) has no plans to conduct a National Byway Designation call; however, a project call for the National Scenic Grants program is planned for later this fall, but neither program guidance nor an anticipated date for the call is available at this time. The department is required by statute to create the State Scenic Byway program by the end of 2021.

New §15.140, Purpose, describes the purpose of the new subchapter.

New §15.141 Definitions, supplies relevant definitions for the subchapter.

New §15.142, State Scenic Byway Program, states that the state program works in conjunction with the National Scenic Byways Program and establishes the requirements for a highway to be designated as a State Scenic Byway.

New §15.143, Eligible Entity, provides that any political subdivision is an eligible entity and that a community group may be approved by the department to be an eligible entity. The section also provides the procedure for a community group to be approved as an eligible entity.

New §15.144, Application Procedure, describes the application procedure for an entity to request the designation of a highway as a State Scenic Byway, the designation of a State Scenic Byway as a National Scenic Byway, and an application for a national scenic byway grant for a project on a State Scenic Byway.

New §15.145, Matching Funds, describes the matching fund provisions under the program and states the statutory limitation on the department's use of state funds. The section restates the substance of Transportation Code, §391.256(b)(3) and (d).

New §15.146, Outdoor Advertising Prohibited, states that outdoor advertising on a State Scenic Byway is generally prohibited. This prohibition is required under Transportation Code, §391.252. Technical corrections of the citations to the state and federal law have been made to this section, as proposed, to provide greater specificity of the applicable law.

New §15.147, Removal of Designation, authorizes the department to remove the designation of a State Scenic Byway if the

roadway no longer meets the requirements under Title 23, United States Code, §162.

COMMENTS

The department received a total of 72 comments concerning the proposed draft rules. Comments were received from Scenic Texas, the Outdoor Advertising Association of Texas (OAAT), and the National Parks Conservation Association. Sixty nine of the comments were from private citizens in support of comments made by Scenic Texas.

Comment: OAAT commented on §15.142 that the rule does not properly designate criteria for becoming a state scenic byway as intended by the Legislature.

Response: The department disagrees. The proposed rules state 23 U.S.C. §162 is the guide for the State Scenic Byway Program. The intrinsic qualities as mentioned in the federal statute will be considered as part of the department's review process. The program documents will detail all of the designation requirements.

Comment: Scenic Texas commented on §15.143 that community groups should be broadly defined so that a broad range of groups would be eligible to apply.

Response: The department agrees in part and includes broad requirements for community group eligibility to ensure a wide variety of entities can participate. However, the department will not define specific criteria in the rules but rather in its program guidance and application form.

Comment: OAAT commented that a 60-day deadline for the department to process applications from community groups does not allow enough time to adequately process the application.

Response: The department agrees and revised the wording to clarify that the 60-day deadline was intended only to review whether a community group is eligible to submit an application.

Comment: Scenic Texas commented on §15.144 that a corridor management plan (CMP) should not be required. OAAT commented that the department should require a CMP for state designation.

Response: The department agrees in part. The proposed rules were drafted to provide the department with discretion regarding the requirement for the CMP and inform potential applicants of the corridor management plan requirement under the National Designation Program. However, in response to Scenic Texas' comments, the last sentence of §15.144(a) is removed and the section no longer states that a CMP could be required as part of a State Scenic Designation application. However, per FHWA requirements, the applicant will likely still have to submit a CMP as part of a National Designation application. Moreover, the CMP is required by FHWA only for the National Designation application. Also, the federal grant under the National Scenic Byway Program can be used to create the CMP. The proposed rules require that each affected local governmental entity must approve of the designation as part of the State Scenic Byway application. This requirement ensures that the public and impacted landowners are aware of the designation. The impacted landowners will be able to voice their concerns to their local government officials.

Comment: Scenic Texas commented that the requirement for concurrence in §15.144 should be removed.

Response: The department disagrees. This requirement was added to ensure that local governments are aware and approve of the designation. This requirement is consistent with the de-

partment's goal of working closely with various planning partners to ensure coordination. Moreover, the department's Memorial Highway Guidelines also require that a group seeking to designate a portion of a highway must obtain a supporting authorizing resolution or municipal ordinance. The department's staff recommendations language remain as proposed.

Comment: Scenic Texas commented in §15.144 that an eligible entity should be allowed to submit an application for either National Scenic Byway Designation or funding but not required to submit both.

Response: The department agrees and revised the wording to make this clear. After §15.144(c)(1), the department has replaced "and" with "or" for clarification. The department understands the language can be interpreted to mean both applications for a grant and national designation must be submitted together. The intent was to state that eligible entity could submit an application for either a grant or national designation.

Comments: Scenic Texas commented in §15.147 that the department should "clearly state the federal criteria for de-designation in the rules so that they can be found easily by stakeholders." If not, Scenic Texas requests that the department include "a list of reasons a particular roadway may be de-designated." OAAT also commented on that "with no criteria to include a road as a state scenic byway, the method for the removal of the designation is also unclear."

Response: The department disagrees and believes that the language provides sufficient explanation. The program guidance and application form will detail the criteria and processes for both for designation and de-designation.

Comment: Scenic Texas commented that the department should keep an internal list of applications denied by the department with reasons for denial to be used to help expand the list of eligible roadways.

Response: The department disagrees, the bill language is clear as to what roadways are eligible. The department's staff respectfully declines this suggestion because doing so could suggest that the department is interested in expanding the list of eligible roadways. The expansion of the list of eligible roadways is a legislative matter.

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §391.256(f), which requires the commission by rule to prohibit outdoor advertising on a State Scenic Byway.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, §391.256.

§15.140. *Purpose.*

Transportation Code, Chapter 391, Subchapter I, requires the department to establish a State Scenic Byways Program. This subchapter sets forth the procedures for the program.

§15.141. *Definitions.*

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

- (1) Department--The Texas Department of Transportation.

(2) National Scenic Byway--A roadway designated as a National Scenic Byway by the Federal Highway Administration under Title 23, §162, United States Code.

§15.142. *State Scenic Byways Program.*

(a) The State Scenic Byways Program works in conjunction with the national scenic byways program, 23 U.S.C. §162 and guidance for that program from the federal highway administration.

(b) To be a State Scenic Byway, a highway must be described by Transportation Code, §391.252, and designated by the department as a State Scenic Byway under this subchapter.

§15.143. *Eligible Entity.*

(a) To be eligible to participate in the State Scenic Byways Program, an entity must be:

- (1) a political subdivision; or
- (2) a community group that is approved by the department.

(b) To be approved for participation in the program, a community group must submit to the department:

- (1) an application in the form prescribed by the department; and
- (2) information supporting the application, as required by the department.

(c) The department will send to a community group that applies under subsection (b) of this section notice of the approval or rejection of its application for participation in the program before the 60th day after the day on which that application and all required information is first received by the department.

§15.144. *Scenic Byways Application Procedures.*

(a) State Scenic Byways Application. An eligible entity may submit to the department an application for the designation of a highway as a State Scenic Byway in the form prescribed by the department.

(b) Concurrence. Before the department may designate a highway as a State Scenic Byway, the applicant must obtain concurrence from each governmental entity that has jurisdiction over the highway that is subject to the application.

(c) National Scenic Byway Applications. Subject to Federal Highway Administration notice and after a highway is designated as a State Scenic Byway, an eligible entity may submit to the department:

- (1) an application for designation of the State Scenic Byway as a National Scenic Byway; or
- (2) an application for a National Scenic Byway grant for a project on the State Scenic Byway.

§15.145. *Matching Funds.*

An eligible entity under the program may pay for the costs of a project that are not covered by a grant made under 23 U.S.C. §162. The department may use money from the state highway fund for a project that receives a grant made under 23 U.S.C. §162 only to satisfy the state matching fund requirements for the grant.

§15.146. *Outdoor Advertising Prohibited.*

In accordance with §21.145 of this title (relating to Prohibited Signs), Transportation Code, §391.252, and 23 U.S.C. §131(s), outdoor advertising on a State Scenic Byway is prohibited.

§15.147. *Removal of Designation.*

The department may remove a State Scenic Byway designation if the department determines that the highway no longer meets the criteria

for designation under the national scenic byways program provided by 23 U.S.C. §162.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 30, 2021.

TRD-202104760

Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Effective date: December 20, 2021

Proposal publication date: September 17, 2021

For further information, please call: (512) 463-8630



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 Department of Motor Vehicles

Title 43, Part 10

The Texas Department of Motor Vehicles (department) will review 43 Texas Administrative Code, Chapter 206, Management; Chapter 218, Motor Carriers; and Chapter 221, Salvage Vehicle Dealers. This review is being conducted pursuant to Texas Government Code §2001.039.

The department will determine whether the reasons for adopting these rules continue to exist and whether the rules should be repealed, readopted, or readopted with amendments.

If you want to comment on this rule review proposal, submit your written comments by 5:00 p.m. CST on January 17, 2022. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to rules@txdmv.gov or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

Any necessary repeals or amendments identified during this rule review will be proposed in a separate rulemaking document and published in the *Texas Register* under the Administrative Procedure Act, Texas Government Code Chapter 2001.

TRD-202104805

Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Filed: December 3, 2021

Adopted Rule Reviews

Texas Historical Commission

Title 13, Part 2

The Texas Historical Commission (the "commission") adopts the review of Texas Administrative Code, Title 13, Part 2, Chapter 16, relating to Historic Sites. This review was completed pursuant to Texas Government Code §2001.039. The commission has assessed whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of the above-mentioned chapters was reviewed to determine whether it was obsolete, reflected current legal and policy considerations, reflected current general provisions in the governance of the commission, and/or whether it was in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act). The commission proposed the review of 13 TAC Chapter 11 - Administra-

tion; Chapter 12 - Texas Historic Courthouse Preservation Program; Chapter 14 - Texas Historical Artifacts Acquisition program; Chapter 15 - Administration of Federal Programs; Chapter 16 - Historic Sites; Chapter 19 - Texas Main Street Program; Chapter 20 - Awards; Chapter 22 - Cemeteries; Chapter 23 - Publications; Chapter 25 - Office of the State Archeologist; and Chapter 26 - Practice & Procedure in the August 13, 2021, issue of the *Texas Register* (46 TexReg 5067).

Relating to the review of 13 TAC, the commission finds the reasons for adopting Chapters 11, 12, 14, 15, 16, 19, 20, 22, 23, 25, and 26 continue to exist and readopts the rules. The commission received no comments related to the review. At a later date, the THC plans to propose revisions to clarify language in various chapters.

This concludes the review of 13 TAC Chapters 11 - Administration; Chapter 12 - Texas Historic Courthouse Preservation Program; Chapter 14 - Texas Historical Artifacts Acquisition program; Chapter 15 - Administration of Federal Programs; Chapter 16 - Historic Sites; Chapter 19 - Texas Main Street Program; Chapter 20 - Awards; Chapter 22 - Cemeteries; Chapter 23 - Publications; Chapter 25 - Office of the State Archeologist; and Chapter 26 - Practice & Procedure.

TRD-202104893

Mark Wolfe

Executive Director

Texas Historical Commission

Filed: December 7, 2021

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Comptroller of Public Accounts

Title 34, Part 1

The Comptroller of Public Accounts adopts the review of Texas Administrative Code, Title 34, Part 1, Chapter 7, concerning Prepaid Higher Education Tuition Program; Chapter 9, concerning Property Tax Administration; Chapter 11, concerning Government Growth Impact Statement; Chapter 12, concerning Economic Growth; Chapter 13, concerning Unclaimed Property Reporting and Compliance; and Chapter 15, concerning Electronic Transfer of Certain Payments to State Agencies pursuant to Government Code, §2001.039. The review assessed whether the reason for adopting the chapter continues to exist.

The comptroller received no comments on the proposed review, which was published in the October 1, 2021, issue of the *Texas Register* (46 TexReg 6547).

Relating to the review of Chapter 7, the comptroller finds that the reasons for adopting Chapter 7 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039.

Relating to the review of Chapter 9, the comptroller finds that the reasons for adopting Chapter 9 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039. At a later date, §§9.101, 9.301, 9.419, 9.1002, 9.1051, 9.1052, 9.3002, 9.3015, 9.3031, 9.3039, 9.3060, 9.4001, 9.4011, 9.4031, 9.4033, 9.4035, and 9.4037 will be amended in separate rulemakings in accordance with the Texas Administrative Procedure Act.

Relating to the review of Chapter 11, the comptroller finds that the reasons for adopting Chapter 11 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039.

Relating to the review of Chapter 12, the comptroller finds that the reasons for adopting Chapter 12 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039.

Relating to the review of Chapter 13, the comptroller finds that the reasons for adopting Chapter 13 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039.

Relating to the review of Chapter 15, the comptroller finds that the reasons for adopting Chapter 15 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039. At a later date, §§15.1, 15.4, 15.6, 15.21, and 15.32 will be amended in separate rulemakings in accordance with the Texas Administrative Procedure Act.

This concludes the review of Texas Administrative Code, Title 34, Part 1, Chapters 7, 9, 11, 12, 13, and 15.

TRD-202104850
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: December 7, 2021



Employees Retirement System of Texas

Title 34, Part 4

Pursuant to the notice of the proposed rule review that was published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1243), the Employees Retirement System of Texas (ERS) reviewed 34 Texas Administrative Code (TAC), Chapter 61, Terms and Phrases, pursuant to Texas Government Code § 2001.039, to determine whether the reasons for adopting the rules in Chapter 61 continue to exist. No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reasons for adopting the rules in 34 TAC Chapter 61 continue to exist, and the Board readopts Chapter 61 with amendments as published in the October 22, 2021, issue of the *Texas Register* (46 TexReg 7194) and adopted by the Board at its December 7, 2021,

meeting. This completes ERS' review of 34 TAC Chapter 61, Terms and Phrases.

TRD-202104900
Cynthia C. Hamilton
General Counsel
Employees Retirement System of Texas
Filed: December 7, 2021



Pursuant to the notice of the proposed rule review that was published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1243), the Employees Retirement System of Texas (ERS) reviewed 34 Texas Administrative Code (TAC), Chapter 63, Board of Trustees, pursuant to Texas Government Code § 2001.039, to determine whether the reasons for adopting the rules in Chapter 63 continue to exist. No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reasons for adopting the rules in 34 TAC Chapter 63 continue to exist, and the Board readopts Chapter 63 with the amendments as published in the October 22, 2021, issue of the *Texas Register* (46 TexReg 7194) and adopted by the Board at its December 7, 2021, meeting. This completes ERS' review of 34 TAC Chapter 63, Board of Trustees.

TRD-202104904
Cynthia C. Hamilton
General Counsel
Employees Retirement System of Texas
Filed: December 7, 2021



Pursuant to the notice of the proposed rule review that was published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1243), the Employees Retirement System of Texas (ERS) reviewed 34 Texas Administrative Code (TAC), Chapter 65, Executive Director, pursuant to Texas Government Code § 2001.039, to determine whether the reasons for adopting the rules in Chapter 65 continue to exist. No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reasons for adopting the rules in 34 TAC Chapter 65 continue to exist, and the Board readopts Chapter 65 with amendments as published in the October 22, 2021, issue of the *Texas Register* (46 TexReg 7197) and adopted by the Board at its December 7, 2021, meeting. This completes ERS' review of 34 TAC Chapter 65, Executive Director.

TRD-202104902
Cynthia C. Hamilton
General Counsel
Employees Retirement System of Texas
Filed: December 7, 2021



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 10 TAC §11.2(a)

Deadline	Documentation Required
01/03/2022	Application Acceptance Period Begins. Public Comment period starts.
01/07/2022	Pre-Application Final Delivery Date (including waiver requests).
02/15/2022	Deadline for submission of Application for .ftp access if pre-application not submitted.
03/01/2022	<p>End of Application Acceptance Period and Full Application Delivery Date (including Quantifiable Community Participation documentation; Environmental Site Assessments (ESAs), Scope and Cost Reviews (SCRs); Appraisals; Primary Market Area Map; Feasibility Report; all Resolutions necessary under §11.3 of this chapter related to Housing De-Concentration Factors).</p> <p>Final Input from Elected Officials Delivery Date (including Resolution for Local Government Support pursuant to §11.9(d)(1) of this chapter and State Representative Input pursuant to §11.9(d)(5) of this chapter).</p>
04/01/2022	Market Analysis Delivery Date pursuant to §11.205 of this chapter.
05/06/2022	Deadline for Third Party Request for Administrative Deficiency.
Mid-May 2022	Scoring Notices Issued for Majority of Applications Considered "Competitive."
06/01/2022	Public comment deadline for the comment to be included in the Board materials relating to the June presentation of awards are due in accordance with §1.10.
June 2022	On or before June 30, publication of the list of Eligible Applications for Consideration for Award in July.
July 2022	On or before July 31, Board issuance of Final Awards.

Deadline	Documentation Required
Mid-August	Commitments are Issued.
11/01/2022	Carryover Documentation Delivery Date.
11/30/2022	Deadline for closing under §11.9(c)(8) (if applicable) (not subject to an extension under §11.2(a) pursuant to the requirements of §11.9(c)(8)).
07/01/2023	10% Test Documentation Delivery Date.
12/31/2024	Placement in Service.
Five business days after the date on the Deficiency Notice (without incurring point loss)	Administrative Deficiency Response Deadline (unless an extension has been granted).

Figure: 10 TAC §11.1002

Deadline	Documentation Required
11/12/21	Department releases Materials for Notice of Intent for Supplemental Allocations.
11/19/21	Department releases Materials for Supplemental Allocations.
11/19/21	Deadline for Notice of Intent due for Supplemental Allocations.
12/10/21	Deadline for all Requests for Supplemental Allocations.
February Board meeting	Board approval of Supplemental Allocations under this Subchapter (may be awarded conditioned on final underwriting review).
05/01/21 (est.)	Commitments for Supplemental Allocations are Issued.
05/15/21 (est.)	Commitment Fees for the Supplemental Allocation and any conditions of the credit Allocation are to be met.
11/01/2022	Carryover Documentation Delivery Date.
11/30/2022	Deadline for closing under §11.9(c)(8) (if applicable) (not subject to an extension under §11.2(a) pursuant to the requirements of §11.9(c)(8)).
07/21/2023	10% Test Documentation Delivery Date.
12/31/24	Placement in Service.
Five business days after the date on the Deficiency Notice (without incurring point loss)	Administrative Deficiency Response Deadline (unless an extension has been granted).

Figure: 16 TAC §3.107(e)(1)

Table 1. Penalty Guideline

Oil & Gas Rule/Statute	General Description	Guideline Minimum Penalty Amount or Range
16 TAC §3.2	Commission denied access	\$1,000
16 TAC §3.3	failure to comply with well sign requirements	\$500
16 TAC §3.3	failure to comply with entrance sign requirements	\$1,000
16 TAC §3.3	failure to comply with tank battery sign requirements	\$1,000
16 TAC §3.5(a)	no drilling permit approved	\$5,000
16 TAC §3.5(a)	no drilling permit: no application filed	\$10,000
16 TAC §3.8(b)	pollution of surface or subsurface water	\$1,000 minimum
16 TAC §3.8(d)(1)	improper disposal of oil and gas waste; enhance for actual or threatened pollution: dry pit area	\$500 base penalty plus \$0.30/sq. ft.
16 TAC §3.8(d)(1)	improper disposal of oil and gas waste; enhance for actual or threatened pollution: wet pit area	\$500 base penalty plus \$0.50/sq. ft.
16 TAC §3.8(d)(2)	use of prohibited pits: fresh water pit area	\$2,500 base plus \$0.25 sq. ft.
16 TAC §3.8(d)(2)	use of prohibited pits: salt water or other fluid area	\$2,500 base plus \$0.75 sq. ft.
16 TAC §3.8(d)(4)(G)(i)(I), (II)	reserve pits: fresh water pit area	\$2,500 base plus \$0.25 sq. ft.
16 TAC §3.8(d)(4)(G)(i)(I), (II)	reserve pits: salt water or other fluid pit area	\$2,500 base plus \$0.75 sq. ft.
16 TAC §3.8(d)(4)(G)(i)(III), (IV)	workover and other pits: dry	\$2,500
16 TAC §3.8(d)(4)(G)(i)(III), (IV)	workover and other pits: wet	\$5,000
16 TAC §3.9(1)	no permit to dispose or inject	\$5,000
16 TAC §3.9(9)(A)	failure to comply with tubing and packer requirements	\$2,000
16 TAC §3.9(9)(B)	no pressure observation valve	\$1,000 per valve
16 TAC §3.9(12)	no test, failed test, or no Form H-5	\$5,000
16 TAC §3.13(b)(1)(B)	open casing/tubing	\$1,000 to \$5,000
16 TAC §3.13(b)(1)(C)	failure to comply with wellhead control requirements	\$5,000
16 TAC §3.13(b)(2)	failure to comply with surface casing requirements	\$2,000
16 TAC §3.14(a)(2)	failure to file Form W-3A	\$2,500
16 TAC §3.14(a)(3)	failure to notify of setting plugs	\$1,500

Oil & Gas Rule/Statute	General Description	Guideline Minimum Penalty Amount or Range
16 TAC §3.14(b)(1)	failure to file Form W-3	\$5,000
16 TAC §3.14(b)(2)	failure to plug onshore well	\$2,000 plus \$1/ft. of total depth
16 TAC §3.14(b)(2)	failure to plug bay, estuary, or inland waterway well	\$15,000 plus \$2 per foot of total depth, subject to statutory maximum
16 TAC §3.14(b)(2)	failure to plug offshore well	\$50,000 plus \$5 per foot of total depth, subject to statutory maximum
16 TAC §3.14(d)(1)-(11)	failure to follow general plugging requirement	\$1,000
16 TAC §3.14(d)(12)	failure to remove miscellaneous loose junk and trash	\$1,000
16 TAC §3.14(d)(12)	failure to remove tanks, vessels, and related piping	\$2,500
16 TAC §3.14(d)(12)	failure to empty tanks, vessels, and related piping	\$5,000
16 TAC §3.15(l)(7)	failure to test prior to reactivating well	\$1,000
16 TAC §3.15(f)(2)(A)	failure to disconnect electricity	\$5,000
16 TAC §3.15(f)(2)(A)	failure to purge vessels	\$7,500
16 TAC §3.15(f)(2)(A)	failure to remove equipment	\$10,000
16 TAC §3.16(b) and (c)	failure to file completion records/logs	\$2,500
16 TAC §3.17	Bradenhead violations: no valve; no access; or pressure on it	\$1,000 to \$2,500
16 TAC §3.20(a)(1)	failure to notify of incident	\$2,500 to \$5,000
16 TAC §3.21(a)-(i)	improper fire prevention	\$1,000
16 TAC §3.21(j)	failure to comply with dike/firewall requirements	\$2,500
16 TAC §3.21(k)	swabbing without authority	\$1,000 per well
16 TAC §3.21(l)	failure to comply with electric power line requirements	\$2,000
16 TAC §3.22	no nets	compliance
16 TAC §3.35(a)	failure to notify of lost logging tool	\$5,000
16 TAC §3.35(b)	failure to properly abandon lost logging tool	\$5,000
16 TAC §3.36(c)(5)(B)	improper storage tank signs in a non-public area	\$1,000
16 TAC §3.36(c)(5)(B)	improper storage tank signs in a public area	\$2,000
16 TAC §3.36(c)(6)(A)	improper entry signs in a non-public area	\$1,000
16 TAC §3.36(c)(6)(A)	improper entry signs in a public area	\$2,000

Oil & Gas Rule/Statute	General Description	Guideline Minimum Penalty Amount or Range
16 TAC §3.36(c)(6)(A)	improper entry signs in a populated public area	\$5,000
16 TAC §3.36(c)(6)(B)	failure to fence specific area at a well	\$5,000
16 TAC §3.36(c)(6)(B)	failure to fence specific area at a battery	\$10,000
16 TAC §3.36(c)(6)(C)	materials provision	\$2,500
16 TAC §3.36(c)(8)	failure to maintain H ₂ S equipment	\$5,000
16 TAC §3.36(c)(9)(Q)	failure to update contingency plan	\$2,500
16 TAC §3.36(c)(9)(N)	failure to notify of H ₂ S contingency plan activation	more than 6 hours up to 12 hours-\$5,000
16 TAC §3.36(c)(9)(N)	failure to notify of H ₂ S contingency plan activation	12 hours or more-\$10,000
16 TAC §3.36(c)(14)	failure to notify of H ₂ S release	more than 6 hours up to 12 hours-\$5,000
16 TAC §3.36(c)(14)	failure to notify of H ₂ S release	12 hours or more-\$10,000
16 TAC §3.36(c)(11)-(12), except (12)(F)	failure to follow requirements at drill/workover site; no injury	\$5,000
16 TAC §3.36(c)(11)-(12), except (12)(F)	failure to follow requirements at drill/workover site; injury or death	\$10,000
16 TAC §3.36(c)(12)(F)	failure to notify of drill stem test in H ₂ S formation	\$2,000
16 TAC §3.36(c)(13)	failure to have H ₂ S trained personnel	\$5,000 per person
16 TAC §3.36(d)(1)(E)	failure to file Form H-9; non-public area	\$1,000
16 TAC §3.36(d)(1)(E)	failure to file Form H-9; public area	\$10,000
16 TAC §3.36(d)(2)	failure to identify well as sour on completion report	\$10,000
16 TAC §3.36(d)(3)	intentional failure to file written report of H ₂ S release	\$3,000
16 TAC §3.36(d)(3)	failure to file written report of emergency H ₂ S release	\$5,000
16 TAC §3.46(a)	no permit to dispose or inject	\$5,000
16 TAC §3.46(g)(1)	failure to comply with tubing and packer requirements	\$2,000
16 TAC §3.46(g)(2)	no pressure observation valve	\$1,000 per valve
16 TAC §3.46(j)	no test, failed test, or no Form H-5	\$5,000
16 TAC §3.57	reclamation plant operation violation	\$1,000
16 TAC §3.65 (c), (d), or (f)	failure to file Form CI-D or Form CI-X	\$1,000
16 TAC §3.65(g)	failure to provide critical customer information	\$2,500
16 TAC §3.73(a)	failure to notify of pipeline connection	\$1,000

Oil & Gas Rule/Statute	General Description	Guideline Minimum Penalty Amount or Range
16 TAC §3.73(h)	reconnecting, transporting from well/lease without approved Form P-4	\$1,000 minimum; see Table 1A for additional amount
16 TAC §3.73(j)	reporting, producing, injecting, disposing without approved Form P-4	\$1,000 minimum; see Table 1A for additional amount
16 TAC §3.81	failure to comply with brine mining injection well operation requirements	\$1,000
16 TAC §3.95	failure to comply with underground salt formation liquid or liquefied hydrocarbon storage facility operation requirements	\$2,000
16 TAC §3.96	failure to comply with underground productive or depleted reservoir gas storage facility operation requirements	\$2,000
16 TAC §3.98	failure to comply with hazardous waste disposal operation requirements	\$2,000
16 TAC §3.99(d)(2)	failure to comply with protection/isolation of usable quality water requirements	\$2,500 per well
16 TAC §3.99(e)	failure to comply with cathodic protection well construction requirements	\$1,000 per well
16 TAC §3.99(g)	failure to file completion report	\$1,000 per well
16 TAC §3.100(d)(2)	failure to permit seismic/core holes penetrating usable quality water	\$1,000 per hole
16 TAC §3.100(f)	failure to properly plug seismic/core holes	\$1,000 per hole
16 TAC §3.100(g)	failure to file final survey report	\$5,000 per survey
16 TAC §3.106(b)	commenced construction of a sour gas pipeline facility without a permit	\$10,000
16 TAC §3.106(e)	published notice with egregious errors/omissions	\$5,000
16 TAC §3.106(f)	provided pipeline plat with egregious errors/omissions	\$5,000

Figure: 16 TAC §3.107(j)

Table 5. Penalty Calculation Worksheet

	Oil & Gas Rule/Statute	General Description	Guideline Minimum Penalty from Table 1	Penalty Tally
1	16 TAC §3.2	Commission denied access	\$1,000	\$
2	16 TAC §3.3	failure to comply with well sign requirements	\$500	\$
3	16 TAC §3.3	failure to comply with entrance sign requirements	\$1,000	\$
4	16 TAC §3.3	failure to comply with tank battery sign requirements	\$1,000	\$
5	16 TAC §3.5(a)	no drilling permit: filed but not approved	\$5,000	\$
6	16 TAC §3.5(a)	no drilling permit: no application filed	\$10,000	\$
7	16 TAC §3.8(b)	pollution of surface or subsurface water	\$1,000 minimum	\$
8	16 TAC §3.8(d)(1)	improper disposal of oil and gas waste; enhance for actual or threatened pollution: dry pit area	\$500 base penalty plus \$0.30/sq. ft.	\$
9	16 TAC §3.8(d)(1)	improper disposal of oil and gas waste; enhance for actual or threatened pollution: wet pit area	\$500 base penalty plus \$0.50/sq. ft.	\$
10	16 TAC §3.8(d)(2)	use of prohibited pits: fresh water pit area	\$2,500 base plus \$0.25 sq. ft.	\$
11	16 TAC §3.8(d)(2)	use of prohibited pits: salt water or other fluid area	\$2,500 base plus \$0.75 sq. ft.	\$
12	16 TAC §3.8(d)(4)(G)(i)(I), (II)	reserve pits: fresh water pit area	\$2,500 base plus \$0.25 sq. ft.	\$
13	16 TAC §3.8(d)(4)(G)(i)(I), (II)	reserve pits: salt water or other fluid pit area	\$2,500 base plus \$0.75 sq. ft.	\$
14	16 TAC §3.8(d)(4)(G)(i)(III), (IV)	workover and other pits: dry	\$2,500	\$
15	16 TAC §3.8(d)(4)(G)(i)(III), (IV)	workover and other pits: wet	\$5,000	\$
16	16 TAC §3.9(1)	no permit to dispose or inject	\$5,000	\$
17	16 TAC §3.9(9)(A)	failure to comply with tubing and packer requirements	\$2,000	\$
18	16 TAC §3.9(9)(B)	no pressure observation valve	\$1,000 per valve	\$
19	16 TAC §3.9(12)	no test, failed test, or no Form H-5	\$5,000	\$
20	16 TAC §3.13(b)(1)(B)	open casing/tubing	\$1,000 to \$5,000	\$
21	16 TAC §3.13(b)(1)(C)	failure to comply with wellhead control requirements	\$5,000	\$
22	16 TAC §3.13(b)(2)	failure to comply with surface casing requirements	\$2,000	\$
23	16 TAC §3.14(a)(2)	failure to file Form W-3A	\$2,500	\$
24	16 TAC §3.14(a)(3)	failure to notify of setting plugs	\$1,500	\$
25	16 TAC §3.14(b)(1)	failure to file Form W-3	\$5,000	\$
26	16 TAC §3.14(b)(2)	failure to plug onshore well	\$2,000 plus \$1/ft. of total depth	\$

	Oil & Gas Rule/Statute	General Description	Guideline Minimum Penalty from Table 1	Penalty Tally
27	16 TAC §3.14(b)(2)	failure to plug bay, estuary, or inland waterway well	\$15,000 plus \$2 per foot of total depth, subject to statutory maximum	\$
28	16 TAC §3.14(b)(2)	failure to plug offshore well	\$50,000 plus \$5 per foot of total depth, subject to statutory maximum	\$
29	16 TAC §3.14(d)(1)-(11)	failure to follow general plugging requirement	\$1,000	\$
30	16 TAC §3.14(d)(12)	failure to remove miscellaneous loose junk and trash	\$1,000	\$
31	16 TAC §3.14(d)(12)	failure to remove tanks, vessels, and related piping	\$2,500	\$
32	16 TAC §3.14(d)(12)	failure to empty tanks, vessels, and related piping	\$5,000	\$
33	16 TAC §3.15(l)(7)	failure to test prior to reactivating well	\$1,000	\$
34	16 TAC §3.15(f)(2)(A)	failure to disconnect electricity	\$5,000	\$
35	16 TAC §3.15(f)(2)(A)	failure to purge vessels	\$7,500	\$
36	16 TAC §3.15(f)(2)(A)	failure to remove equipment	\$10,000	\$
37	16 TAC §3.16(b) and (c)	failure to file completion records/logs	\$2,500	\$
38	16 TAC §3.17	Bradenhead violations: no valve; no access; or pressure on it	\$1,000 to \$2,500	\$
39	16 TAC §3.20(a)(1)	failure to notify of incident	\$2,500 to \$5,000	\$
40	16 TAC §3.21(a)-(i)	improper fire prevention	\$1,000	\$
41	16 TAC §3.21(j)	failure to comply with dike/firewall requirements	\$2,500	\$
42	16 TAC §3.21(k)	swabbing without authority	\$1,000 per well	\$
43	16 TAC §3.21(l)	failure to comply with electric power line requirements	\$2,000	\$
44	16 TAC §3.22	no nets	compliance	
45	16 TAC §3.35(a)	failure to notify of lost logging tool	\$5,000	\$
46	16 TAC §3.35(b)	failure to properly abandon lost logging tool	\$5,000	\$
47	16 TAC §3.36(c)(5)(B)	improper storage tank signs in a non-public area	\$1,000	\$
48	16 TAC §3.36(c)(5)(B)	improper storage tank signs in a public area	\$2,000	\$
49	16 TAC §3.36(c)(6)(A)	improper entry signs in a non-public area	\$1,000	\$
50	16 TAC §3.36(c)(6)(A)	improper entry signs in a public area	\$2,000	\$
51	16 TAC §3.36(c)(6)(A)	improper entry signs in a populated public area	\$5,000	\$
52	16 TAC §3.36(c)(6)(B)	failure to fence specific area at a well	\$5,000	\$
53	16 TAC §3.36(c)(6)(B)	failure to fence specific area at a battery	\$10,000	\$
54	16 TAC §3.36(c)(6)(C)	materials provision	\$2,500	\$

	Oil & Gas Rule/Statute	General Description	Guideline Minimum Penalty from Table 1	Penalty Tally
55	16 TAC §3.36(c)(8)	failure to maintain H ₂ S equipment	\$5,000	\$
56	16 TAC §3.36(c)(9)(Q)	failure to update contingency plan	\$2,500	\$
57	16 TAC §3.36(c)(9)(N)	failure to notify of H ₂ S contingency plan activation	more than 6 hours up to 12 hours-\$5,000	\$
58	16 TAC §3.36(c)(9)(N)	failure to notify of H ₂ S contingency plan activation	12 hours or more-\$10,000	\$
59	16 TAC §3.36(c)(14)	failure to notify of H ₂ S release	more than 6 hours up to 12 hours-\$5,000	\$
60	16 TAC §3.36(c)(14)	failure to notify of H ₂ S release	12 hours or more-\$10,000	\$
61	16 TAC §3.36(c)(11)-(12), except (12)(F)	failure to follow requirements at drill/workover site; no injury	\$5,000	\$
62	16 TAC §3.36(c)(11)-(12), except (12)(F)	failure to follow requirements at drill/workover site; injury or death	\$10,000	\$
63	16 TAC §3.36(c)(12)(F)	failure to notify of drill stem test in H ₂ S formation	\$2,000	\$
64	16 TAC §3.36(c)(13)	failure to have H ₂ S trained personnel	\$5,000 per person	\$
65	16 TAC §3.36(d)(1)(E)	failure to file Form H-9; non-public area	\$1,000	\$
66	16 TAC §3.36(d)(1)(E)	failure to file Form H-9; public area	\$10,000	\$
67	16 TAC §3.36(d)(2)	failure to identify well as sour on completion report	\$10,000	\$
68	16 TAC §3.36(d)(3)	intentional failure to file written report of H ₂ S release	\$3,000	\$
69	16 TAC §3.36(d)(3)	failure to file written report of emergency H ₂ S release	\$5,000	\$
70	16 TAC §3.46(a)	no permit to dispose or inject	\$5,000	\$
71	16 TAC §3.46(g)(1)	failure to comply with tubing and packer requirements	\$2,000	\$
72	16 TAC §3.46(g)(2)	no pressure observation valve	\$1,000 per valve	\$
73	16 TAC §3.46(j)	no test, failed test, or no Form H-5	\$5,000	\$
74	16 TAC §3.57	reclamation plant operation violation	\$1,000	\$
75	16 TAC §3.65(c), (d), or (f)	failure to file Form CI-D or Form CI-X	\$1,000	\$
76	16 TAC §3.65(g)	failure to provide critical customer information	\$2,500	\$
77	16 TAC §3.73(a)	failure to notify of pipeline connection	\$1,000	\$
78	16 TAC §3.73(h)	reconnecting, transporting from well/lease without approved Form P-4	\$1,000 minimum; see Table 1A for additional amount	\$
79	16 TAC §3.73(j)	reporting, producing, injecting, disposing without approved Form P-4	\$1,000 minimum; see Table 1A for additional amount	\$
80	16 TAC §3.81	failure to comply with brine mining injection well operation requirements	\$1,000	\$
81	16 TAC §3.95	failure to comply with underground salt formation liquid or liquefied hydrocarbon storage facility operation requirements	\$2,000	\$

	Oil & Gas Rule/Statute	General Description	Guideline Minimum Penalty from Table 1	Penalty Tally
82	16 TAC §3.96	failure to comply with underground productive or depleted reservoir gas storage facility operation requirements	\$2,000	\$
83	16 TAC §3.97	failure to comply with underground salt formation gas storage facility operation requirements	\$2,000	\$
84	16 TAC §3.98	failure to comply with hazardous waste disposal operation requirements	\$2,000	\$
85	16 TAC §3.99(d)(2)	failure to comply with protection/isolation of usable quality water requirements	\$2,500 per well	\$
86	16 TAC §3.99(e)	failure to comply with cathodic protection well construction requirements	\$1,000 per well	\$
87	16 TAC §3.99(g)	failure to file completion report	\$1,000 per well	\$
88	16 TAC §3.100(d)(2)	failure to permit seismic/core holes penetrating usable quality water	\$1,000 per hole	\$
89	16 TAC §3.100(f)	failure to properly plug seismic/core holes	\$1,000 per hole	\$
90	16 TAC §3.100(g)	failure to file final survey report	\$5,000 per survey	\$
91	16 TAC §3.106(b)	commenced construction of a sour gas pipeline facility without a permit	\$10,000	\$
92	16 TAC §3.106(e)	published notice with egregious errors/omissions	\$5,000	\$
93	16 TAC §3.106(f)	provided pipeline plat with egregious errors/omissions	\$5,000	\$
94	Tex. Nat. Res. Code, §91.143	false filing	\$1,000 per form	\$
95	Subtotal of guideline penalty amounts from Table 1 (lines 1-94, inclusive)			\$
96	Reduction for settlement before hearing: up to 50% of line 95 amt.		%	\$
97	Subtotal: amount shown on line 95 less applicable settlement reduction on line 96			\$
Penalty enhancement amounts for threatened or actual pollution from Table 2				
98	Agricultural land or sensitive wildlife habitat		\$1,000 to \$5,000	\$
99	Endangered or threatened species		\$2,000 to \$10,000	\$
100	Bay, estuary or marine habitat		\$5,000 to \$25,000	\$
101	Minor freshwater source (minor aquifer, seasonal watercourse)		\$2,500 to \$7,500	\$
102	Major freshwater source (major aquifer, creeks, rivers, lakes and reservoirs)		\$5,000 to \$25,000	\$
Penalty enhancement amounts for safety hazard from Table 2				
103	Impacted residential/public areas		\$1,000 to \$15,000	\$
104	Hazardous material release		\$2,000 to \$25,000	\$
105	Reportable incident/accident		\$5,000 to \$25,000	\$
106	Well in H ₂ S field		up to \$10,000	\$
Penalty enhancement amounts for severity of violation from Table 2				

	Oil & Gas Rule/Statute	General Description	Guideline Minimum Penalty from Table 1	Penalty Tally
107		Time out of compliance	\$100 to \$2,000 each month	\$
108	Subtotal: amount shown on line 97 plus all amounts on lines 98 through 107, inclusive			\$
Penalty enhancements for culpability of person charged from Table 2				
109		Reckless conduct of operator	double line 108 amount	\$
110		Intentional conduct of operator	triple line 108 amount	\$
Penalty enhancements for number of prior violations within past seven years from Table 3				
111		One	\$1,000	\$
112		Two	\$2,000	\$
113		Three	\$3,000	\$
114		Four	\$4,000	\$
115		Five or more	\$5,000	\$
Penalty enhancements for amount of penalties within past seven years from Table 4				
116		Less than \$10,000	\$1,000	\$
117		Between \$10,000 and \$25,000	\$2,500	\$
118		Between \$25, 000 and \$50,000	\$5,000	\$
119		Between \$50,000 and \$100,00	\$10,000	\$
120		Over \$100,000	10% of total amt.	\$
121	Subtotal: Line 97 amt. plus amts. on line 109 and/or 110 plus the amt. shown on any line from 111 through 120, inclusive			\$
122	Reduction for demonstrated good faith of person charged			\$
123	TOTAL PENALTY AMOUNT: amount on line 121 less any amount shown on line 122			\$

Figure: 16 TAC §24.76(e)(11)

Meter Size	Multiplier
5/8"	1.00
3/4"	1.50
1"	2.50
1 1/2"	5.00
2"	8.00
3"	15.00

Local Optional Teacher Designation System Application Statutorily Based Framework

<u>Component</u>	<u>Requirements</u>
<u>Includes a teacher observation component and a percent weight is assigned</u>	<ul style="list-style-type: none"> • <u>Includes a teacher observation component as part of the local teacher designation system and assigns a clear percent weight for it.</u> • <u>For teachers who teach more than one content area/grade level, it is clear which content area/grade level will be used for purpose of TIA for all the teachers in each respective eligible teacher category.</u>
<u>Includes a Student Growth component and a percent weight is assigned</u>	<ul style="list-style-type: none"> • <u>Uses approved student growth measures as part of the local teacher designation system for all eligible teaching assignments, and clearly identifies which student growth measures apply to which eligible teaching assignments.</u> • <u>A clear percent weight of the student growth component is assigned.</u>
<u>Teacher Observation Rubric and Appraiser Certification</u>	<ul style="list-style-type: none"> • <u>District uses an approved teacher observation rubric that accurately measures teacher effectiveness, aligns to all of the dimensions of T-TESS, and is in compliance with §21.351 or §21.352.</u> • <u>Thorough training/certification is required for all appraisers. Calibration component required during certification.</u> • <u>Recertification of appraisers required at minimum every 3 years.</u>
<u>Reliability of teacher appraisers within and across campuses</u>	<ul style="list-style-type: none"> • <u>Calibration among appraisers both within and among campuses, including district leadership, is required at least once a year. (Note: for districts with fewer than 3 appraisers districtwide, calibration component includes partnering with additional trained appraisers, such as teacher leaders, ESC partners, etc.)</u> • <u>Appraisers calibrate on scoring using the district’s teacher observation rubric at least annually by conducting a multi-appraiser observation either in-person or on video.</u>
<u>District review of teacher observation trends</u>	<ul style="list-style-type: none"> • <u>Principals and principal supervisors review campus-based teacher observation trends at least quarterly by grade/subject/appraiser.</u> • <u>Results are shared with campus leaders and with teachers when possible.</u> • <u>Campus leaders determine the root cause of any skew in observation trends and have a plan to address the root causes.</u> • <u>For districts with more than one campus: District leaders review districtwide teacher observation trends at least quarterly by grade/subject/campus/appraiser.</u> • <u>Results shared at district level and there is a district plan to determine the root cause of the skew as well as address areas of skew at both the teacher and the appraiser levels.</u>
<u>District reviews correlation of teacher observation and student growth data and develops plan to address any issues</u>	<ul style="list-style-type: none"> • <u>Campus leaders review the correlation of teacher observation data to student growth data at the campus level at least once a year and develop a plan to determine the root cause of any lack of correlation.</u> • <u>For districts with more than one campus, district leaders review the district-wide correlation of teacher observation and student growth data and have a plan to identify the root cause.</u> • <u>The district has a plan to address possible root causes such as lack of appraiser calibration, teacher instructional practice, unreliable student growth measures and any other possible causes.</u>

<u>Observation/feedback schedule</u>	<ul style="list-style-type: none"> • <u>All teachers in eligible teaching assignments receive at least one 45 min. observation or multiple observations that aggregate to 45 min. during their data capture year, including scores on all observable domains.</u> • <u>Full teacher observation and student growth measures are required for all teachers in eligible teaching assignments during the data capture year.</u> • <u>If using multi-year appraisal system, both teacher observation data and student growth data are from the same school year.</u>
<u>Alignment to Statewide Performance Standards</u>	<ul style="list-style-type: none"> • <u>District utilizes the TIA statewide performance standards to guide the district's performance standards for teacher observation.</u>
<u>Student Learning Objectives: Rationale</u>	<ul style="list-style-type: none"> • <u>District has a clear rationale for using SLOs as a student growth measure in their local teacher designation system.</u>
<u>Student Learning Objectives: Validity in administration of the SLO</u>	<ul style="list-style-type: none"> • <u>District requires training annually on the administration of SLOs.</u> • <u>District provides guidance, protocols, and rubrics for the administration of each district-created student growth measure used in the SLO process.</u> • <u>District requirements for data used to determine growth on the SLO align to state guidelines for SLOs.</u>
<u>Student Learning Objectives: Updated SLO training</u>	<ul style="list-style-type: none"> • <u>District received SLO training in June 2020 or after or plans to have SLO training at the beginning of the data capture year.</u>
<u>Student Learning Objectives: Alignment to texasslo.org</u>	<ul style="list-style-type: none"> • <u>District's SLO system aligns to TexasSLO.org.</u>
<u>Student Learning Objectives: Requirements for writing an SLO</u>	<ul style="list-style-type: none"> • <u>District ensures that all SLOs used are aligned to the standards for the course and focus on a foundational skill that is addressed throughout the school year.</u>
<u>Student Learning Objectives: Requirements for approving an SLO</u>	<ul style="list-style-type: none"> • <u>All SLOs are approved by teacher appraisers who follow guidance for approving SLOs as listed on the Texas SLO website.</u>
<u>Student Learning Objectives: Security of the body of evidence</u>	<ul style="list-style-type: none"> • <u>District has protocols in place to ensure the security of student assessment/assignment documents used in the SLO.</u>
<u>Student Learning Objectives: Requirements of the body of evidence</u>	<ul style="list-style-type: none"> • <u>Five or more pieces of student work comprise the body of evidence.</u>
<u>Student Learning Objectives: Setting Expected Growth Targets</u>	<ul style="list-style-type: none"> • <u>District uses the Initial Skill profile and the Targeted Skill Profile, based on multiple data points to set individual expected growth targets for each student at the beginning of the year.</u>
<u>Student Learning Objectives: Determining students' end of year growth</u>	<ul style="list-style-type: none"> • <u>District uses the body of evidence of student work as it aligns to students' expected growth targets on the TSP to determine whether students met their targeted growth at the end of the year.</u>
<u>Student Learning Objectives: Calculation of teachers' end of year student growth rating</u>	<ul style="list-style-type: none"> • <u>Clear and published procedures exist for how student growth data based on the SLO is calculated for each individual student and how this data is used to determine the teachers' end-of-year student growth rating for all teachers in applicable eligible teaching assignments.</u>

<u>in alignment with statewide performance standards</u>	<ul style="list-style-type: none"> • <u>The district's use of SLOs to determine a teacher's end-of-year student growth rating aligns with the TIA statewide performance standards for student growth.</u>
<u>Portfolios: Rationale</u>	<ul style="list-style-type: none"> • <u>District has a clear rationale for using portfolios as a student growth measure in their local teacher designation system.</u>
<u>Portfolios: Validity and reliability in portfolio assignment administration</u>	<ul style="list-style-type: none"> • <u>District has protocols in place to ensure the valid administration of all assignments/projects to be used as part of the student portfolio.</u> • <u>Teachers and appraisers are trained in procedures for administration of portfolio assignments.</u>
<u>Portfolios: Security of portfolios</u>	<ul style="list-style-type: none"> • <u>District has procedures in place to ensure the security of all portfolio documents and provides training to teachers regarding portfolio security.</u>
<u>Portfolios: Artifacts to be included in the portfolio</u>	<ul style="list-style-type: none"> • <u>District has clear guidelines for what is required for a student task/assignment/project to be included as part of the student portfolio.</u>
<u>Portfolios: Number of artifacts</u>	<ul style="list-style-type: none"> • <u>Student portfolios consist of more than one artifact.</u>
<u>Portfolios: Development of Scoring Rubric</u>	<ul style="list-style-type: none"> • <u>District has a clear plan for who creates the portfolio scoring rubric.</u> • <u>Portfolio rubric required to align to content standards of the course and required to specify what students need to know and be able to do across at least four different skill levels.</u>
<u>Portfolios: Scoring artifacts based on the rubric</u>	<ul style="list-style-type: none"> • <u>District has clear plan for who will use the scoring rubric to assess student portfolios, including a selection and training process for all scorers.</u> • <u>District requires training annually on the scoring of rubrics.</u> • <u>District provides guidance and protocols for using rubrics to score portfolios.</u>
<u>Portfolios: Setting student expected growth targets</u>	<ul style="list-style-type: none"> • <u>There are clear procedures and guidelines for how to set student expected growth targets at the beginning of the year using a portfolio system.</u>
<u>Portfolios: Calculation of a teacher's student growth data in alignment with statewide performance standards</u>	<ul style="list-style-type: none"> • <u>Clear and published procedures exist for how student growth data based on the portfolio is calculated for each individual student and how this data is used to determine the teachers' end of year student growth rating for teachers in all applicable eligible teaching assignments in alignment with the TIA statewide performance standards for student growth.</u>
<u>Value-Added Measures: Rationale</u>	<ul style="list-style-type: none"> • <u>District has a clear rationale for using VAM as a student growth measure in their local teacher designation system.</u>
<u>Value-Added Measures: Assessments used to calculate VAM</u>	<ul style="list-style-type: none"> • <u>District uses state-approved or nationally normed, standards-aligned assessments to calculate VAM for all teacher groups using this measure.</u>
<u>Value-Added Measures: Setting expected growth targets</u>	<ul style="list-style-type: none"> • <u>District has clear and well-communicated procedures for how VAM is used to set expected growth targets.</u>
<u>Value-Added Measures: Calculation of a teacher's student growth rating</u>	<ul style="list-style-type: none"> • <u>Clear and published procedures exist for how student growth data based on VAM is calculated for each individual student and for how this data is used to determine the teachers' end-of-year student growth rating for teachers in all</u>

	<p><u>teachers in applicable eligible teaching assignments.</u></p> <ul style="list-style-type: none"> • <u>The district’s use of VAM to set teachers’ growth ratings is in alignment with the TIA statewide performance standards for student growth.</u>
<u>Value-Added Measures: Calculation of VAM</u>	<ul style="list-style-type: none"> • <u>District uses 3rd party statisticians or has a local process to run statistical VAM calculations that includes at least one year of test data on a nationally normed or criterion-referenced test.</u>
<u>Value-Added Measures: Locally calculated VAM</u>	<ul style="list-style-type: none"> • <u>District has clear and specific policies and procedures for how they calculate VAM locally that are informed by the standards used for calculating statewide value-added measures.</u>
<u>Pre-test used for each eligible teaching category</u>	<ul style="list-style-type: none"> • <u>It is clear which pre-test is being used for each eligible teaching assignment.</u> • <u>If more than one pre-test is being used, it is clear how the multiple tests are used together.</u>
<u>Expected growth targets set using each pre-test selected</u>	<ul style="list-style-type: none"> • <u>It is clear who is setting expected growth targets for each pre-test that the district is using for each eligible teaching category.</u>
<u>Post-test used for each eligible teaching category</u>	<ul style="list-style-type: none"> • <u>It is clear which post-test is being used for each eligible teaching assignment. If more than one post-test is being used, it is clear how the multiple tests are used together.</u>
<u>Pre-Test/Post-Test: Validity and reliability of pre-test/post-test</u>	<ul style="list-style-type: none"> • <u>All of the assessments selected are valid and reliable assessments, aligned to the standards of the course, that assess the majority of the content covered in the course/grade level for each eligible teaching category.</u>
<u>Pre-Test/Post-Test: Administration of pre-test/post-test</u>	<ul style="list-style-type: none"> • <u>District requires training annually on the valid and reliable administration each specific pre-test/post-test used.</u>
<u>Pre-Test/Post-Test: Security of pre-tests/post-tests</u>	<ul style="list-style-type: none"> • <u>District has procedures in place to ensure the security of all pre-test/post-test documents and provides training to teachers regarding test security.</u>
<u>Pre-Test/Post-Test: Setting expected growth targets</u>	<ul style="list-style-type: none"> • <u>District has clear procedures in place for how to set valid expected growth targets at the beginning of the year using the pre-test.</u>
<u>Pre-Test/Post-Test: Calculating end of year student growth</u>	<ul style="list-style-type: none"> • <u>District has clear procedures for how to determine students’ end of year growth based on the post-test.</u>
<u>Pre-Test/Post-Test: Calculation of a teacher’s student growth data</u>	<ul style="list-style-type: none"> • <u>Clear and published procedures exist for how student growth data based on the pre-test/post-test is calculated for each individual student and how this data is used to determine the teachers’ end-of-year student growth rating in alignment with the statewide performance standards for student growth.</u>
<u>Pre-Test/Post-Test: Requirements for writing standards aligned pre-tests/post-tests</u>	<ul style="list-style-type: none"> • <u>District has rigorous protocols in place for writing district-created assessments that align to the standards of the course and that follow best practices in assessment design.</u> • <u>District requires qualifications to be able to design district-created tests that include, at minimum, in-depth content knowledge of the subject matter/grade level being assessed.</u>
<u>Pre-Test/Post-Test: Process to review and approve district-created pre-tests/post-tests</u>	<ul style="list-style-type: none"> • <u>All district-created pre-tests/post-tests require a rigorous approval process including multiple levels of review, checks for alignment to standards of the course, and for the ability of the tests to measure student growth across a wide variety of student ability levels (stretch of the test).</u>
<u>Spending: Distribution</u>	<ul style="list-style-type: none"> • <u>District spends at least 90% of TIA funds on teacher compensation on the</u>

<u>of Allotment Funds</u>	<p><u>campuses where the designated teachers work.</u></p> <ul style="list-style-type: none"> • <u>District spends no more than 10% of TIA funds at the district level to support rollout and implementation of TIA and/or to support teachers in earning a TIA designation through professional development.</u> • <u>District has plans to expend all allotment funds by August 31st, annually.</u> • <u>Compliance with §48.112 is required for full readiness.</u>
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Texas Animal Health Commission

Administrative Penalty Policy

Effective Date: January 1, 2022

Penalty Policy

This penalty policy is established by the Texas Animal Health Commission pursuant to the Texas Agriculture Code, §161.148. This policy describes the specific ranges of penalties and sanctions that apply to specific alleged violations of the statutes and rules enforced by the Texas Animal Health Commission (hereinafter "TAHC" or "the Commission"). This policy also presents the criteria that are considered by the Commission's legal and compliance staff in determining the amount of an administrative penalty or the magnitude of a sanction to be pursued.

I. Content of the Penalty Policy

This policy contains a brief description of each individual violation that may be committed, a citation to the statute and rule provision for each violation, and a range of penalties and/or sanctions applicable to each violation. The violations are organized into levels, which denote the relative seriousness of the offenses. A range of penalties and sanctions is presented for each level of violation and organized by table. Specifically, a range is presented for the first, second, and third and subsequent occurrence of each class of violation. For purposes of this policy, a previous complaint alleging a violation of the statute or rules is counted as a "violation" only if it resulted in a formal disciplinary action by the Commission: an Agreed Order, a Final Order, Suspension or Revocation.

The administrative penalty amounts presented for each level of violation will be pursued on a "per violation" basis. In other words, if a Respondent commits three violations of the same class, he will be subject to a maximum penalty of three times the highest dollar amount specified in the range.

Where both a penalty and a sanction are provided, a connector of "and/or" indicates that the Commission has discretion to pursue only a penalty, only a sanction, or both a penalty and a sanction.

II. Statutes and Rules Referenced in the Penalty Policy

This penalty policy conforms with the statutes and rules currently in effect on the date the policy is published. The policy will be revised periodically to reflect changes in statutes and rules. The majority of the violations referenced in the policy will arise from the statute and rules specific to that program. The policy also contains some references to violations arising under TAHC's enabling statute, Chapter 161 of the Agriculture Code, and the rules attendant to that statute, Title 4 Texas Administrative Code, Chapters 31 - 60.

While this policy is intended to present a fairly comprehensive list of the violations, by section, that may be committed under the current statutes and rules, the policy does not in any way restrict or limit the Commission's authority to pursue violations that may have been omitted from the policy.

III. Applicability of the Penalty Policy

The purpose of the penalty policy is to establish a structure within which TAHC's legal and compliance staff will make decisions about the relief to be sought in their cases. The policy is not binding upon the Commission and Executive Director when acting as the final decision-makers in contested cases. The Commission and Executive Director are bound only by the limits of the law, specifically, Chapter 161 of the Texas Agriculture Code and the individual program statutes administered by TAHC.

TAHC's legal and compliance staff are generally expected to seek penalties and sanctions that are within the administrative penalty levels and ranges presented in this policy. Pursuit of a penalty or sanction outside the stated range is permitted only with the express approval of the Commission's General Counsel, when exceptional circumstances warrant a departure from the policy.

IV. Factors to be Considered by the Commission

In determining the amount of a proposed administrative penalty or the degree of a proposed sanction to be assessed within the administrative penalty levels and ranges presented, the Commission will consider the following factors:

- (1) The seriousness of the violation, including the nature, circumstances, extent and gravity of prohibited acts and the hazard or potential hazard created to the health, safety, or economic welfare of the public.
- (2) Whether the violation was willful or intentional.
- (3) The economic harm to property or the environments caused by the violation.
- (4) The history of previous violations.
- (5) The amount necessary to deter future violations.
- (6) Efforts to correct the violation.
- (7) Any other matter that justice may require.

V. Administrative Penalty Levels and Ranges

Figure 1: Administrative Penalty Levels and Ranges

Level 1 Penalties (L1)	
1 st violation	Warning to \$200
2 nd violation	\$200 - \$600
3 rd & subsequent violations	\$600 - \$1,800 and/or suspension or revocation

Level 2 Penalties (L2)	
1 st violation	\$200 - \$600
2 nd violation	\$600 - \$1,800 and/or suspension or revocation
3 rd & subsequent violations	\$1,800 - \$5,000 and/or suspension or revocation

Level 3 Penalties (L3)	
1 st violation	\$600 - \$1,800 and/or suspension or revocation
2 nd violation	\$1,800 - \$3,600 and/or suspension or revocation
3 rd & subsequent violations	\$5,000 and/or suspension or revocation

VI. Violations

Figure 2: Violations

Violation Description	Texas Statute or Rule	Penalty Level
Chapter 31-Anthrax		
Failure to prepare anthrax sample.	4 TAC 31.1	L2
Failure to maintain records	4 TAC 31.1	L2
Failure to maintain complete records	4 TAC 31.1	L1
Failure to comply with quarantine requirements	4 TAC 31.2	L3
Failure to properly dispose of animals that have died from anthrax	4 TAC 31.3	L2
Chapter 34-Veterinary Biologics		
Failure to obtain Executive Director approval prior to importing a veterinary biologic for sale, use, or distribution within the state.	4 TAC 34.2	L3
Chapter 35- Brucellosis		
Failure to comply with general brucellosis requirements - cattle	4 TAC 35.2	L2
Failure to collect blood sample	4 TAC 35.2(f)	L1
Failure to comply with identification requirements	4 TAC 35.2(q)	L1
Unauthorized removal of official identification	4 TAC 35.1(28)	L2
Failure to maintain records	4 TAC 35.2(u)	L2
Failure to maintain complete records	4 TAC 35.2(u)	L1
Failure to comply with entry, movement or change of ownership requirements.	4 TAC 35.4	L1
Failure to comply with movement restrictions	4 TAC 35.4	L3
Failure to dispose of equine brucellosis reactors	4 TAC 35.7	L3
Unauthorized collection of blood samples	4 TAC 35.43	L3
Failure to report test results	4 TAC 35.43	L2
Failure to report test results within 48 hours	4 TAC 35.43	L1
Failure to comply with identification or movement requirements for infected or exposed swine	4 TAC 35.44	L3
Failure to comply with procedures for handling infected, adjacent and high risk herds of swine	4 TAC 35.45	L3
Failure to comply with plans for eradicating brucellosis from infected swine herds	4 TAC 35.46	L2
Failure to provide assistance	4 TAC 35.47	L1
Failure to comply with conditions of validation or revalidation of swine herds	4 TAC 35.48	L1
Failure to comply with general brucellosis requirements - goats	4 TAC 35.61	L2
Failure to comply with general brucellosis requirements - cervidae	4 TAC 35.81	L2
Chapter 37 Screwworms		
Failure to comply with control and eradication requirements	4 TAC 37.1	L3
Chapter 38 Trichomoniasis		
Failure to comply with general requirements	4 TAC 38.2	L2
Failure to properly handle infected bull	4 TAC 38.2(d)(3)	L3
Failure to comply with identification requirements	4 TAC 38.2(b) or (d)	L1
Failure to comply with infected herd requirements	4 TAC 38.3	L3
Failure to comply with certified veterinary practitioner requirements	4 TAC 38.4	L2
Failure to comply with official laboratories requirements	4 TAC 38.5	L1
Failure to report test results	4 TAC 38.5	L2
Failure to report test results within 48 hours	4 TAC 38.5	L1

Failure to comply with official trichomoniasis tests requirements	4 TAC 38.6	L2
Failure to comply with herd certification program-breeding bulls	4 TAC 38.8	L2
Chapter 39 Scabies and Mange Mites		
Failure to properly treat infested or exposed livestock	4 TAC 39.2	L3
Failure to maintain records	4 TAC 39.2	L2
Failure to maintain complete records	4 TAC 39.2	L1
Failure to properly handle treated livestock	4 TAC 39.2	L2
Failure to comply with quarantine requirements	4 TAC 39.3	L3
Failure to comply with duties of owners and caretakers of livestock infested with or exposed to scabies or mange mites	4 TAC 39.4	L2
Failure to properly handle infested or exposed livestock at shows, fairs, or exhibitions	4 TAC 39.5	L1
Failure to comply with permitted dips for scabies and mange mite eradication requirements	4 TAC 39.6	L2
Chapter 40 Chronic Wasting Disease		
Failure to comply with general requirements	4 TAC 40.2	L2
Failure to comply with herd status requirements	4 TAC 40.2	L2
Failure to comply with carcass movement restrictions	4 TAC 40.4	L2
Failure to comply with surveillance and movement requirements for exotic CWD susceptible species	4 TAC 40.5	L2
Failure to comply with identification requirements	4 TAC 40.5(c)	L1
Failure to maintain records	4 TAC 40.5	L2
Failure to maintain complete records	4 TAC 40.5	L1
Failure to comply with CWD movement restriction zones requirements	4 TAC 40.6	L3
Failure to comply with Executive Director declaration of a CWD movement restriction zone requirements	4 TAC 40.7	L3
Chapter 41 Fever Ticks		
Failure to comply with livestock movement requirements	4 TAC 41.5	L2
Failure to comply with livestock movement restrictions	4 TAC 41.6	L3
Failure to comply with identification requirements	4 TAC 41.6(b) or 41.9(e-f)	L1
Failure to comply with movement restrictions on hides or carcasses	4 TAC 41.7	L2
Failure to comply with dipping, treatment, and vaccination requirements	4 TAC 41.8	L2
Failure to comply with vacation or inspection of a premise requirements	4 TAC 41.9	L2
Failure to properly handle conveyances, materials, hay, feed and other commodities	4 TAC 41.10	L2
Failure to comply with requirements for cattle or products imported from Mexico	4 TAC 41.12	L2
Chapter 43 Tuberculosis		
Failure to comply with tuberculosis general requirements	4 TAC 43.2	L2
Failure to comply with movement restrictions	4 TAC 43.2(b)	L3
Failure to maintain records	4 TAC 43.2(h)	L2
Failure to maintain complete records	4 TAC 43.2(h)	L1
Failure to comply with identification requirements	4 TAC 43.2(e) or (n)	L1
Failure to comply with approved feedyards or approved pens requirements	4 TAC 43.3	L3
Failure to comply with requirements for increased risk herds or animals	4 TAC 43.4	L3
Failure to comply with dairy calf ranch requirements	4 TAC 43.6	L2
Failure to comply with authorized calf ranch or authorized grower facility requirements	4 TAC 43.7	L3
Failure to maintain records	4 TAC 43.6 or 43.7	L2
Failure to maintain complete records	4 TAC 43.6 or 43.7	L1

Failure to comply with goat accredited herd plan requirements	4 TAC 43.11	L1
Failure to comply with cervidae general requirements	4 TAC 43.21	L2
Failure to comply with cervidae herd status plan requirements	4 TAC 43.22	L1
Failure to comply with movement restriction zone testing requirements	4 TAC 43.31	L2
Chapter 44 Bovine Viral Diarrhea		
Failure to comply with general requirements	4 TAC 44.2(a)	L1
Chapter 45 Reportable Diseases		
Failure to report reportable disease	4 TAC 45.2	L3
Failure to report reportable disease within 24 hours	4 TAC 45.2	L1
Failure to report required information	4 TAC 45.2	L2
Failure to report complete information	4 TAC 45.2	L1
Chapter 47 Authorized Personnel		
Failure to comply with authorized personnel requirements- unauthorized practice	4 TAC 47.2	L2
Failure to comply with training requirements	4 TAC 47.3	L2
Failure to comply with standards for authorized personnel	4 TAC 47.4	L2
Failure to comply with recordkeeping requirements	4 TAC 47.5	L2
Failure to maintain official documents	4 TAC 47.5	L2
Failure to maintain complete official documents	4 TAC 47.5	L1
Violation that is grounds for suspension or revocation	4 TAC 47.6	L3
Failure to comply with brucellosis program general requirements	4 TAC 47.12	L2
Failure to comply with brucellosis testing requirements	4 TAC 47.13	L2
Failure to comply with brucellosis calfhood vaccination requirements	4 TAC 47.14	L2
Violation that is grounds for suspension or revocation of brucellosis authorized personnel status	4 TAC 47.15	L3
Failure to comply with CWD authorized personnel general requirements	4 TAC 47.22	L2
Failure to comply with training requirements	4 TAC 47.23	L1
Violation that is grounds for suspension or revocation	4 TAC 47.24	L3
Chapter 49 Equine		
Failure to comply with equine infectious anemia requirements	4 TAC 49.1	L2
Failure to comply with quarantine requirements	4 TAC 49.1 (g) or (i)	L3
Failure to properly handle reactors or exposed equine	4 TAC 49.1 (d), (f), (h) or (j)	L2
Failure to comply with change of ownership requirements	4 TAC 49.1(l)	L2
Failure to comply with testing requirements	4 TAC 49.1(n - q)	L1
Failure to comply with testing requirements-racetracks	4 TAC 49.1(r) or 49.5(d)	L2
Failure to maintain records	4 TAC 49.3(c-d)	L2
Failure to maintain complete records	4 TAC 49.3(c-d)	L1
Failure to comply with equine viral arteritis reporting or handling of infected equine requirements	4 TAC 49.4	L3
Failure to comply with piroplasmiasis testing, Identification of infected equine requirements	4 TAC 49.5	L2
Failure to comply with piroplasmiasis area or county test requirements	4 TAC 49.6	L2
Chapter 50 Animal Disease Traceability		
Failure to comply with approved tagging site requirements	4 TAC 50.2	L2
Failure to maintain records	4 TAC 50.2	L2
Failure to maintain complete records	4 TAC 50.2	L1
Failure to comply with cattle identification requirements	4 TAC 50.3	L1
Chapter 51 Entry Requirements		
Failure to comply with general requirements	4 TAC 51.2	L1
Failure to comply with entry requirements for shows, fairs or exhibitions	4 TAC 51.4	L1
Failure to comply with equine entry testing requirements-racetracks	4 TAC 51.4(b)(1)	L2
Failure to comply with movement of quarantined animal requirements	4 TAC 51.5	L3

Failure to comply with special requirements	4 TAC 51.6	L1
Failure to permit inspection or testing	4 TAC 51.6	L2
Failure to comply with all livestock -special requirements	4 TAC 51.7	L1
Failure to comply with all livestock special quarantine requirements	4 TAC 51.7(a) or (d)	L3
Failure to comply with cattle requirements	4 TAC 51.8	L1
Failure to comply with exotic livestock and fowl requirements	4 TAC 51.9	L1
Failure to comply with exotic livestock and fowl quarantine requirements	4 TAC 51.9(b)(1)	L3
Failure to comply with cervidae requirements	4 TAC 51.10	L1
Failure to comply with cervidae quarantine requirements	4 TAC 51.10	L3
Failure to comply with goat requirements	4 TAC 51.11	L1
Failure to comply with sheep requirements	4 TAC 51.12	L1
Failure to comply with equine requirements	4 TAC 51.13	L1
Failure to comply with swine requirements	4 TAC 51.14	L1
Failure to comply with poultry requirements	4 TAC 51.15	L1
Failure to comply with entry requirements by a dealer	4 TAC 51.2 - 51.15	L2
Failure to comply with quarantine requirements by a dealer	4 TAC 51.2 - 51.15	L3
Chapter 53 Market Regulations		
Failure to comply with facilities requirements	4 TAC 53.1(a-c)	L1
Failure to comply with release of animal requirements	4 TAC 53.2	L2
Failure to comply with quarantine or hold order requirements	4 TAC 53.3	L3
Failure to comply with market identification requirements	4 TAC 53.4	L1
Failure to maintain records	4 TAC 53.5	L3
Failure to maintain complete records	4 TAC 53.5	L2
Chapter 54 Domestic and Exotic Fowl Registration		
Failure to comply with registration requirements	4 TAC 54.2	L2
Failure to comply with program requirements	4 TAC 54.5	L2
Failure to permit inspection	4 TAC 54.5(b)	L2
Failure to report reportable disease	4 TAC 54.5(c)(2)	L3
Failure to timely report reportable disease	4 TAC 54.5(c)(2)	L3
Failure to comply with recordkeeping requirements	4 TAC 54.6	L2
Failure to maintain records	4 TAC 54.6 or 54.9	L2
Failure to maintain complete records	4 TAC 54.6 or 54.9	L1
Failure to permit inspection	4 TAC 54.6, 54.7, 54.9	L2
Failure to comply with movement and testing requirements	4 TAC 54.7	L2
Failure to comply with quarantine or hold order requirements	4 TAC 54.7(a)	L3
Failure to comply with live bird market system requirements	4 TAC 54.9	L2
Chapter 55 Swine		
Failure to comply with testing breeding swine prior to sale or change of ownership requirements	4 TAC 55.1	L1
Failure to comply with vaccine restrictions	4 TAC 55.2	L3
Failure to comply with feeding of garbage requirements	4 TAC 55.3	L1
Failure to comply with livestock markets handling swine requirements	4 TAC 55.4	L2
Failure to comply with identification requirements	4 TAC 55.4, 55.5 or 55.9	L1
Failure to comply with pseudorabies requirements	4 TAC 55.5	L2
Failure to comply with quarantine or hold order requirements	4 TAC 55.5(e)	L3
Failure to comply with slaughter plant requirements	4 TAC 55.7	L2
Failure to comply with feral swine requirements	4 TAC 55.9	L1
Failure to maintain records	4 TAC 55.8 or 55.9	L2
Failure to maintain complete records	4 TAC 55.8 or 55.9	L1
Failure to comply with feral swine requirements-authorized holding facility or hunting preserve	4 TAC 55.9(c) or (d)	L2
Chapter 57 Poultry		
Failure to comply with general requirements	4 TAC 57.11	L1

Failure to comply with quarantine requirements	4 TAC 57.11	L3
Failure to maintain records	4 TAC 57.12	L2
Failure to maintain complete records	4 TAC 57.12	L1
Failure to permit inspection	4 TAC 57.12	L2
Chapter 58 Emergency Response and Management		
Failure to comply with disease control requirements	4 TAC 58.2	L1
Failure to comply with general requirements	4 TAC 58.3	L3
Failure to maintain records	4 TAC 58.3	L2
Failure to maintain complete records	4 TAC 58.3	L1
Failure to permit inspection	4 TAC 58.3	L2
Failure to comply with establishment of quarantine requirements	4 TAC 58.11	L2
Failure to comply with livestock movement restriction requirements	4 TAC 58.21	L3
Failure to comply with disposal of diseased or exposed livestock requirements	4 TAC 58.31	L2
Chapter 59 General Practices and Procedures		
Failure to comply with Executive Order of a high risk disease movement restriction zone requirement	4 TAC 59.11	L3
Failure to comply with carcass disposal requirements	4 TAC 59.12	L2
Chapter 60 Scrapie		
Failure to comply with identification requirements	4 TAC 60.2	L1
Failure to maintain records	4 TAC 60.2	L2
Failure to maintain complete records	4 TAC 60.2	L1
Failure to comply with monitoring and surveillance requirements	4 TAC 60.4	L2
Failure to comply with movement restrictions or quarantine requirements	4 TAC 60.4 or 60.5	L3
Failure to comply with management of affected and source flocks, and exposed, high-risk, and suspect animal requirements	4 TAC 60.5	L2
Failure to comply with requirements for flock plans, post-exposure, pilot project flock plans and monitoring flock plans	4 TAC 60.6	L2
Failure to comply with exhibition requirements	4 TAC 60.7	L1
Texas Agriculture Code Chapter 161 General Disease and Pest Control		
Document to accompany shipment	161.006	L1
Disposal of diseased or exposed livestock or fowl	161.0415	L2
Sale and distribution of veterinary biologics	161.042	L3
Animal identification program	161.056	L1
Persons or laboratories performing equine infectious anemia tests.	161.0602	L2
Dealer Enhancement		
Failure to comply with any violation listed in this penalty policy by a dealer will result in the penalty being enhanced to the next highest penalty level.		L1 to L2 L2 to L3 L3 not enhanced

TRD-202104940
Mary Luedeker
General Counsel
Texas Animal Health Commission
Filed: December 8, 2021

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Office of the Attorney General

2022 Tax Charts

**OFFICE OF THE ATTORNEY GENERAL
2022 TAX CHARTS**

Pursuant to § 154.061(b) of the Texas Family Code, the Office of the Attorney General of Texas, as the Title IV-D agency, has promulgated the following tax charts to assist courts in establishing the amount of a child support order. These tax charts are applicable to employed and self-employed persons in computing net monthly income. The charts include a range of monthly gross wages for obligors starting at \$100. The child support percentages used to calculate child support for obligors of all incomes with children in one household are located within § 154.125(b) and (c). Under Texas Family Code section 154.125(c), a different set of percentages is used to calculate child support for low-income obligors, who are defined as obligors whose monthly net resources are less than \$1,000. The child support percentages used to calculate child support for obligors with children in more than one household are located within § 154.129. This section provides an alternative method for computing child support for children in more than one household.

For assistance computing child support under the Texas Child Support Guidelines, please visit:
<https://csapps.oag.texas.gov/monthly-child-support-calculator>

INSTRUCTIONS FOR USE

To use these tables, first compute the obligor's annual gross income. Then recompute to determine the obligor's average monthly gross income. These tables provide a method for calculating "monthly net income" for child support purposes, subtracting from monthly gross income the social security taxes and the federal income tax withholding for a single person claiming one personal exemption and the standard deduction.

Thereafter, in many cases the guidelines call for a number of additional steps to complete the necessary calculations. For example, §§ 154.061 - 154.070 provide for appropriate additions to "income" as that term is defined for federal income tax purposes, and for certain subtractions from monthly net income, in order to arrive at the net resources of the obligor available for child support purposes. If necessary, one may compute an obligee's net resources using similar steps.

LIMITATIONS ON USE

These charts are intended to assist courts in common situations, and do not account for all deductions and adjustments allowable under the Internal Revenue Code. For instance, these charts do not take into account the qualified business income deduction which might be taken by some owners of sole proprietorships, S corporations, partnerships, or stand-alone rental properties (pass-thru entities). In some situations, section 199A of the Internal Revenue Code allows owners of pass-thru entities to take a deduction against their income resulting in a reduction of the effective tax rate. These charts should not be used to estimate the net income of owners of pass-thru entities. The computation of net income for parties with complex tax situations may require consultation with an income tax professional.

**EMPLOYED PERSONS
2022 TAX CHART**

Monthly Gross Wages	Federal Insurance Contributions Act Taxes			Federal Income Tax***	Net Monthly Income
	Old-Age, Survivors and Disability Insurance Program (Social Security) Tax (6.2%)*	Medicare's Hospital Insurance Program (Medicare) Tax (1.45%)*			
\$100.00	\$6.20	\$1.45	\$0.00	\$92.35	
\$150.00	\$9.30	\$2.18	\$0.00	\$138.52	
\$200.00	\$12.40	\$2.90	\$0.00	\$184.70	
\$250.00	\$15.50	\$3.63	\$0.00	\$230.87	
\$300.00	\$18.60	\$4.35	\$0.00	\$277.05	
\$350.00	\$21.70	\$5.08	\$0.00	\$323.22	
\$400.00	\$24.80	\$5.80	\$0.00	\$369.40	
\$450.00	\$27.90	\$6.53	\$0.00	\$415.58	
\$500.00	\$31.00	\$7.25	\$0.00	\$461.75	
\$550.00	\$34.10	\$7.98	\$0.00	\$507.92	
\$600.00	\$37.20	\$8.70	\$0.00	\$554.09	
\$650.00	\$40.30	\$9.43	\$0.00	\$600.27	
\$700.00	\$43.40	\$10.15	\$0.00	\$646.45	
\$750.00	\$46.50	\$10.88	\$0.00	\$692.62	
\$800.00	\$49.60	\$11.60	\$0.00	\$738.80	
\$850.00	\$52.70	\$12.33	\$0.00	\$784.97	
\$900.00	\$55.80	\$13.05	\$0.00	\$831.15	
\$950.00	\$58.90	\$13.78	\$0.00	\$877.32	
\$1,000.00	\$62.00	\$14.50	\$0.00	\$923.50	
\$1,050.00	\$65.10	\$15.23	\$0.00	\$969.67	
\$1,100.00	\$68.20	\$15.95	\$2.08	\$1,013.77	
\$1,150.00	\$71.30	\$16.68	\$7.08	\$1,054.94	
\$1,200.00	\$74.40	\$17.40	\$12.08	\$1,096.12	
\$1,256.67****	\$77.91	\$18.22	\$17.75	\$1,142.79	
\$1,300.00	\$80.60	\$18.85	\$22.08	\$1,178.47	
\$1,400.00	\$86.80	\$20.30	\$32.08	\$1,260.82	
\$1,500.00	\$93.00	\$21.75	\$42.08	\$1,343.17	
\$1,600.00	\$99.20	\$23.20	\$52.08	\$1,425.52	
\$1,700.00	\$105.40	\$24.65	\$62.08	\$1,507.87	
\$1,800.00	\$111.60	\$26.10	\$72.08	\$1,590.22	
\$1,900.00	\$117.80	\$27.55	\$82.08	\$1,672.57	
\$2,000.00	\$124.00	\$29.00	\$93.37	\$1,753.63	
\$2,100.00	\$130.20	\$30.45	\$105.37	\$1,833.98	
\$2,200.00	\$136.40	\$31.90	\$117.37	\$1,914.33	
\$2,300.00	\$142.60	\$33.35	\$129.37	\$1,994.68	
\$2,400.00	\$148.80	\$34.80	\$141.37	\$2,075.03	
\$2,500.00	\$155.00	\$36.25	\$153.37	\$2,155.38	
\$2,600.00	\$161.20	\$37.70	\$165.37	\$2,235.73	
\$2,700.00	\$167.40	\$39.15	\$177.37	\$2,316.08	
\$2,800.00	\$173.60	\$40.60	\$189.37	\$2,396.43	
\$2,900.00	\$179.80	\$42.05	\$201.37	\$2,476.78	
\$3,000.00	\$186.00	\$43.50	\$213.37	\$2,557.13	
\$3,100.00	\$192.20	\$44.95	\$225.37	\$2,637.48	
\$3,200.00	\$198.40	\$46.40	\$237.37	\$2,717.83	
\$3,300.00	\$204.60	\$47.85	\$249.37	\$2,798.18	
\$3,400.00	\$210.80	\$49.30	\$261.37	\$2,878.53	
\$3,500.00	\$217.00	\$50.75	\$273.37	\$2,958.88	
\$3,600.00	\$223.20	\$52.20	\$285.37	\$3,039.23	
\$3,700.00	\$229.40	\$53.65	\$297.37	\$3,119.58	
\$3,800.00	\$235.60	\$55.10	\$309.37	\$3,199.93	
\$3,900.00	\$241.80	\$56.55	\$321.37	\$3,280.28	
\$4,000.00	\$248.00	\$58.00	\$333.37	\$3,360.63	
\$4,100.00	\$254.20	\$59.45	\$345.37	\$3,440.98	
\$4,200.00	\$260.40	\$60.90	\$357.37	\$3,521.33	
\$4,300.00	\$266.60	\$62.35	\$369.37	\$3,601.68	
\$4,400.00	\$272.80	\$63.80	\$381.37	\$3,682.03	
\$4,500.00	\$279.00	\$65.25	\$393.37	\$3,762.38	
\$4,600.00	\$285.20	\$66.70	\$405.37	\$3,842.73	
\$4,700.00	\$291.40	\$68.15	\$417.37	\$3,923.08	
\$4,800.00	\$297.60	\$69.60	\$429.37	\$4,003.43	
\$4,900.00	\$303.80	\$71.05	\$441.37	\$4,083.78	
\$5,000.00	\$310.00	\$72.50	\$453.37	\$4,164.13	
\$5,100.00	\$316.20	\$73.95	\$465.37	\$4,244.48	
\$5,200.00	\$322.40	\$75.40	\$477.37	\$4,324.83	
\$5,300.00	\$328.60	\$76.85	\$489.37	\$4,405.18	
\$5,400.00	\$334.80	\$78.30	\$501.37	\$4,485.53	

\$5,500.00	\$341.00	\$79.75	\$607.33	\$4,471.92
\$5,600.00	\$347.20	\$81.20	\$629.33	\$4,542.27
\$5,700.00	\$353.40	\$82.65	\$651.33	\$4,612.62
\$5,800.00	\$359.60	\$84.10	\$673.33	\$4,682.97
\$5,900.00	\$365.80	\$85.55	\$695.33	\$4,753.32
\$6,000.00	\$372.00	\$87.00	\$717.33	\$4,823.67
\$6,100.00	\$378.20	\$88.45	\$739.33	\$4,894.02
\$6,200.00	\$384.40	\$89.90	\$761.33	\$4,964.37
\$6,300.00	\$390.60	\$91.35	\$783.33	\$5,034.72
\$6,400.00	\$396.80	\$92.80	\$805.33	\$5,105.07
\$6,500.00	\$403.00	\$94.25	\$827.33	\$5,175.42
\$6,600.00	\$409.20	\$95.70	\$849.33	\$5,245.77
\$6,700.00	\$415.40	\$97.15	\$871.33	\$5,316.12
\$6,800.00	\$421.60	\$98.60	\$893.33	\$5,386.47
\$6,900.00	\$427.80	\$100.05	\$915.33	\$5,456.82
\$7,000.00	\$434.00	\$101.50	\$937.33	\$5,527.17
\$7,100.00	\$440.20	\$102.95	\$959.33	\$5,597.52
\$7,200.00	\$446.40	\$104.40	\$981.33	\$5,667.87
\$7,300.00	\$452.60	\$105.85	\$1,003.33	\$5,738.22
\$7,400.00	\$458.80	\$107.30	\$1,025.33	\$5,808.57
\$7,500.00	\$465.00	\$108.75	\$1,047.33	\$5,878.92
\$7,600.00	\$471.20	\$110.20	\$1,069.33	\$5,949.27
\$7,700.00	\$477.40	\$111.65	\$1,091.33	\$6,019.62
\$7,800.00	\$483.60	\$113.10	\$1,113.33	\$6,089.97
\$7,900.00	\$489.80	\$114.55	\$1,135.33	\$6,160.32
\$8,000.00	\$496.00	\$116.00	\$1,157.33	\$6,230.67
\$8,100.00	\$502.20	\$117.45	\$1,179.33	\$6,301.02
\$8,200.00	\$508.40	\$118.90	\$1,201.33	\$6,371.37
\$8,300.00	\$514.60	\$120.35	\$1,223.33	\$6,441.72
\$8,400.00	\$520.80	\$121.80	\$1,245.33	\$6,512.07
\$8,500.00	\$527.00	\$123.25	\$1,267.33	\$6,582.42
\$8,600.00	\$533.20	\$124.70	\$1,291.29	\$6,650.81
\$8,700.00	\$539.40	\$126.15	\$1,315.29	\$6,719.16
\$8,800.00	\$545.60	\$127.60	\$1,339.29	\$6,787.51
\$8,900.00	\$551.80	\$129.05	\$1,363.29	\$6,855.86
\$9,000.00	\$558.00	\$130.50	\$1,387.29	\$6,924.21
\$9,100.00	\$564.20	\$131.95	\$1,411.29	\$6,992.56
\$9,200.00	\$570.40	\$133.40	\$1,435.29	\$7,060.91
\$9,300.00	\$576.60	\$134.85	\$1,459.29	\$7,129.26
\$9,400.00	\$582.80	\$136.30	\$1,483.29	\$7,197.61
\$9,500.00	\$589.00	\$137.75	\$1,507.29	\$7,265.96
\$9,600.00	\$595.20	\$139.20	\$1,531.29	\$7,334.31
\$9,700.00	\$601.40	\$140.65	\$1,555.29	\$7,402.66
\$9,800.00	\$607.60	\$142.10	\$1,579.29	\$7,471.01
\$9,900.00	\$613.80	\$143.55	\$1,603.29	\$7,539.36
\$10,000.00	\$620.00	\$145.00	\$1,627.29	\$7,607.71
\$10,100.00	\$626.20	\$146.45	\$1,651.29	\$7,676.06
\$10,200.00	\$632.40	\$147.90	\$1,675.29	\$7,744.41
\$10,300.00	\$638.60	\$149.35	\$1,699.29	\$7,812.76
\$10,400.00	\$644.80	\$150.80	\$1,723.29	\$7,881.11
\$10,500.00	\$651.00	\$152.25	\$1,747.29	\$7,949.46
\$10,600.00	\$657.20	\$153.70	\$1,771.29	\$8,017.81
\$10,700.00	\$663.40	\$155.15	\$1,795.29	\$8,086.16
\$10,800.00	\$669.60	\$156.60	\$1,819.29	\$8,154.51
\$10,900.00	\$675.80	\$158.05	\$1,843.29	\$8,222.86
\$11,000.00	\$682.00	\$159.50	\$1,867.29	\$8,291.21
\$11,100.00	\$688.20	\$160.95	\$1,891.29	\$8,359.56
\$11,200.00	\$694.40	\$162.40	\$1,915.29	\$8,427.91
\$11,300.00	\$700.60	\$163.85	\$1,939.29	\$8,496.26
\$11,400.00	\$706.80	\$165.30	\$1,963.29	\$8,564.61
\$11,500.00	\$713.00	\$166.75	\$1,987.29	\$8,632.96
\$11,600.00	\$719.20	\$168.20	\$2,011.29	\$8,701.31
\$11,700.00	\$725.40	\$169.65	\$2,035.29	\$8,769.66
\$11,800.00	\$731.60	\$171.10	\$2,059.29	\$8,838.01
\$11,900.00	\$737.80	\$172.55	\$2,083.29	\$8,906.36
\$12,000.00	\$744.00	\$174.00	\$2,107.29	\$8,974.70
\$12,250.00**	\$759.50	\$177.63	\$2,167.29	\$9,145.58
\$12,322.99*****	\$759.50	\$178.68	\$2,184.81	\$9,200.00

Footnotes to Employed Persons 2022 Tax Chart:

References to “the Code” refer to the Internal Revenue Code of 1986, as amended (26 U.S.C.)

* An employed person not subject to the Old-Age, Survivors and Disability Insurance Program “OASDI” (Social Security) tax and Medicare’s Hospital Insurance Program (Medicare) tax will be allowed the reductions reflected in these columns, unless it is shown that such person has no similar contributory plans such as teacher retirement, federal railroad retirement, federal civil service retirement, etc.

** In 2022 the maximum level of Monthly Gross Wages for an employed person subject to the 6.2% Social Security tax is \$147,000 per year, or \$12,250 per month ($\$147,000 / 12 = \$12,250$). The maximum monthly Social Security Tax in 2022 is \$759.50 based on the maximum OASDI Contribution and Benefit Base amount of \$147,000 for 2022.

Monthly Gross Wages	\$147,000 for the year, or \$12,250 monthly average
Social Security tax rate = 6.2%	\$147,000 is equal to the 2022 OASDI contribution and benefit base, so \$147,000 is taxed at this rate. $\$147,000 \times .062 = \$9,114$ for the year, or \$759.50 monthly average

*** These amounts represent one-twelfth (1/12) of the annual federal income tax calculated for a single taxpayer claiming one personal exemption (in the case of a taxable year beginning after December 31, 2017, and before January 1, 2026 the exemption amount is zero), and taking the standard deduction (\$12,950).

Examples:

Monthly Gross Wages	\$72,000 for the year, or \$6,000 monthly average	\$132,000 for the year, or \$11,000 monthly average
Personal Exemption Section 151(d) of the Code	\$0 for tax years 2018 through 2025	\$0 for tax years 2018 through 2025
Standard Deduction Section 63(c) of the Code	\$12,950	\$12,950
Income amount to be used in the income tax computation	$\$72,000 - \$0 - \$12,950 = \$59,050$	$\$132,000 - \$0 - \$12,950 = \$119,050$
Income tax computation for 2022	<i>If taxable income is over \$41,775 but not over \$89,075, the tax is \$4,807.50 plus 22% of the excess over \$41,775 (Section 1(j) of the Code)</i> $\$4,807.50 + ((\$59,050 - \$41,775) \times .22) = \$8,608$ for the year, or \$717.33 monthly average	<i>If taxable income is over \$89,075 but not over \$170,050, the tax is \$15,213.50 plus 24% of the excess over \$89,075 (Section 1(j) of the Code)</i> $\$15,213.50 + ((\$119,050 - \$89,075) \times .24) = \$22,407.50$ for the year, or \$1,867.29 monthly average

**** This amount represents one-twelfth (1/12) of the gross income of an individual earning the federal minimum wage (\$7.25 per hour) for a 40-hour week for a full year.

Federal Minimum Wage = \$7.25 per hour	$\$7.25 \times 40 \text{ hours per week} \times 52 \text{ weeks per year} = \$15,080$ per year
Monthly average	$\$15,080 / 12 = \$1,256.67$ monthly average

***** This amount represents the point where the monthly gross wages of an employed individual would result in \$9,200.00 of net resources. Texas Family Code section 154.125 provides “The guidelines for the support of a child in this section are specifically designed to apply to situations in which the obligor's monthly net resources are not greater than \$7,500 or the adjusted amount determined under Subsection (a-1), whichever is greater.” Effective September 1, 2019 the adjusted amount determined under Subsection (a-1) is \$9,200.00. Texas Family Code section 154.126(a) provides, “If the obligor’s net resources exceed the amount provided by Section 154.125(a), the court shall presumptively apply the percentage guidelines to the portion of the obligor’s net resources that does not exceed that amount. Without further reference to the percentage recommendation by these guidelines, the court may order additional amounts of child support as appropriate, depending on the income of the parties and the proven needs of the child.” The tax charts promulgated by the Office of the Attorney General include net monthly income amounts up to the amount specified in Texas Family Code section 154.125.

* * * * *

Citations Relating to Employed Persons 2022 Tax Chart:

1. Old-Age, Survivors and Disability Insurance Tax

(a) Contribution Base

- (1) Social Security Administration’s notice appearing in 86 Fed. Reg. 58715 (October 22, 2021)
- (2) Section 3121(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3121(a))
- (3) Section 230 of the Social Security Act, as amended (42 U.S.C. § 430)

(b) Tax Rate

- (1) Section 3101(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3101(a))

2. Hospital (Medicare) Insurance Tax

(a) Contribution Base

- (1) Section 3121(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3121(a))
- (2) Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13207, 107 Stat. 312, 467-69 (1993)

(b) Tax Rate

- (1) Section 3101(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3101(b))

3. Federal Income Tax

(a) Tax Rate Schedule for 2022 for Single Taxpayers

- (1) Revenue Procedure 2021-45, Section 3.01, Table 3 which appears in Internal Revenue Bulletin 2021-48, dated November 29, 2021,
 - (2) Section 1(j) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1(j))
 - (b) Standard Deduction
 - (1) Revenue Procedure 2021-45, Section 3.15, which appears in Internal Revenue Bulletin 2021-48, dated November 29, 2021
 - (2) Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 63(c))
 - (c) Personal Exemption
 - (1) An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 115-97, 131 Stat. 2054 (codified as amended in scattered sections of 26 U.S.C.) amended the Internal Revenue Code of 1986, by adding a new paragraph to Section 151(d), which dictates that the personal exemption amount is zero for the taxable years 2018 through 2025.
 - (2) Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 151(d))
4. Adjusted amount determined under Subsection (a-1) of Texas Family Code section 154.125

Office of the Attorney General “Announcement of Adjustment Required by Texas Family Code section 154.125” appearing in 44 TexReg 3559 (July 12, 2019)

**SELF-EMPLOYED PERSONS
2022 TAX CHART**

Federal Insurance Contribution Act Taxes				
Monthly Self-Employment Income*	Old-Age, Survivors and Disability Insurance Program (Social Security) Tax (12.4%)**	Medicare's Hospital Insurance Program (Medicare) Tax(2.9%)**	Federal Income Tax****	Net Monthly Income
\$100.00	\$11.45	\$2.68	\$0.00	\$85.87
\$150.00	\$17.18	\$4.02	\$0.00	\$128.80
\$200.00	\$22.90	\$5.36	\$0.00	\$171.74
\$250.00	\$28.63	\$6.70	\$0.00	\$214.67
\$300.00	\$34.35	\$8.03	\$0.00	\$257.62
\$350.00	\$40.08	\$9.37	\$0.00	\$300.55
\$400.00	\$45.81	\$10.71	\$0.00	\$343.48
\$450.00	\$51.53	\$12.05	\$0.00	\$386.42
\$500.00	\$57.26	\$13.39	\$0.00	\$429.35
\$550.00	\$62.98	\$14.73	\$0.00	\$472.29
\$600.00	\$68.71	\$16.07	\$0.00	\$515.22
\$650.00	\$74.43	\$17.41	\$0.00	\$558.16
\$700.00	\$80.16	\$18.75	\$0.00	\$601.09
\$750.00	\$85.89	\$20.09	\$0.00	\$644.02
\$800.00	\$91.61	\$21.43	\$0.00	\$686.96
\$850.00	\$97.34	\$22.76	\$0.00	\$729.90
\$900.00	\$103.06	\$24.10	\$0.00	\$772.84
\$950.00	\$108.79	\$25.44	\$0.00	\$815.77
\$1,000.00	\$114.51	\$26.78	\$0.00	\$858.71
\$1,050.00	\$120.24	\$28.12	\$0.00	\$901.64
\$1,100.00	\$125.97	\$29.46	\$0.00	\$944.57
\$1,150.00	\$131.69	\$30.80	\$0.00	\$987.51
\$1,200.00	\$137.42	\$32.14	\$3.61	\$1,026.83
\$1,300.00	\$148.87	\$34.82	\$12.90	\$1,103.41
\$1,400.00	\$160.32	\$37.49	\$22.19	\$1,180.00
\$1,500.00	\$171.77	\$40.17	\$31.49	\$1,256.57
\$1,600.00	\$183.22	\$42.85	\$40.78	\$1,333.14
\$1,700.00	\$194.67	\$45.53	\$50.07	\$1,409.73
\$1,800.00	\$206.13	\$48.21	\$59.37	\$1,486.29
\$1,900.00	\$217.58	\$50.88	\$68.66	\$1,562.87
\$2,000.00	\$229.03	\$53.56	\$77.95	\$1,639.46
\$2,100.00	\$240.48	\$56.24	\$87.57	\$1,715.70
\$2,200.00	\$251.93	\$58.92	\$98.72	\$1,790.43
\$2,300.00	\$263.38	\$61.60	\$109.88	\$1,865.14
\$2,400.00	\$274.83	\$64.28	\$121.03	\$1,939.86
\$2,500.00	\$286.29	\$66.95	\$132.18	\$2,014.58
\$2,600.00	\$297.74	\$69.63	\$143.33	\$2,089.30
\$2,700.00	\$309.19	\$72.31	\$154.48	\$2,164.01
\$2,800.00	\$320.64	\$74.99	\$165.64	\$2,238.73
\$2,900.00	\$332.09	\$77.67	\$176.79	\$2,313.45
\$3,000.00	\$343.54	\$80.34	\$187.94	\$2,388.18
\$3,100.00	\$354.99	\$83.02	\$199.09	\$2,462.90
\$3,200.00	\$366.44	\$85.70	\$210.25	\$2,537.61
\$3,300.00	\$377.90	\$88.38	\$221.40	\$2,612.32
\$3,400.00	\$389.35	\$91.06	\$232.55	\$2,687.04
\$3,500.00	\$400.80	\$93.74	\$243.70	\$2,761.76
\$3,600.00	\$412.25	\$96.41	\$254.86	\$2,836.47
\$3,700.00	\$423.70	\$99.09	\$266.01	\$2,911.20
\$3,800.00	\$435.15	\$101.77	\$277.16	\$2,985.92
\$3,900.00	\$446.60	\$104.45	\$288.31	\$3,060.64
\$4,000.00	\$458.06	\$107.13	\$299.46	\$3,135.35
\$4,100.00	\$469.51	\$109.80	\$310.62	\$3,210.07
\$4,200.00	\$480.96	\$112.48	\$321.77	\$3,284.79
\$4,300.00	\$492.41	\$115.16	\$332.92	\$3,359.51
\$4,400.00	\$503.86	\$117.84	\$344.07	\$3,434.23
\$4,500.00	\$515.31	\$120.52	\$355.23	\$3,508.94
\$4,600.00	\$526.76	\$123.19	\$366.38	\$3,583.67
\$4,700.00	\$538.22	\$125.87	\$377.53	\$3,658.38
\$4,800.00	\$549.67	\$128.55	\$388.68	\$3,733.10
\$4,900.00	\$561.12	\$131.23	\$399.83	\$3,807.82
\$5,000.00	\$572.57	\$133.91	\$419.62	\$3,873.90
\$5,100.00	\$584.02	\$136.59	\$440.07	\$3,939.32
\$5,200.00	\$595.47	\$139.26	\$460.51	\$4,004.76
\$5,300.00	\$606.92	\$141.94	\$480.96	\$4,070.18
\$5,400.00	\$618.38	\$144.62	\$501.40	\$4,135.60
\$5,500.00	\$629.83	\$147.30	\$521.85	\$4,201.02
\$5,600.00	\$641.28	\$149.98	\$542.29	\$4,266.44

\$5,700.00	\$652.73	\$152.65	\$562.74	\$4,331.88
\$5,800.00	\$664.18	\$155.33	\$583.19	\$4,397.30
\$5,900.00	\$675.63	\$158.01	\$603.63	\$4,462.73
\$6,000.00	\$687.08	\$160.69	\$624.08	\$4,528.15
\$6,100.00	\$698.54	\$163.37	\$644.52	\$4,593.57
\$6,200.00	\$709.99	\$166.05	\$664.97	\$4,658.99
\$6,300.00	\$721.44	\$168.72	\$685.42	\$4,724.42
\$6,400.00	\$732.89	\$171.40	\$705.86	\$4,789.85
\$6,500.00	\$744.34	\$174.08	\$726.31	\$4,855.27
\$6,600.00	\$755.79	\$176.76	\$746.75	\$4,920.70
\$6,700.00	\$767.24	\$179.44	\$767.20	\$4,986.12
\$6,800.00	\$778.70	\$182.11	\$787.64	\$5,051.55
\$6,900.00	\$790.15	\$184.79	\$808.09	\$5,116.97
\$7,000.00	\$801.60	\$187.47	\$828.54	\$5,182.39
\$7,100.00	\$813.05	\$190.15	\$848.98	\$5,247.82
\$7,200.00	\$824.50	\$192.83	\$869.43	\$5,313.24
\$7,300.00	\$835.95	\$195.50	\$889.87	\$5,378.68
\$7,400.00	\$847.40	\$198.18	\$910.32	\$5,444.10
\$7,500.00	\$858.86	\$200.86	\$930.76	\$5,509.52
\$7,600.00	\$870.31	\$203.54	\$951.21	\$5,574.94
\$7,700.00	\$881.76	\$206.22	\$971.66	\$5,640.36
\$7,800.00	\$893.21	\$208.90	\$992.10	\$5,705.79
\$7,900.00	\$904.66	\$211.57	\$1,012.55	\$5,771.22
\$8,000.00	\$916.11	\$214.25	\$1,032.99	\$5,836.65
\$8,100.00	\$927.56	\$216.93	\$1,053.44	\$5,902.07
\$8,200.00	\$939.01	\$219.61	\$1,073.88	\$5,967.50
\$8,300.00	\$950.47	\$222.29	\$1,094.33	\$6,032.91
\$8,400.00	\$961.92	\$224.96	\$1,114.78	\$6,098.34
\$8,500.00	\$973.37	\$227.64	\$1,135.22	\$6,163.77
\$8,600.00	\$984.82	\$230.32	\$1,155.67	\$6,229.19
\$8,700.00	\$996.27	\$233.00	\$1,176.11	\$6,294.62
\$8,800.00	\$1,007.72	\$235.68	\$1,196.56	\$6,360.04
\$8,900.00	\$1,019.17	\$238.36	\$1,217.00	\$6,425.47
\$9,000.00	\$1,030.63	\$241.03	\$1,237.45	\$6,490.89
\$9,100.00	\$1,042.08	\$243.71	\$1,257.90	\$6,556.31
\$9,200.00	\$1,053.53	\$246.39	\$1,279.30	\$6,620.78
\$9,300.00	\$1,064.98	\$249.07	\$1,301.61	\$6,684.34
\$9,400.00	\$1,076.43	\$251.75	\$1,323.91	\$6,747.91
\$9,500.00	\$1,087.88	\$254.42	\$1,346.22	\$6,811.49
\$9,600.00	\$1,099.33	\$257.10	\$1,368.52	\$6,875.05
\$9,700.00	\$1,110.79	\$259.78	\$1,390.82	\$6,938.61
\$9,800.00	\$1,122.24	\$262.46	\$1,413.13	\$7,002.17
\$9,900.00	\$1,133.69	\$265.14	\$1,435.43	\$7,065.74
\$10,000.00	\$1,145.14	\$267.82	\$1,457.74	\$7,129.31
\$10,100.00	\$1,156.59	\$270.49	\$1,480.04	\$7,192.88
\$10,200.00	\$1,168.04	\$273.17	\$1,502.35	\$7,256.44
\$10,300.00	\$1,179.49	\$275.85	\$1,524.65	\$7,320.01
\$10,400.00	\$1,190.95	\$278.53	\$1,546.95	\$7,383.57
\$10,500.00	\$1,202.40	\$281.21	\$1,569.26	\$7,447.13
\$10,600.00	\$1,213.85	\$283.88	\$1,591.56	\$7,510.71
\$10,700.00	\$1,225.30	\$286.56	\$1,613.87	\$7,574.27
\$10,800.00	\$1,236.75	\$289.24	\$1,636.17	\$7,637.84
\$10,900.00	\$1,248.20	\$291.92	\$1,658.48	\$7,701.40
\$11,000.00	\$1,259.65	\$294.60	\$1,680.78	\$7,764.97
\$11,100.00	\$1,271.11	\$297.27	\$1,703.09	\$7,828.53
\$11,200.00	\$1,282.56	\$299.95	\$1,725.39	\$7,892.10
\$11,300.00	\$1,294.01	\$302.63	\$1,747.69	\$7,955.67
\$11,400.00	\$1,305.46	\$305.31	\$1,770.00	\$8,019.22
\$11,500.00	\$1,316.91	\$307.99	\$1,792.30	\$8,082.80
\$11,600.00	\$1,328.36	\$310.67	\$1,814.61	\$8,146.36
\$11,700.00	\$1,339.81	\$313.34	\$1,836.91	\$8,209.94
\$11,800.00	\$1,351.27	\$316.02	\$1,859.22	\$8,273.49
\$11,900.00	\$1,362.72	\$318.70	\$1,881.52	\$8,337.06
\$12,000.00	\$1,374.17	\$321.38	\$1,903.83	\$8,400.62
\$12,250.00	\$1,402.80	\$328.07	\$1,959.59	\$8,559.54
\$12,500.00	\$1,431.43	\$334.77	\$2,015.35	\$8,718.46
\$12,750.00	\$1,460.05	\$341.46	\$2,071.11	\$8,877.38
\$13,000.00	\$1,488.68	\$348.16	\$2,126.87	\$9,036.29
\$13,257.56*****	\$1,518.18	\$355.06	\$2,184.32	\$9,200.00
\$13,500.00***	\$1,519.00	\$361.55	\$2,241.63	\$9,377.82

Footnotes to Self-Employed Persons 2022 Tax Chart:

References to “the Code” refer to the Internal Revenue Code of 1986, as amended (26 U.S.C.)

* Texas Family Code Section 154.065 defines what is included in, and what may be excluded from, self-employment income for Texas child support guideline computation purposes. The values displayed in the first column of this chart are the full amount of net earnings from self-employment income (determined before the deduction required by Section 1402(a)(12) of the Code explained in the next footnote, **).

** The tax rates for self-employment taxes are 12.4% for the Old-Age, Survivors and Disability Insurance Program “OASDI” (Social Security tax) and 2.9% for Medicare’s Hospital Insurance Program (Medicare) tax, however, only a portion of the net earnings from self-employment are subject to these taxes. Section 1402(a)(12) of the Code permits a self-employed person a deduction in net earnings from self-employment (as defined in sections 1401 and 1402 of the Code) equal to one-half of the combined rates. The purpose is to adjust net income downward by the amount that would have been paid by an employer, had the individual been classified as an employee. The sum of these rates is 15.3% (12.4% + 2.9% = 15.3%). One-half (1/2) of the combined rate is 7.65% (15.3% x 1/2 = 7.65%). Self-employed taxpayers compute this deduction by multiplying net earnings from self-employment by .9235 (100% - 7.65% = 92.35%) to determine the portion of self-employment income subject to self-employment taxes.

Social Security tax is owed on the portion of self-employment income subject to self-employment taxes that do not exceed the maximum OASDI Contribution and Benefit Base amount of \$147,000 (for tax year 2022). Medicare’s Hospital Insurance Program (Medicare) tax is owed on the full amount of self-employment income subject to self-employment taxes. Section 1401 of the Code.

Examples:

Monthly Self-Employment Income, TFC 154.065	\$72,000 for the year, or \$6,000 monthly average	\$160,000 for the year, or \$13,333 monthly average
92.35% of self-employment income is subject to self-employment taxes	$\$72,000 \times .9235 = \$66,492$ for the year	$\$160,000 \times .9235 = \$147,760$ for the year
Social Security tax rate = 12.4%	\$66,492 does not exceed the OASDI contribution and benefit base, so \$66,492 is taxed at this rate. $\$66,492 \times .124 = \$8,245$ for the year, or \$687.08 monthly average	\$147,760 exceeds the OASDI contribution and benefit base, so only the first \$147,000 is taxed at this rate. $\$147,000 \times .124 = \$18,228$ for the year, or \$1,519 monthly average
Medicare tax rate = 2.9%	$\$66,492 \times .029 = \$1,928.27$ for the year, or \$160.69 monthly average	$\$147,760 \times .029 = \$4,285.04$ for the year, or \$357.09 monthly average

*** In 2022 the maximum level of Monthly Self-Employment Income subject to the 12.4% Social Security tax is \$159,177.05 per year, or \$13,264.75 per month ($\$159,177.05 / 12 = \$13,264.75$). This is the income amount before the deduction required by Section 1402(a)(12) of the Code. The maximum monthly Social Security Tax in 2022 is \$1,519 based on the maximum OASDI Contribution and Benefit Base amount of \$147,000 for 2022.

Monthly Self-Employment Income, TFC 154.065	\$159,177.05 for the year, or \$13,264.75 monthly average
92.35% of self-employment income is subject to self-employment taxes	$\$159,177.05 \times .9235 = \$147,000$ for the year

Social Security tax rate = 12.4%	<p>\$147,000 is equal to the 2022 OASDI contribution and benefit base, so \$147,000 is taxed at this rate.</p> <p>$\\$147,000 \times .124 = \\$18,228$ for the year, or \$1,519 monthly average</p>
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**** These amounts represent one-twelfth (1/12) of the annual federal income tax calculated for a single taxpayer claiming one personal exemption (in the case of a taxable year beginning after December 31, 2017, and before January 1, 2026 the exemption amount is zero), and taking the standard deduction (\$12,950).

The calculation of federal income taxes on self-employment income requires the determination of the total self-employment taxes imposed, as described above. The calculation of federal income taxes permits the taxpayer to reduce net income from self-employment by one half of the actual taxes imposed thereby approximating the employment taxes (Social Security and Medicare) that are paid by an employed person. Section 164(f) of the Code.

Examples:

Monthly Self-Employment Income, TFC 154.065	\$72,000 for the year, or \$6,000 monthly average	\$160,000 for the year, or \$13,333 monthly average
Social security tax	\$8,245 for the year, or \$687.08 monthly average	\$18,228 for the year, or \$1,519 monthly average
Medicare tax	\$1,928.27 for the year, or \$160.69 monthly average	\$4,285.04 for the year, or \$357.09 monthly average
Total self-employment taxes imposed	$\$8,245 + \$1,928.27 = \$10,173.27$ for the year	$\$18,228 + \$4,285.04 = \$22,513.04$ for the year
Tax deductible portion of self-employment taxes. Section 164(f) of the Code	$\$10,173.27 \times 1/2 = \$5,086.64$ for the year	$\$22,513.04 \times 1/2 = \$11,256.52$ for the year
Personal Exemption Section 151(d) of the Code	\$0 for tax years 2018 through 2025	\$0 for tax years 2018 through 2025
Standard Deduction Section 63(c) of the Code	\$12,950	\$12,950
Income amount to be used in the income tax computation	$\$72,000 - \$5,086.64 - \$0 - \$12,950 = \$53,963.36$	$\$160,000 - \$11,256.52 - \$0 - \$12,950 = \$135,793.48$
Income tax computation for 2022	<p><i>If taxable income is over \$41,775 but not over \$89,075, the tax is \$4,807.50 plus 22% of the excess over \$41,775 (Section 1(j) of the Code)</i></p> <p>$\\$4,807.50 + ((\\$53,963.36 - \\$41,775) \times .22) = \\$7,488.94$ for the year, or \$624.08 monthly average</p>	<p><i>If taxable income is over \$89,075 but not over \$170,050 the tax is \$15,213.50 plus 24% of the excess over \$89,075 (Section 1(j) of the Code)</i></p> <p>$\\$15,213.50 + ((\\$135,793.48 - \\$89,075) \times .24) = \\$26,425.94$ for the year, or \$2,202.16 monthly average</p>

Note: For tax years 2018 through 2025, the personal exemption amount is zero. Section 63(c) of the Code. For 2022, the computations do not include the subtraction of any personal exemptions.

***** This amount represents the point where the monthly gross income of a self-employed individual would result in \$9,200.00 of net resources. Texas Family Code section 154.125 provides, "The guidelines for the

support of a child in this section are specifically designed to apply to situations in which the obligor's monthly net resources are not greater than \$7,500 or the adjusted amount determined under Subsection (a-1), whichever is greater." Effective September 1, 2019 the adjusted amount determined under Subsection (a-1) is \$9,200.00. Texas Family Code section 154.126(a) provides, "If the obligor's net resources exceed the amount provided by Section 154.125(a), the court shall presumptively apply the percentage guidelines to the portion of the obligor's net resources that does not exceed that amount. Without further reference to the percentage recommendation by these guidelines, the court may order additional amounts of child support as appropriate, depending on the income of the parties and the proven needs of the child." The tax charts promulgated by the Office of the Attorney General include net monthly income amounts up to the amount specified in Texas Family Code section 154.125.

* * * * *

Citations Relating to Self-Employed Persons 2022 Tax Chart:

1. Old-Age, Survivors and Disability Insurance Tax

(a) Contribution Base

- (1) Social Security Administration's notice appearing in 86 Fed. Reg. 58715 (October 22, 2021)
- (2) Section 1402(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(b))
- (3) Section 230 of the Social Security Act, as amended (42 U.S.C. § 430)

(b) Tax Rate

- (1) Section 1401(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1401(a))

(c) Deduction Under Section 1402(a)(12)

- (1) Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(a)(12))

2. Hospital (Medicare) Insurance Tax

(a) Contribution Base

- (1) Section 1402(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(b))
- (2) Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13207, 107 Stat. 312, 467-69 (1993)

(b) Tax Rate

- (1) Section 1401(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1401(b))

(c) Deduction Under Section 1402(a)(12)

- (1) Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(a)(12))

3. Federal Income Tax

(a) Tax Rate Schedule for 2022 for Single Taxpayers

- (1) Revenue Procedure 2021-45, Section 3.01, Table 3 which appears in Internal Revenue Bulletin 2021-48, dated November 29, 2021,
- (2) Section 1(j), of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1(j))

(b) Standard Deduction

- (1) Revenue Procedure 2021-45, Section 3.15, which appears in Internal Revenue Bulletin 2021-48, dated November 29, 2021
- (2) Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 63(c))

(c) Personal Exemption

- (1) An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 115-97, 131 Stat. 2054 (codified as amended in scattered sections of 26 U.S.C.) amended the Internal Revenue Code of 1986, by adding a new paragraph to Section 151(d), which dictates that the personal exemption amount is zero for the taxable years 2018 through 2025.
- (2) Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 151(d))

(d) Deduction Under Section 164(f)

- (1) Section 164(f) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 164(f))

4. Adjusted amount determined under Subsection (a-1) of Texas Family Code section 154.125

Office of the Attorney General “Announcement of Adjustment Required by Texas Family Code section 154.125” appearing in 44 TexReg 3559 (July 12, 2019)

TRD-202104830
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: December 6, 2021



Landowner's Bill of Rights

The Office of the Attorney General of Texas intends to revise the Landowner's Bill of Rights, found on the Office's website, and is publishing the proposed changes in the *Texas Register* for 30 days so that the Office may accept public comment regarding the proposed statement.

Background and Statutory Authority

Pursuant to section 402.031 of the Texas Government Code, the Attorney General is required to maintain on its website a written statement of the rights of property owners whose real property may be acquired through an entity's use of eminent domain authority. The statement is known as the Landowner's Bill of Rights. The Office of the Attorney General intends to revise and update the Landowner's Bill of Rights as indicated herein and will accept public comment on the proposed changes.

This update is made under Government Code § 402.031, as amended by H.B. 2730, which was passed by the 87th Texas Legislature. Act of May 27, 2021, 87th Leg., R.S., ch. 826, § 1, eff. Jan. 1, 2022. H.B. 2730 added Government Code §§ 402.031(b)(6) and (c-1) requiring that the Landowner's Bill of Rights include, respectively, a new section informing landowners of their right to file complaints against right-of-way and easement agents, and new addenda with the standard terms required in conveyance instruments and the terms that are negotiable. The update incorporates the new statutory language and new

addenda required in H.B. 2730, as well as the other changes to the Texas Property Code regarding condemnation proceedings that are relevant to persons whose property may be condemned, and changes to improve readability by the average property owner.

H.B. 2730 also added Government Code § 402.031(f), which requires the Attorney General to publish any proposed changes to the Landowner's Bill of Rights in the *Texas Register* for public comment before making the changes. H.B. 2730 § 1. H.B. 2730 takes effect on January 1, 2022. *Id.* § 13.

Public Comment

Written comments regarding changes to the Landowner's Bill of Rights may be submitted to Shelly M. Doggett, Assistant Attorney General, Office of the Attorney General of Texas, P.O. Box 12548, MC-066, Austin, Texas 78711-2548, or faxed to her attention at (512) 320-0911, no later than noon on January 17, 2022.

THE STATE OF TEXAS
LANDOWNER'S BILL OF RIGHTS
Prepared by THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS

This Landowner's Bill of Rights applies to any attempt to condemn your property. The contents of this Bill of Rights are set out by the Texas Legislature in Texas Government Code section 402.031 and chapter 21 of the Texas Property Code. Any entity exercising eminent domain authority must provide a copy of this Bill of Rights to you.

1. You are entitled to receive adequate compensation if your property is condemned.
2. Your property can only be condemned for a public use.
3. Your property can only be condemned by a governmental entity or private entity authorized by law to do so.
4. The entity that wants to acquire your property must notify you that it intends to condemn your property.
5. The entity proposing to acquire your property must provide you with a written appraisal from a certified appraiser detailing the adequate compensation you are owed for your property.
6. If you believe that a registered easement or right-of-way agent acting on behalf of the entity that wants to acquire your property has engaged in misconduct, you may file a written complaint with the Texas Real Estate Commission (TREC) under section 1101.205 of the Texas Occupations Code. The complaint should be signed and may include any supporting evidence.
- ~~6-7.~~ The condemning entity must make a bona fide offer to buy the property before it files a lawsuit to condemn the property—meaning the condemning entity must make a good faith offer that conforms with chapter 21 of the Texas Property Code.
- ~~7-8.~~ You may hire an appraiser or other professional to determine the value of your property or to assist you in any condemnation proceeding.
- ~~8-9.~~ You may hire an attorney to negotiate with the condemning entity and to represent you in any legal proceedings involving the condemnation.
- ~~9-10.~~ Before your property is condemned, you are entitled to a hearing before a court-appointed panel of three special commissioners. The special commissioners must determine the amount of compensation the condemning entity owes for condemning your property. The commissioners must also determine what compensation, if any, you are entitled to receive for any reduction in value of your remaining property.
- ~~10-11.~~ If you are unsatisfied with the compensation awarded by the special commissioners, or if you question whether the condemnation of your property was proper, you have the right to a trial by a judge or jury. You may also appeal the trial court's judgment if you are unsatisfied with the result.

CONDEMNATION PROCEDURE

Eminent domain is the legal authority certain governmental and private entities have to condemn private property for public use in exchange for adequate compensation. Only entities authorized by law to do so may condemn private property. Private property can include land and certain improvements that are on that property.

Who can I hire to help me?

You can hire an appraiser or real estate professional to help you determine the value of your property as well as an attorney to negotiate with a condemning entity or to represent you during condemnation proceedings.

What qualifies as a public purpose or use?

Your property may be condemned only for a purpose or use that serves the general public. This could include building or expanding roadways, public utilities, parks, universities, and other infrastructure serving the public. Texas law does not allow condemning authorities to exercise eminent domain for tax revenue or economic development.

What is adequate compensation?

Adequate compensation typically means the market value of the property being condemned. It could also include certain damages if your remaining property's market value is diminished by the condemnation or the public purpose for which it is being condemned.

Other than adequate compensation, what other compensation could I be owed?

If you are displaced from your residence or place of business, you may be entitled to reimbursement for reasonable expenses incurred while moving to a new site. However, reimbursement costs may not be available if those expenses are recoverable under another law. Also, reimbursement costs are capped at the market value of the property.

What does a condemnor have to do before condemning my property?

- Provide you a copy of this Landowner's Bill of Rights before, or at the same time as, the entity first represents that it possesses eminent domain authority. It is also required to send this Landowner's Bill of Rights to the last known address of the person listed as the property owner on the most recent tax roll: at least seven days before making its final offer to acquire the property.
 - If the condemnor seeks to condemn a right-of-way easement for a pipeline or electric transmission line and is a private entity, the condemnor must also provide you a copy of the Landowner's Bill of Right's addendum.
 - The addendum describes the standard terms required in an instrument conveying property rights (such as a deed transferring title or an easement spelling out the easement rights) and what terms you can negotiate.
- Make a bona fide offer to purchase the property. A bona fide offer includes an initial written offer as well as a final written offer. This process is described more fully in chapter 21 of the Texas Property Code. A "bona fide offer" involves both an initial written offer as well as a final written offer.
 - The initial written offer must include:
 - a copy of the Landowner's Bill of Rights and addendum (if applicable);
 - either a large-font, bold-print statement saying whether the offered compensation includes damages to the remainder of your remaining property or a formal appraisal of the property that identifies any damages to the remaining property (if any);
 - the conveyance instrument (such as an easement or deed); and
 - the name and telephone number of an employee, affiliate, or legal representative of the condemning entity.
 - The final written offer must be made at least 30 days after the initial written offer and must include, if not previously provided:
 - compensation equal to or more than the amount listed in a written, certified appraisal that is provided to you;
 - copies of the conveyance instrument; and

- the Landowner's Bill of Rights.
- Disclose any appraisal reports. When making its initial offer, the condemning entity must share its appraisal reports that relate to the property from the past 10 years. You have the right to discuss the offer with others and to either accept or reject the offer made by the condemning entity.

~~Make a final offer 30 or more days after the initial bona fide offer. The offered compensation must equal or exceed the amount listed in a written, certified appraisal provided to you. The final offer must also provide copies of the instrument conveying the property rights sought (such as the deed transferring title or the easement spelling out the easement rights) and the Landowner's Bill of Rights (if not provided previously).~~

What if I do not accept an offer by the condemning authority?

The condemnor must give you at least 14 days to consider the final offer before filing a lawsuit to condemn your property-, which begins the legal condemnation process.

How does the legal condemnation process start?

~~What if I do not accept an offer by the condemning authority?~~

The condemnor can start the legal condemnation process by filing a lawsuit to acquire your property in the appropriate court of the county where the property is located. When filing the petition, the condemnor must send you a copy of the petition by certified mail, return receipt requested, and first class mail. It must also send a copy to your attorney if you are represented by counsel.

What does the condemnor have to include in the lawsuit filed with the court?

The lawsuit must describe the property being condemned and state the following: the public use; your name; that you and the condemning entity were unable to agree on the value of the property; that the condemning entity gave you the Landowner's Bill of Rights; and that the condemning entity made a bona fide offer to voluntarily purchase the property from you.

SPECIAL COMMISSIONERS' HEARING AND AWARD

~~After~~No later than 30 days after the condemning entity files a condemnation lawsuit in court, the judge will appoint three local landowners to serve as special commissioners. ~~The special commissioners are required to~~ and two alternates. The judge will promptly give the condemnor a signed order appointing the special commissioners and the condemnor must give you, your lawyer, and other parties a copy of the order by certified mail, return receipt requested. The special commissioners will then schedule a condemnation hearing at the earliest practical time and place and to give you written notice of the hearing.

What do the special commissioners do?

The special commissioners' ~~role~~job is to ~~determine~~decide what amount of money is adequate ~~compensation to~~ compensate you for your property. ~~After~~The special commissioners will hold a hearing ~~evidence from all~~where you and other interested parties, ~~may introduce evidence. Then~~ the special commissioners will determine the amount of money that is adequate compensation and file their written decision, known as an "Award," in the court with notice to all parties. Once the Award is filed, the condemning entity may take possession ~~of~~and start using the property being condemned, even if one or more parties object to the Award of the special commissioners.

Are there limitations on what the special commissioners can do?

Yes. The special commissioners are tasked only with determining monetary compensation for the value of the property condemned and the value of any damages to the remaining property. They do not decide whether the condemnation is necessary or if the public use is proper. Further, the special commissioners do not have the power to alter the terms of an easement, reduce the size of the land acquired, or say what access will be allowed to the property during or after the condemnation. The special commissioners also cannot determine who should receive what portion of the compensation they award. Essentially, the special commissioners are empowered only to say how much money the condemnor should pay for the land or rights being acquired.

Who can be a special commissioner? ~~Can I object to them?~~

Special commissioners must be landowners and residents in the county where the condemnation proceeding is filed, and they must take an oath to assess the amount of adequate compensation fairly, impartially, and according to the law. ~~The judge will give you a reasonable period to object to, or strike, one of the special commissioners. If a commissioner is struck, the judge will appoint a replacement.~~

What if I want to object to a special commissioner?

The judge must provide to the parties the names and contact information of the special commissioners and alternates. Each party will have up to 10 days after the date of the order appointing the special commissioners or 20 days after the date the petition was filed, whichever is later, to strike one of the three special commissioners. If a commissioner is struck, an alternate will serve as a replacement. Another party may strike a special commissioner from the resulting panel within three days after the date the initial strike was filed or the date of the initial strike deadline, whichever is later.

What will happen at the special commissioners' hearing?

The special commissioners will consider any evidence (such as appraisal reports and witness testimony) on the value of your condemned property, the damages or value added to remaining property that is not being condemned, and the condemning entity's proposed use of the property.

What are my rights at the special commissioners' hearing?

You have the right to appear or not appear at the hearing. If you do appear, you can question witnesses or offer your own evidence on the value of the property. The condemning entity must give you all existing appraisal reports regarding your property used to determine an opinion of value at least three days before the hearing. If you intend to use appraisal reports to support your claim about adequate compensation, you must provide them to the condemning entity 10 days after you receive them or three business days before the hearing, whichever is earlier.

Do I have to pay for the special commissioners' hearing?

If the special commissioners' award is less than or equal to the amount the condemning entity offered to pay before the proceedings began, then you may be financially responsible for the cost of the condemnation proceedings. But, if the award is more than the condemning entity offered to pay before the proceedings began, then the condemning entity will be responsible for the costs.

What does the condemnor need to do to take possession of the property?

Once the condemning entity either pays the amount of the award to you or deposits it into the court's registry, the entity may take possession of the property and put the property to public use. Non-governmental condemning authorities may also be required to post bonds in addition

to the award amount. You have the right to withdraw funds that are deposited into the registry of the court, but when you withdraw the money, you can no longer challenge whether the eminent domain action is valid—only whether the amount of compensation is adequate.

OBJECTING TO THE SPECIAL COMMISSIONERS' AWARD

If you, the condemning entity, or any other party is unsatisfied with the amount of the award, that party can formally object. The objection must be filed in writing with the court and is due by the first Monday following the 20th day after the clerk gives notice that the commissioners have filed their award with the court. If no party timely objects to the special commissioners' award, the court will adopt the award amount as the final compensation due and issue a final judgment in absence of objection.

What happens after I object to the special commissioners' award?

If a party timely objects, the court will hear the case just like other civil lawsuits. Any party who objects to the award has the right to a trial and can elect whether to have the case decided by a judge or jury.

Who pays for trial?

If the verdict amount at trial is greater than the amount of the special commissioners' award, the condemnor may be ordered to pay costs. If the verdict at trial is equal to or less than the amount the condemnor originally offered, you may be ordered to pay costs.

Is the trial verdict the final decision?

Not necessarily. After trial any party may appeal the judgment entered by the court.

DISMISSAL OF THE CONDEMNATION ACTION

A condemnation action may be dismissed by either the condemning authority itself or on a motion by the landowner.

What happens if the condemning authority no longer wants to condemn my property?

If a condemning entity decides it no longer needs your condemned property, it can file a motion to dismiss the condemnation proceeding. If the court grants the motion to dismiss, the case is over, and you can recover reasonable and necessary fees for attorneys, appraisers, photographers, and for other expenses up to that date.

What if I do not think the condemning entity has the right to condemn my property?

You can challenge the right to condemn your property by filing a motion to dismiss the condemnation proceeding. For example, a landowner could challenge the condemning entity's claim that it seeks to condemn the property for a public use. If the court grants the landowner's motion, the court may award the landowner reasonable and necessary fees and expenses incurred to that date.

Can I get my property back if it is condemned but never put to a public use?

You may have the right to repurchase your property if your property is acquired through eminent domain and:

- the public use for which the property was acquired is canceled before that property is put to that use,
- no actual progress is made toward the public use within 10 years, or

- the property becomes unnecessary for public use within 10 years.

The repurchase price is the price you were paid at the time of the condemnation.

ADDITIONAL RESOURCES AND ADDENDUM

For more information about the procedures, timelines, and requirements outlined in this document, see chapter 21 of the Texas Property Code. An addendum discussing the terms required for an instrument of conveyance under Property Code section 21.0114(c), and the conveyance terms that a property owner may negotiate under Property Code section 21.0114(d), is attached to this statement.

The information in this statement is intended to be a summary of the applicable portions of Texas state law as required by HB 1495, enacted by the 80th Texas Legislature, Regular Session-, and HB 2730, enacted by the 87th Texas Legislature, Regular Session. This statement is not legal advice and is not a substitute for legal counsel.

ADDENDUM A:

**Required Terms for an Instrument Conveying a Pipeline Right-of-Way Easement
or an Easement Related to Pipeline Appurtenances***

(1) The maximum number of pipelines that may be installed in the right-of-way acquired through this instrument is _____.

(2) The types of pipeline appurtenances that are authorized to be installed under this instrument for pipeline-related appurtenances, such as pipes, valves, compressors, pumps, meters, pigging stations, dehydration facilities, electric facilities, communication facilities, and any other appurtenances that may be necessary or desirable in connection with a pipeline, are described as follows: _____.

(3) The maximum diameter, excluding any protective coating or wrapping, of each pipeline to be initially installed under this instrument for a pipeline right-of-way is _____.

(4) For each pipeline to be installed under this instrument, the type or category of substances permitted to be transported through each pipeline is _____.

(5) Any aboveground equipment or facility that Grantee[†] intends to install, maintain, or operate under this instrument on the surface of the pipeline easement is described as follows: _____.

(6) A description or illustration of the location of the easement, including a metes and bounds or centerline description, plat, or aerial or other map-based depiction of the location of the easement on the property, is attached as Exhibit _____.

(7) The maximum width of the easement under this instrument is _____.

(8) For each pipeline to be installed under this instrument, the minimum depth at which the pipeline will initially be installed is _____.

(9) The entity installing pipeline(s) under this instrument: (check one)

- intends to double-ditch areas of the pipeline easement that are not installed by boring or horizontal directional drilling.
- does not intend to double-ditch areas of the pipeline easement that are not installed by boring or horizontal directional drilling.

(10) Grantee shall provide written notice to Grantor[‡], at the last known address of the person in whose name the property is listed on the most recent tax roll of any taxing unit authorized to levy property taxes against the property, if and when Grantee assigns any interest conveyed under this instrument to another entity, provided that this provision does not require notice by Grantee for assignment to an affiliate or to a successor through merger, consolidation, or other sale or transfer of all or substantially all of its assets and businesses.

(11) The easement rights conveyed by this instrument are: (check one)

- exclusive.
- nonexclusive.

(12) Grantee may not grant to a third party access to the easement area for a purpose that is not related to one of the following: the construction, safety, repair, maintenance, inspection, replacement, operation, or removal of each pipeline to be installed under this instrument or of

*The easement terms listed in this addendum may be amended, altered, or omitted by the agreement of the condemning authority and the landowner, pursuant to Sections 21.0114(d), (e), and (f) of the Texas Property Code.

[†]“Grantee” is the private entity, as defined by Section 21.0114(a) of the Texas Property Code, that is acquiring the pipeline easement.

[‡]“Grantor” is the property owner from whom the Grantee is acquiring the pipeline easement.

pipeline appurtenances to be installed under this instrument.

(13) Grantor: (check one)

- may recover from Grantee actual monetary damages, if any, arising from the construction and installation of each pipeline to be installed under this instrument.
- acknowledges that the consideration paid for the easement acquired under this instrument includes monetary damages, if any, arising from the construction and installation of each pipeline to be installed under this instrument.

(14) After initial construction and installation of each pipeline installed under this instrument, Grantor: (check one)

- may recover from Grantee actual monetary damages, if any, arising from the repair, maintenance, inspection, replacement, operation, or removal of each pipeline to be installed under this instrument.
- acknowledges that the consideration paid for the easement acquired under this instrument includes monetary damages, if any, arising from the repair, maintenance, inspection, replacement, operation, or removal of each pipeline to be installed under this instrument.

(15) Grantor: (check one)

- and Grantee agree, with regard to Grantee's removal, cutting, use, repair, and replacement of gates and fences that cross the easement or that will be used by Grantee under this instrument, that Grantee will access and secure the easement acquired under this instrument as follows: _____.
- may recover from Grantee payment for monetary damages, if any, caused by Grantee to gates and fences, if any, to the extent that the gates or fences are not restored or paid for as part of the consideration paid for the instrument.
- acknowledges that the consideration paid for the easement acquired under this instrument includes monetary damages, if any, caused by Grantee to gates and fences.

(16) With regard to restoring the pipeline easement area acquired under this instrument and Grantor's remaining property used by Grantee to as near to original condition as is reasonably practicable and maintaining the easement in a manner consistent with the purposes for which the easement is to be used under this instrument: (check one)

- Grantee will be responsible for the restoration.
- Grantee will reimburse Grantor for monetary damages that arise from damage to the pipeline easement area or the Grantor's remaining property, if any, caused by the Grantee and not restored or paid for as part of the consideration for the instrument.
- acknowledges that the consideration paid for the easement acquired under this instrument includes monetary damages, if any, caused by Grantee to the pipeline easement area or the Grantor's remaining property.

(17) Grantee's rights of ingress, egress, entry, and access on, to, over, and across Grantor's property under this instrument are described as follows: _____.

(18) Grantee may not make use of the property rights acquired by this instrument, other than as provided by this instrument, without the express written consent of Grantor.

(19) The terms of this instrument bind the heirs, successors, and assigns of Grantor and Grantee.

ADDENDUM B:
**Required Terms for an Instrument Conveying
an Electric Transmission Line Right-of-Way Easement[§]**

(1) The uses of the surface of the property to be encumbered by the electric transmission line right-of-way easement acquired by Grantee^{**} under this instrument are generally described as follows: _____.

(2) A description or illustration of the location of the electric transmission line right-of-way easement, including a metes and bounds or centerline description, plat, or aerial or other map-based depiction of the location of the easement on the property, is attached as Exhibit _____.

(3) The maximum width of the electric transmission line right-of-way easement acquired by this instrument is _____.

(4) Grantee will access the electric transmission line right-of-way easement acquired under this instrument in the following manner: _____.

(5) Grantee may not grant to a third party access to the electric transmission line right-of-way easement area for a purpose that is not related to the construction, safety, repair, maintenance, inspection, replacement, operation, or removal of the electric and appurtenant facilities installed under this instrument.

(6) Grantor^{††}: (check one)

- may recover from Grantee actual monetary damages, if any, arising from the construction, operation, repair, maintenance, inspection, replacement, and future removal of lines and support facilities after initial construction in the easement, if any.
- acknowledges that the consideration paid for the easement acquired under this instrument includes monetary damages, if any, arising from the construction, operation, repair, maintenance, inspection, replacement, and future removal of lines and support facilities after initial construction in the easement.

(7) Grantor: (check one)

- and Grantee agree, with regard to Grantee's removal, cutting, use, repair, and replacement of gates and fences that cross the easement or that will be used by Grantee under this instrument, that Grantee will access and secure the easement acquired under this instrument as follows: _____.
- may recover from Grantee payment for monetary damages, if any, caused by Grantee to gates and fences, if any, to the extent that the gates or fences are not restored or paid for as part of the consideration paid for the instrument.
- acknowledges that the consideration paid for the easement acquired under this instrument includes monetary damages, if any, caused by Grantee to gates and fences.

(8) Grantee shall restore the easement area and Grantor's remaining property to their original contours and grades, to the extent reasonably practicable, unless Grantee's safety or

[§]The easement terms listed in this addendum may be amended, altered, or omitted by the agreement of the condemning authority and the landowner, pursuant to Sections 21.0114(d), (e), and (f) of the Texas Property Code.

^{**}“Grantee” is the private entity, as defined by Section 21.0114(a) of the Texas Property Code, that is acquiring the electric transmission line right-of-way easement.

^{††}“Grantor” is the property owner from whom the Grantee is acquiring the electric transmission line right-of-way easement.

operational needs and the electric facilities located on the easement would be impaired. With regard to restoring the electric transmission line right-of-way easement area acquired under this instrument and Grantor's remaining property used by Grantee to as near to original condition as is reasonably practicable following future damages, if any, directly attributed to Grantee's use of the easement: (check one)

- Grantee will be responsible for the restoration, unless the safety or operational needs of Grantee and the electric facilities would be impaired.
- Grantor acknowledges that the consideration paid for the easement acquired under this instrument includes future damages, if any, caused by Grantee to the easement area or the Grantor's remaining property.

(9) The easement rights acquired under this instrument are: (check one)

- exclusive.
- nonexclusive.
- otherwise limited under the terms of the instrument as follows: _____.

(10) Grantee may not assign Grantee's interest in the property rights acquired under this instrument to an assignee that will not operate as a utility subject to the jurisdiction of the Public Utility Commission of Texas or the Federal Energy Regulatory Commission without written notice to Grantor at the last known address of the person in whose name the property is listed on the most recent tax roll of any taxing unit authorized to levy property taxes against the property.

(11) Grantee may not make use of the property rights acquired by this instrument, other than as provided by this instrument, without the express written consent of Grantor.

(12) The terms of this instrument bind the heirs, successors, and assigns of Grantor and Grantee.

ADDENDUM C:

**Optional Terms for an Instrument Conveying a Pipeline Right-of-Way Easement,
an Easement Related to Pipeline Appurtenances,
or an Electric Transmission Line Right-of-Way Easement^{††}**

(1) With regard to the specific vegetation described as follows: _____, Grantor^{§§}: (check one):

- may recover from Grantee^{***} payment for monetary damages, if any, caused by Grantee to the vegetation.
- Grantor acknowledges that the consideration paid for the easement acquired under this instrument includes monetary damages, if any, caused by Grantee to the vegetation.

(2) With regard to income loss from disruption of existing agricultural production or existing leases based on verifiable loss or lease payments caused by Grantee's use of the easement acquired under this instrument, Grantor: (check one)

- may recover from Grantee payment for monetary damages, if any, caused by Grantee to Grantor's income.
- Grantor acknowledges that the consideration paid for the easement acquired under this instrument includes monetary damages, if any, caused by Grantee to Grantor's income.

(3) Grantee shall maintain commercial liability insurance or self-insurance at all times, including during Grantee's construction and operations on the easement, while Grantee uses the easement acquired under this instrument. The insurance must insure Grantor against liability for personal injuries and property damage sustained by any person to the extent caused by the negligence of Grantee or Grantee's agents or contractors and to the extent allowed by law. If Grantee maintains commercial liability insurance, it must be issued by an insurer authorized to issue liability insurance in the State of Texas.

(4) If Grantee is subject to the electric transmission cost-of-service rate jurisdiction of the Public Utility Commission of Texas or has a net worth of at least \$25 million, Grantee shall maintain commercial liability insurance or self-insurance at levels approved by the Public Utility Commission of Texas in the entity's most recent transmission cost-of-service base rate proceeding.

^{††}Pursuant to Section 21.0114(d) of the Texas Property Code, in addition to the terms set forth in Addenda A and B, a property owner may negotiate for the inclusion of the terms in this Addendum in any instrument conveying an easement to a private entity, as defined by Section 21.0114(a) of the Texas Property Code. The easement terms listed in this addendum may be amended, altered, or omitted by the agreement of the condemning authority and the landowner, pursuant to Sections 21.0114(d), (e), and (f) of the Texas Property Code.

^{§§}“Grantor” is the property owner from whom the Grantee is acquiring the pipeline or electric transmission line right-of-way easement.

^{***}“Grantee” is the private entity, as defined by Section 21.0114(a) of the Texas Property Code, that is acquiring the easement.

TRD-202104843
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: December 7, 2021



Texas Water Code and Texas Health and Safety Code
Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code and Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. Tom Green County Fresh Water Supply District 2.*; Cause No. D-1-GN-21-006851 in the 200th Judicial District Court, Travis County, Texas.

Background: Tom Green County Fresh Water Supply District 2 ("District") owns and operates a public water system in Christoval, Tom Green County, Texas. The public water system distributes drinking water from three groundwater wells that are under the direct influence of surface water to approximately 235 residential connections. The District had several on-site violations and monitoring/reporting violations.

An additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will be abolished effective December 31, 2021 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Hawk Cove (Hunt Co)	2116118	.017500	.080000
Los Indios (Cameron Co)	2031174	.017500	.080000

A 2 percent special purpose district sales and use tax will become effective January 1, 2022 in the special purpose district listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Fort Bend County Assistance District No. 12	5079729	.020000	SEE NOTE 1

NOTE 1: The Fort Bend County Assistance District No. 12 is located in the central portion of Fort Bend County. The district excludes the city of Pleak or any other cities or special purpose districts. The unincorporated areas of Fort Bend County in ZIP Codes 77461, 77469 and 77471 are partially located within the Fort Bend County Assistance District No. 12. Contact the district representative at 281-344-9400 for additional boundary information.

TRD-202104834
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: December 6, 2021



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, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/13/21 - 12/19/21 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/13/21 - 12/19/21 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009³ for the period of 12/01/21 - 12/31/21 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 12/01/21 - 12/31/21 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

³ For variable rate commercial transactions only.

TRD-202104859

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: December 7, 2021



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 **January 20, 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 **January 20, 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: BizOne LLC dba 5 Points Grocery; DOCKET NUMBER: 2021-0847-PST-E; IDENTIFIER: RN104409446; LOCATION: Dallas, Dallas 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 (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,600; ENFORCEMENT COORDINATOR: Terrany Binford, (512) 239-1116; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: City of Marlin; DOCKET NUMBER: 2020-0568-PWS-E; IDENTIFIER: RN102886892; LOCATION: Marlin, Falls County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.060 milligrams per liter for haloacetic acids based on the locational running annual average; PENALTY: \$2,325; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$2,325; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Cypress Cove, LLC; DOCKET NUMBER: 2021-0723-WQ-E; IDENTIFIER: RN109924621; LOCATION: Tyler, Smith County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number TXR15277M, Part III, Section D.2, by failing to post and maintain the TCEQ site notice near the main entrance of the construction site; 30 TAC §305.125(1), TWC, §26.121(a), and TPDES Permit Number TXR15277M, Part III, Section F, by failing to maintain a complete Stormwater Pollution Prevention Plan; and TWC, §26.121(a) and TPDES Permit Number TXR15277M, Part III, Section G.1, by failing to install and maintain best management practices at the site which resulted in an unauthorized discharge of pollutants; PENALTY: \$2,438; ENFORCEMENT COORDINATOR: Alyssa Loveday, (512) 239-5504; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: DSM Nutritional Products, LLC; DOCKET NUMBER: 2021-0823-AIR-E; IDENTIFIER: RN101190221; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: medicinal chemicals and botanical products manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 19797, Special Conditions Number 1, Federal Operating Permit Number O3943, General Terms and Conditions and Special Terms and Conditions Number 11, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$4,875; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: DuPont Specialty Products USA, LLC; DOCKET NUMBER: 2021-0916-AIR-E; IDENTIFIER: RN102662970; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: plastic product manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §116.615(2), New Source Review Permit Number 5155A, Special Conditions Number 1, Standard Permit Registration Number 161496, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$2,438; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Edna Derrick-Humble dba Cougar Country Water System; DOCKET NUMBER: 2021-0487-PWS-E; IDENTIFIER: RN102687548; LOCATION: Buna, Jasper County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify the executive director (ED) prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.45(b)(1)(C)(i) and THSC, §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute per connection; 30 TAC §290.45(b)(1)(C)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(C)(iv) and THSC, §341.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(q)(1), by failing to issue a boil water notice (BWN) to the customers of the facility using the applicable language and prescribed format specified in 30 TAC §290.47(c)(1); 30 TAC §290.46(q)(1), by failing to provide a copy of the BWN to the ED within 24 hours after issuance by the facility and a signed Certificate of Delivery to the ED within ten days after issuance of the BWN; and 30 TAC §290.121(a), by failing to maintain an up-to-date chemical and microbiological monitoring plan at each water treatment plant and at a central location; PENALTY: \$1,116; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(7) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2021-0339-AIR-E; IDENTIFIER: RN102579307; LOCATION: Baytown, Harris County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Flexible Permit Numbers 18287, PSDTX730M4, and PAL7, Special Conditions Number 1, Federal Operating Permit Number O1229, General Terms and Conditions and Special Terms and Conditions Numbers 32 and 36.A, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$13,126; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$5,250; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: FRONK OIL CO., INCORPORATED dba Imo's Country Store 1, Imo's Country Store 3, Imo's Country Store 4, and Imo's Country Store 8; DOCKET NUMBER: 2021-0321-PST-E; IDENTIFIERS: RN102232543, RN102011178, RN102231602, and RN105814925; LOCATIONS: Booker and Follett, Lipscomb County and Perryton and Farnsworth, Ochiltree County; TYPE OF FACILITIES: convenience stores with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; and 30 TAC §334.50(b)(1)(B) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases using interstitial monitoring in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$8,500; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(9) COMPANY: Montgomery County Municipal Utility District Number 56; DOCKET NUMBER: 2020-1612-WQ-E; IDENTIFIER: RN107636359; LOCATION: Porter, Montgomery County; TYPE OF FACILITY: municipal separate storm sewer system; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code

of Federal Regulations §122.26(a)(9)(i)(A), by failing to maintain authorization to discharge stormwater under Texas Pollutant Discharge Elimination System (TPDES) General Permit for municipal separate storm sewer systems; 30 TAC §305.125(1) and expired TPDES General Permit Number TXR040548, Part III, Section A(1)(c) and Section B, by failing to implement the Stormwater Management Plan (SWMP) and the Best Management Practices consistent with the provisions of the General Permit and the SWMP; and 30 TAC §305.125(1) and expired TPDES General Permit Number TXR040548, Part IV, Section B(2), by failing to submit concise annual reports to the executive director within 90 days of the end of each reporting year; PENALTY: \$16,250; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: New Progress Water Supply Corporation; DOCKET NUMBER: 2021-0599-PWS-E; IDENTIFIER: RN101651578; LOCATION: Hudson Oaks, Parker County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute per connection; and 30 TAC §291.76 and TWC, §5.702, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 11844 for calendar year 2020; PENALTY: \$305; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: RCI HOLDINGS, INCORPORATED; DOCKET NUMBER: 2021-0501-PWS-E; IDENTIFIER: RN105818264; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay annual Public Health Service fees and/or any associated late fees for TCEQ Financial Administration Account Number 91520263 for Fiscal Year 2021; 30 TAC §290.106(f)(3)(C) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant levels of 0.010 milligrams per liter (mg/L) for arsenic and 4.0 mg/L for fluoride based on a running annual average; 30 TAC §290.117(c)(2)(A), (h), and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the executive director (ED) for the July 1, 2020 - December 31, 2020, monitoring period; and 30 TAC §290.117(e)(2), (h), and (i)(3), by failing to conduct water quality parameter sampling at each of the facility's entry points and the required distribution sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2020 - December 31, 2020, monitoring period; PENALTY: \$7,304; ENFORCEMENT COORDINATOR: Amanda Conner, (512) 239-2521; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

TRD-202104845

Charmaine Backens

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: December 7, 2021



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 pro-

posed 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 **January 20, 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 January 20, 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: JANOOB, INC. dba Snappy Foods 17; DOCKET NUMBER: 2020-0654-PST-E; TCEQ ID NUMBER: RN105683817; LOCATION: 1002 United States Highway 77, Bishop, Nueces County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.45(c)(3)(A), by failing to ensure that the emergency shutoff valves (also called shear or impact valves) are securely anchored at the base of all dispensers; and 30 TAC §334.42(a) and §334.48(a) and (b), by failing to operate, maintain, and manage a UST system in accordance with accepted industry practices and in a manner that will prevent releases of regulated substances; PENALTY: \$7,500; STAFF ATTORNEY: Megan Grace, Litigation, MC 175, (512) 239-0000; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-202104847
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: December 7, 2021



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 **January 20, 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 January 20, 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: Cliff J. Chambers; DOCKET NUMBER: 2020-0573-MLM-E; TCEQ ID NUMBER: RN103749859; LOCATION: 2764 Rea Road, Kountze, Hardin County; TYPE OF FACILITY: unregistered sludge transport business; RULES VIOLATED: 30 TAC §312.142(a), by failing to apply for and receive a registration from the executive director prior to commencing operations to transport sewage sludge, water treatment sludge, domestic septage, chemical toilet waste, grit trap waste, or grease trap waste - specifically, respondent pumped and transported domestic septage and septic sewage without a registration; and TWC, §26.121(a)(1), by discharging sewage into or adjacent to any water in the state - specifically, the site contained a discharge of sewage sludge, two-inches thick in an area approximately 20 by 20 feet wide. Additionally, the southern end of the site contained ponding sewage sludge that had a septic smell. Vacuum hoses were lying on the ground with sewage residue at the ends of the hoses; PENALTY: \$7,350; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202104846
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: December 7, 2021



Notice of Public Meeting for TPDES Permit for Municipal Wastewater: New Permit No. WQ0015930001

APPLICATION AND PRELIMINARY DECISION. City of Bryan, P.O. Box 1000, Bryan, Texas 77805, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015930001, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 12,000,000 gallons per day.

The facility will be located approximately 1,400 feet northeast of the intersection of Australia Lane and Cole Lane, in Brazos County, Texas 77845. The treated effluent will be discharged to Brushy Creek, thence

to Wickson Creek, thence to the Navasota River Below Lake Limestone in Segment No. 1209 of the Brazos River Basin. The unclassified receiving water uses are limited aquatic life use for Brushy Creek and presumed high aquatic life use for Wickson Creek. The designated uses for Segment No. 1209 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code §307.5 and the TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (June 2010), 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. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Wickson Creek, which has been identified as having a presumed high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-96.231388%2C30.649444&level=12>

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, 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.

PUBLIC COMMENT / PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, January 13, 2022 at 7:00 p.m.

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 555-530-667. It is recommended that you join the webinar and register for the public meeting at least 15 minutes before the meeting begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access must call (512) 239-1201 **at least one day prior** to the meeting to register for the meeting and to obtain information for participating telephonically. Members of the public who

wish to **only listen** to the meeting may call, toll free, (562) 247-8422 and enter access code 321-433-425. Additional information will be available on the agency calendar of events at the following link:

<https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html>.

INFORMATION. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/>. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at <https://www.tceq.texas.gov>.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Clara B. Mounce Public Library, 201 East 26th Street, Bryan, Texas. Further information may also be obtained from City of Bryan at the address stated above or by calling Dr. Jayson Barfknecht, PhD, P.E. at (979) 209-5900.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: December 02, 2021

TRD-202104788

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: December 2, 2021

Texas Health and Human Services Commission

Public Notice - Texas State Plan for Home Health Care and Related Services Amendment Effective October 1, 2021

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Home Health Care and Related Services under Title XIX of the Social Security Act. The proposed amendment is effective October 1, 2021.

The purpose of the amendment is to update Home Health Care and Related Services pages to allow a physician assistant (PA), certified nurse practitioner (CNP), or clinical nurse specialist (CNS), to the extent allowed by Texas state licensure, to certify eligibility for home health services, as well as establish and periodically review the home health plan of care. This proposal aligns with CMS-5531-IFC codified at 42 C.F.R. §440.70. The relevant sections of CMS-5531-IFC adopted permanent federal regulation that is not subject to the Public Health Emergency and went into effect on May 8, 2020, with a retroactive application date of March 1, 2020.

Rate Hearing - No rate hearing will be needed as the rates will not change.

Copy of Proposed Amendment - Interested parties may obtain additional information and/or a free copy of the proposed amendments by contacting Shae James, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of proposed amendment will be available for review at the local county offices of HHSC, (which were

formerly the local offices of 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: Medical Benefits Office of Policy
Mail Code H-310
P.O. Box 149030
Austin, Texas 78756

Overnight Mail, special Deliver mail, or hand delivery

Texas Health and Human Services Commission
Attention: Medical Benefits Office of Policy
John H. Winters Building
Mail Code H-310
701 W. 51st St.
Austin, Texas 78751

Fax

Attention: Office of Policy at (512) 730-7474

Email

MedicaidBenefitRequest@hhsc.state.tx.us

Preferred Communication - During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than normal business operations. For the quickest response, and to help curb the possible transmission of infection, please use email or phone if possible for communication with HHSC related to this state plan amendment.

TRD-202104943
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: December 8, 2021



Public Notice - Texas State Plan for Medical Assistance Amendments Effective January 2, 2022

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective January 1, 2022.

The purpose of the amendments is to update the fee schedules in the current state plan by adjusting fees, rates, or charges for the following services:

- 2022 Annual Healthcare Common Procedure Coding System (HCPCS) Updates:
- Ambulance Services;
- Ambulatory Surgical Center;
- Birthing Center Facility Services;
- Case Management Services;

Certified Pediatric Nurse Practitioners and Certified Family Nurse Practitioners;

Certified Registered Nurse Anesthetists and Anesthesiologist Assistants;

Clinical Diagnostic Laboratory Services;

Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS);

Early and Periodic Screening, Diagnosis, and Treatment Services (EPSDT);

Family Planning Services;

Hearing Aids and Audiometric Evaluations;

Home Health Services;

Indian Health Services;

Licensed Clinical Social Worker Services;

Licensed Professional Counselor Services;

Licensed Marriage and Family Therapist Services;

Physicians and Other Practitioners;

Physician Assistants;

Rehabilitative Chemical Dependency Treatment Facility Services; and

Vision Care Services.

The proposed amendments are estimated to result in an annual aggregate expenditure of \$1,188,367 for federal fiscal year (FFY) 2022, consisting of \$722,527 in federal funds and \$465,840 in state general revenue. For FFY 2023, the estimated result is an annual aggregate expenditure of \$1,557,237, consisting of \$951,316 in federal funds and \$605,921 in state general revenue. For FFY 2024, the estimated result is an annual aggregate expenditure of \$1,530,452, consisting of \$934,953 in federal funds and \$595,499 in state general revenue.

Further detail on specific reimbursement rates and percentage changes will be made available on the HHSC Provider Finance website under the proposed effective date at: <http://pfd.hhs.texas.gov/rate-packets>.

Rate Hearing. A rate hearing will be held both online and in person to address the 2022 Annual Healthcare Common Procedures Coding System (HCPCS) Updates. Once available, information about the proposed rate changes and the hearing will be published in a subsequent issue of the *Texas Register* at <http://www.sos.state.tx.us/texreg/index.shtml>.

Copy of Proposed Amendments. Interested parties may obtain additional information and/or a free copy of the proposed amendments by contacting Holly Freed, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 487-3349; by facsimile at (512) 730-7472; or by e-mail at Medicaid_Chip_SPA_Inquiries@hhs.texas.gov. Copies of the proposed amendments 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 amendments 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, 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, Mail Code H-400

North Austin Complex

4601 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 rate hearing.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202104786

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: December 2, 2021

◆ ◆ ◆
Texas Department of Housing and Community Affairs

Notice of Public Comment Period and Public Hearing on the Draft 2022 State of Texas Low Income Housing Plan and Annual Report

The Texas Department of Housing and Community Affairs (TDHCA) will hold a public comment period from Monday, December 20, 2021, through 5:00 p.m. Austin local time on Monday, January 10, 2022, to obtain public comment on the Draft 2022 State of Texas Low Income Housing Plan and Annual Report (SLIHP).

The SLIHP offers a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. It reviews TDHCA's housing programs, current and future policies, resource allocation plans to meet state housing needs, and reports on performance during the preceding state fiscal year (September 1, 2020, through August 31, 2021).

During the public comment period, a public hearing will take place as follows:

Wednesday, January 12, 2022

2:00 p.m. Austin local time

GoToWebinar: <https://attendee.gotowebinar.com/register/1755905095225612812>

Participants may also call into the hearing by using the following phone number and access code. Phone number: +1 (562) 247-8422 Access Code: 741-358-636

Anyone may submit comments on the SLIHP in written form or oral testimony at the public hearing. Written comments may be submitted to Texas Department of Housing and Community Affairs, Elizabeth Yevich, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: info@tdhca.state.tx.us.

The full text of the Draft 2022 SLIHP may be viewed at the Department's website: <http://www.tdhca.state.tx.us/public-comment.htm>. The public may also receive a copy of the Draft 2022 SLIHP by contacting TDHCA's Housing Resource Center at (512) 475-3976.

Individuals who require auxiliary aids, services or sign language interpreters for this public hearing should contact Nancy Dennis, at (512) 475-3959 or by email at nancy.dennis@tdhca.state.tx.us or Relay Texas at 1-800-735-2989, at least five (5) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for the public hearings should contact Danielle Leath by phone at (512) 475-4606 or by email at Dannielle.Leath@tdhca.state.tx.us at least five (5) days before the hearings so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Danielle Leath al siguiente número (512) 475-4606 o enviarle un correo electrónico a Dannielle.Leath@tdhca.state.tx.us por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

TRD-202104832

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Filed: December 6, 2021

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Texas Department of Insurance

Company Licensing

Application for Georgia Casualty & Surety Company, a foreign fire and/or casualty company, to change its name to Builders Alliance Insurance Company. The home office is in Raleigh, North Carolina.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-202104913

James Person

General Counsel

Texas Department of Insurance

Filed: December 8, 2021

◆ ◆ ◆
Texas Lottery Commission

Scratch Ticket Game Number 2321 "\$50,000 BONUS CASHWORD"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2321 is "\$50,000 BONUS CASHWORD". The play style is "crossword".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2321 shall be \$3.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2321.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each

Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y and Z.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol Captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2321 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	

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 (2321), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2321-0000001-001.

H. Pack - A Pack of the "\$50,000 BONUS CASHWORD" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of Ticket 001 and the back of Ticket 125. Configuration B will show the back of Ticket 001 and the front of Ticket 125.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "\$50,000 BONUS CASHWORD" Scratch Ticket Game No. 2321.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "\$50,000 BONUS CASHWORD" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose one hundred forty-three (143) Play Symbols. A prize winner in the "\$50,000 BONUS CASHWORD" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose Play Symbols as follows: PLAY INSTRUCTIONS: 1. The player completely scratches all of the YOUR 20 LETTERS and the two BONUS LETTERS. Then the player scratches all the letters found in the \$50,000 BONUS CASHWORD puzzle that exactly match the YOUR 20 LETTERS and BONUS LETTERS. 2. If a player has scratched at least 3 complete WORDS, the player wins the prize found in the PRIZE LEGEND. 3. Only one prize paid per ticket. 4. Only letters within the \$50,000 BONUS CASHWORD puzzle that are matched with the YOUR 20 LETTERS and BONUS LETTERS can be used to form a complete WORD. 5. Every letter within an unbroken horizontal (left to right) or vertical (top to bottom) sequence must be matched with the YOUR 20 LETTERS and BONUS LETTERS to be considered a complete WORD. Words revealed in a diagonal sequence are not considered valid WORDS. Words within WORDS are not eligible for a prize. Words that are spelled from right to left or bottom to top are not eligible for a prize. 6. A complete WORD must contain at least three letters. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly one hundred forty-three (143) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
 2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption. Crossword and Bingo style games do not typically have Play Symbol Captions;
 3. Each of the Play Symbols must be present in its entirety and be fully legible;
 4. Each of the Play Symbols must be printed in black ink except for dual image games;
 5. The Scratch Ticket shall be intact;
 6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
 7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
 8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
 9. The Scratch Ticket must not be counterfeit in whole or in part;
 10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
 11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
 12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
 13. The Scratch Ticket must be complete and not miscut, and have exactly one hundred forty-three (143) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
 14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
 15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
 16. Each of the one hundred forty-three (143) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
 17. Each of the one hundred forty-three (143) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
 18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
 19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the

award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of Play Symbols.

B. GENERAL: There is no correlation between any exposed data on a Ticket and its status as a winner or non-winner.

C. CROSSWORD GAMES: The grid on each Ticket will contain exactly the same number of letters.

D. CROSSWORD GAMES: The grid on each Ticket will contain exactly the same number of words.

E. CROSSWORD GAMES: No matching words on a Ticket.

F. CROSSWORD GAMES: All words used will be from the TEXAS APPROVED WORD LIST CASHWORD/CROSSWORD v.2.0, dated January 31, 2019.

G. CROSSWORD GAMES: All words will contain a minimum of three (3) letters.

H. CROSSWORD GAMES: All words will contain a maximum of nine (9) letters.

I. CROSSWORD GAMES: There will be a minimum of three (3) vowels in the YOUR 20 LETTERS and the BONUS LETTERS play areas. Vowels are considered to be A, E, I, O, U.

J. CROSSWORD GAMES: No consonant will appear more than nine (9) times, and no vowel will appear more than fourteen (14) times in the grid.

K. CROSSWORD GAMES: No matching Play Symbols in the YOUR 20 LETTERS play area.

L. CROSSWORD GAMES: At least fifteen (15) of the letters in the YOUR 20 LETTERS and BONUS LETTERS play areas will open at least one (1) letter in the grid.

M. CROSSWORD GAMES: The presence or absence of any letter or combination of letters in the YOUR 20 LETTERS and the BONUS LETTERS play areas will not be indicative of a winning or Non-Winning Ticket.

N. CROSSWORD GAMES: Words from the TEXAS REJECTED WORD LIST v. 2.3, dated December 4, 2017, will not appear horizontally in the YOUR 20 LETTERS play area when read left to right or right to left.

O. CROSSWORD GAMES: On Non-Winning Tickets, there will be two (2) completed word in the grid.

P. CROSSWORD GAMES: There will be no more than twelve (12) complete words in the grid.

Q. CROSSWORD GAMES: A Ticket can only win one (1) time.

R. CROSSWORD GAMES: The two (2) BONUS LETTERS Play Symbols will not match any of the YOUR 20 LETTERS Play Symbols on a Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "\$50,000 BONUS CASHWORD" Scratch Ticket Game prize of \$3.00, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and 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 \$50.00, \$100 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$50,000 BONUS CASHWORD" Scratch Ticket Game prize of \$5,000 or \$50,000, 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 "\$50,000 BONUS CASHWORD" 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 "\$50,000 BONUS CASHWORD" 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 "\$50,000 BONUS CASHWORD" 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 47,040,000 Scratch Tickets in Scratch Ticket Game No. 2321. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2321 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$3.00	5,174,400	9.09
\$5.00	2,634,240	17.86
\$10.00	2,257,920	20.83
\$15.00	658,560	71.43
\$20.00	564,480	83.33
\$50.00	188,160	250.00
\$100	76,440	615.38
\$500	3,920	12,000.00
\$5,000	118	398,644.07
\$50,000	18	2,613,333.33

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.07. 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. 2321 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. 2321, 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-202104844
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: December 7, 2021



Scratch Ticket Game Number 2329 "LIMITED EDITION BREAK THE BANK"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2329 is "LIMITED EDITION BREAK THE BANK". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2329 shall be \$2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2329.

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, 03, 04, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 2X SYMBOL, 5X SYMBOL, \$2.00,

\$4.00, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$200, \$1,000, \$3,000 and \$30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2329 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFO
26	TWSX

27	TWSV
28	TWET
29	TWNI
30	TRTY
2X SYMBOL	DBL
5X SYMBOL	WINX5
\$2.00	TWO\$
\$4.00	FOR\$
\$5.00	FIV\$
\$10.00	TEN\$
\$15.00	FFN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$200	TOHN
\$1,000	ONTH
\$3,000	THTH
\$30,000	30TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2329), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2329-0000001-001.

H. Pack - A Pack of the "LIMITED EDITION BREAK THE BANK" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the Packs will be in an A, B, C and D configuration.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "LIMITED EDITION BREAK THE BANK" Scratch Ticket Game No. 2329.

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 "LIMITED EDITION BREAK THE BANK" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty-two (22) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. If the player re-

veals a "5X" Play Symbol, the player wins 5 TIMES the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly twenty-two (22) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly twenty-two (22) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the twenty-two (22) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the twenty-two (22) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 04 and \$4).

D. KEY NUMBER MATCH: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

E. KEY NUMBER MATCH: No matching WINNING NUMBERS Play Symbols on a Ticket.

F. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol.

G. KEY NUMBER MATCH: A Ticket may have up to two (2) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

H. KEY NUMBER MATCH: The "2X" (DBL) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

I. KEY NUMBER MATCH: The "5X" (WINX5) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "LIMITED EDITION BREAK THE BANK" Scratch Ticket Game prize of \$2.00, \$4.00, \$5.00, \$8.00, \$10.00, \$15.00, \$20.00, \$50.00 or \$200, 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 \$50.00 or \$200 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 "LIMITED EDITION BREAK THE BANK" Scratch Ticket Game prize of \$1,000, \$3,000 or \$30,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LIMITED EDITION BREAK THE BANK" 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 "LIMITED EDITION BREAK THE BANK" 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 "LIMITED EDITION BREAK THE BANK" 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 34,080,000 Scratch Tickets in Scratch Ticket Game No. 2329. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2329 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$2.00	3,271,680	10.42
\$4.00	1,908,480	17.86
\$5.00	408,960	83.33
\$8.00	136,320	250.00
\$10.00	681,600	50.00
\$15.00	272,640	125.00
\$20.00	272,640	125.00
\$50.00	127,800	266.67
\$200	14,200	2,400.00
\$1,000	426	80,000.00
\$3,000	130	262,153.85
\$30,000	25	1,363,200.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.80. 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. 2329 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. 2329, 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-202104828

Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: December 6, 2021



Scratch Ticket Game Number 2419 "TRIPLE PLAY!"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2419 is "TRIPLE PLAY!". The play style is "other".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2419 shall be \$2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2419.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, MONEY BAG SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$100, \$500, \$1,000 and \$30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2419 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV

MONEY BAG SYMBOL	WIN\$
\$2.00	TWO\$
\$4.00	FOR\$
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$40.00	FRTY\$
\$100	ONHN
\$500	FVHN
\$1,000	ONTH
\$30,000	30TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2419), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2419-0000001-001.

H. Pack - A Pack of the "TRIPLE PLAY!" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the Packs will be in an A, B, C and D configuration.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "TRIPLE PLAY!" Scratch Ticket Game No. 2419.

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 "TRIPLE PLAY!" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off

to expose twenty-two (22) Play Symbols. GAME 1: If a player matches any of the YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. GAME 2: If the player reveals 3 matching prize amounts, the player wins that amount. GAME 3: If the player reveals a "MONEY BAG" Play Symbol, the player wins the prize for that symbol instantly! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly twenty-two (22) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly twenty-two (22) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the twenty-two (22) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twenty-two (22) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to ten (10) times in accordance with the approved prize structure. B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols. C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure. D. Each Ticket will have two (2) different WINNING NUMBERS Play Symbols. E. Non-winning YOUR NUMBERS Play Symbols will all be different. F. No Prize Symbol will correspond with a non-winning YOUR NUMBERS Play Symbol (i.e., 5 and \$5). G. Non-winning Prize Symbols will never appear more than two (2) times. H. There will never be more than three (3) matching Prize Symbols on

any Ticket. I. There will be no more than three (3) pairs of matching Prize Symbols on a Non-Winning Ticket. J. Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s). K. There will be no more than one (1) set of three (3) matching Prize Symbols on a Ticket. L. There will never be more than two (2) \$30,000 Prize Symbols on a Ticket. M. The "MONEY BAG" (WIN\$) may appear multiple times on intended winning Tickets, unless restricted by other parameters, play action or prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "TRIPLE PLAY!" Scratch Ticket Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$100 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 \$40.00, \$100 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TRIPLE PLAY!" Scratch Ticket Game prize of \$1,000 or \$30,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TRIPLE PLAY!" 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 "TRIPLE PLAY!" 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 "TRIPLE PLAY!" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a

prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 9,000,000 Scratch Tickets in Scratch Ticket Game No. 2419. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2419 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$2.00	1,008,000	8.93
\$4.00	576,000	15.63
\$5.00	180,000	50.00
\$10.00	180,000	50.00
\$20.00	90,000	100.00
\$40.00	15,000	600.00
\$100	15,000	600.00
\$500	1,125	8,000.00
\$1,000	70	128,571.43
\$30,000	5	1,800,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.36. 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. 2419 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. 2419, 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-202104831
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: December 6, 2021



Texas Parks and Wildlife Department

Notice of a Public Comment Hearing on an Application for a Sand and Gravel Permit

Florida Gas Transmission Company, LLC has applied to the Texas Parks and Wildlife Department (TPWD) for an Individual Permit pursuant to Texas Parks and Wildlife Code, Chapter 86, to remove or disturb up to 6,791 cubic yards of sedimentary material within Galveston Bay. The purpose is to restore cover and armor an existing natural gas pipeline. The location is within Galveston Bay between San Leon Point and Smith Point. Notice is being published and mailed pursuant to 31 TAC §69.105(d).

TPWD will hold a public comment hearing regarding the application at 11:00 a.m. on January 7, 2022. Due to COVID-19 transmission concerns with travelling and person-to-person gatherings, the public comment hearing will be conducted through remote participation. Potential attendees should contact Tom Heger at (512) 389-4583 or at tom.heger@tpwd.texas.gov for information on how to participate in the hearing remotely. The hearing is not a contested case hearing under the Texas Administrative Procedure Act. Oral and written public comment will be accepted during the hearing.

Written comments may be submitted directly to TPWD and must be received no later than 30 days after the date of publication of this notice in the *Texas Register* or a newspaper, whichever is later. A written request for a contested case hearing from an applicant or a person

with a justiciable interest may also be submitted and must be received by TPWD prior to the close of the public comment period. Timely hearing requests shall be referred to the State Office of Administrative Hearings. Submit written comments, questions, requests to review the application, or requests for a contested case hearing to: Tom Heger, TPWD, by mail: 4200 Smith School Road, Austin, Texas 78744; fax (512) 389-4405; or e-mail tom.heger@tpwd.texas.gov.

TRD-202104803

James Murphy

General Counsel

Texas Parks and Wildlife Department

Filed: December 3, 2021



Teacher Retirement System of Texas

Report of Fiscal Transactions, Accumulated Cash and Securities, and Rate of Return on Assets and Actuary's Certification of Actuarial Valuation and Actuarial Present Value of Future Benefits

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," this document is not included in the print version of the Texas Register. The document is available in the on-line version of the December 17, 2021, issue of the Texas Register.)

TRD-202104789

Brian Guthrie

Executive Director

Teacher Retirement System of Texas

Filed: December 2, 2021



Texas Department of Transportation

Notice of Virtual Public Hearing on Acquisition of PA 86E; Gulf Intracoastal Waterway (GIWW) Dredge Material Placement Area Parcel; CSJ (Project Number): 5500-00-033; Brazoria County, Texas

The Texas Department of Transportation (TxDOT) is proposing to acquire a parcel of land to use as a placement area for materials dredged from the Gulf Intracoastal Waterway (GIWW) in Brazoria County, Texas. This notice advises the public that TxDOT will be conducting an online virtual public hearing on the proposed project. The virtual hearing will be available on Wednesday, January 12, 2022, by 10:00 a.m. To log onto the virtual public hearing, go to the following web address at the date and time indicated above: www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings/maritime/011222.html.

The virtual hearing will consist of a pre-recorded video presentation and will include both audio and visual components. Please note that the presentation will not be available on the website until the time and date listed above.

If you do not have internet access, you may call (512) 468-5630 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, to ask questions and access project materials during the project development process.

Formal written comments may be provided by mail or email as explained below. All written comments will be considered by TxDOT and included as part of the official record. Responses to comments

will be prepared by TxDOT, included as part of the hearing and project record and made available online at: www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings/maritime/011222.html.

This notice is provided as required by the Texas Coastal Waterways Act, Transportation Code, Section 51.006. The proposed parcel of land to be considered for acquisition is Placement Area (PA) 86E. PA 86E is a 102.66-acre parcel of land in the R.H. Barrow Survey, Abstract Number 653, Brazoria County, Texas.

TxDOT is acquiring the property to fulfill its responsibilities as the non-federal sponsor of the GIWW. These responsibilities include providing right of way and placement areas for the U.S. Army Corps of Engineers (USACE) operation and maintenance of the GIWW. Right of way and displacement requirements are not applicable for this acquisition.

Environmental documentation, maps and drawings showing the project location, and other information regarding the proposed project are available for inspection online at: www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings/maritime/011222.html.

Maps, USACE environmental documentation, and other displays concerning the proposed site will be available during the virtual public hearing. These displays are on file and available for inspection from Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. at the TxDOT Riverside Campus, 118 E. Riverside Drive, Austin, Texas 78704. To schedule an appointment, please contact Matthew Mahoney at (512) 486-5630.

The virtual public hearing will be conducted in English. If you need an interpreter or document translator because English is not your primary language or you have difficulty communicating effectively in English, one will be provided to you. If you need an interpreter, document translator or have a disability and need assistance, special arrangements can be made to accommodate most needs. If you need interpretation or translation services or you are a person with a disability who requires an accommodation to participate in the virtual public hearing, please contact the TxDOT Maritime Division at (512) 486-5630 no later than 10:00 a.m. CT on Friday, January 7, 2022. Please be aware that advance notice is required as some services and accommodations may require time for TxDOT to arrange.

Written comments from the public regarding the proposed project may be submitted by mail to the TxDOT Riverside Campus, Attention: Maritime Division, 118 E. Riverside Drive, Austin, Texas 78705. Comments may also be submitted electronically to matthew.mahoney@txdot.gov or online at: www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings/maritime/011222.html. Comments must be received on or before Thursday, January 27, 2022, to be considered part of the official virtual public hearing record.

Responses to written comments received will be available online at: www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings/maritime/011222.html, once they have been prepared.

If you have any general questions or concerns regarding the proposed project or the virtual hearing, please contact Matthew Mahoney, Program Coordinator, Maritime Division at (512) 486-5630 or matthew.mahoney@txdot.gov.

TRD-202104782

Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Filed: December 1, 2021



Texas Water Development Board

Applications November 2021

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #40189 a request from the City of San Marcos, 630 East Hopkins Street, San Marcos, Texas 78666, received on November 1, 2021, for \$1,199,635 in financing from the Flood Infrastructure Fund for Briarwood and River Ridge improvement projects.

Project ID #40152 a request from Harris County Flood Control District, 9900 Northwest Freeway, Houston, Texas 77092, received on November 1, 2021, for \$1,297,422 in financing from the Flood Infrastructure Fund for Lauder stormwater detention basin project.

Project ID #40187, a request from the City of Kennedale, 420 Corry A Edwards Drive, Kennedale, Texas 76060, received on November 1, 2021, for \$2,161,426 in financing from the Flood Infrastructure Fund for the Valley Lane streambank stabilization project.

Project ID #40186 a request from the City of Socorro, 124 Horizon Boulevard, Socorro, Texas 79927, received on November 2, 2021, for \$4,409,659 in financing from the Flood Infrastructure Fund for Sparks Arroyo drainage project.

Project ID #40185 a request from the City of Ennis, 115 West Brown Street, Ennis, Texas 75119, received on November 2, 2021, for \$3,283,010 in financing from the Flood Infrastructure Fund for Cottonwood drainage rehabilitation project.

Project ID #40188 a request from Trinity Bay Conservation District, 2500 State Highway 124, Stowell, Texas 77661, received on November 2, 2021, for \$406,000 in financing from the Flood Infrastructure Fund for Spring Branch and Albritta Gulley projects.

Project ID #40190 a request from Cameron County, 1101 East Monroe Street, Dancy Building, Brownsville, Texas 78520, received on November 8, 2021, for \$282,216 in financing from the Flood Infrastructure Fund for Cameron County Mariposa Ranch drainage project.

Project ID #73923 a request from the North Alamo Water Supply Corporation, 420 South Doolittle Road, Edinburg, Texas 78542, received on November 15, 2021, for \$16,000,000 in financing from the Clean Water State Revolving Fund for regional wastewater treatment plant project.

Project ID #73921 a request from the City Jacksonville, 315 South Ragsdale Street, Jacksonville, Texas 75766, received on November 15, 2021, for \$5,809,000 in financing from the Clean Water State Revolving Fund for wastewater capital improvement project.

Project ID #73920 a request from the City of Winona, 110 Dallas Street, Winona, Texas 75792, received on November 15, 2021, for \$4,025,000 in financing from the Clean Water State Revolving Fund for wastewater treatment facility improvement project.

Project ID #62925 a request from Millersview-Doole Water Supply Corporation, 13841 Farm to Market Road 1929 East, Millersview, Texas 76862, received on November 15, 2021, for \$2,500,000 in financing from the Drinking Water State Revolving Fund for water system and well water blending facilities improvement projects.

Project ID #62924 a request from Welch Water Supply Corporation, P.O. Box 36, Welch, Texas 79377, received on November 15, 2021, for \$1,472,000 in financing from the Drinking Water State Revolving Fund for water rehabilitation project.

Project ID #62921 a request from M&M Water Supply Corporation, 4616 Texas 103, Lufkin, Texas 75901, received on November 15, 2021, for \$1,195,900 in financing from the Drinking Water State Revolving Fund for water system improvement project.

Project ID #73918 a request from Lumberton Municipal Utility District, 625 Texas 421, Lumberton Texas 77657, received on November 15, 2021, for \$44,000,000 in financing from the Clean Water State Revolving Fund for wastewater treatment plan expansion and sanitary sewer collection system improvement projects.

Project ID #62920 a request from the Mullin Independent School District, 403 West Bulldog Drive, Mullin, Texas 76864, received on November 15, 2021, for \$1,000,000 in financing from the Drinking Water State Revolving Fund for Greenfield water treatment plant and distribution project.

Project ID #62919 a request from the City of Pflugerville, 100 East Main Street, Pflugerville, Texas 78660, received on November 15, 2021, for \$24,000,000 in financing from the Drinking Water State Revolving Fund for water treatment plant expansion design.

Project ID #73917 a request from the City of Marble Falls, 800 3rd Street, Texas 78654, received on November 15, 2021, for \$1,471,000 in financing from the Clean Water State Revolving Fund for aquifer recharge study and design.

Project ID #62926 a request from the City of Strawn, 118 Housley Street, Strawn, Texas 76475, received on November 15, 2021, for \$2,000,000 in financing from the Drinking Water State Revolving Fund for water treatment improvement project.

Project ID #62923 a request from the Riverside Special Utility District 3662 Texas 19, Riverside, Texas 77367, received on November 15, 2021, for \$1,575,000 in financing from the Drinking Water State Revolving Fund for a water well replacement project.

Project ID #73919 a request from the City of Corrigan, 101 West Ben Franklin Street, Corrigan, Texas 75939, received on November 15, 2021, for \$6,775,000 in financing from the Clean Water State Revolving Fund for wastewater treatment plant rehabilitation and expansion project.

Project ID #73922 a request from the City of Los Fresnos, 520 East Ocean Boulevard, Los Fresnos, Texas 78566, received on November 15, 2021, for \$1,701,653 in financing from Clean Water State Revolving Fund for stormwater planning and drainage improvement project.

Project ID #62922 a request from Angelina & Neches River Authority, 2901 North John Redditt Drive, Lufkin, Texas 75904, received on November 15, 2021, for \$23,970,040 in financing from the Drinking Water State Revolving Fund for the Zavalla area regional water system project.

Project ID #73924 a request from the City of Raymondville, 142 South 7th Street, Raymondville, Texas 78580, received on November 17, 2021, for \$4,924,342 in financing from the Clean Water State Revolving Fund for proposed I/I study and lift station rehabilitation project.

Project ID #73925 a request from the City of Leonard, 111 West Collin Street, Leonard, Texas 75452, received on November 17, 2021, for \$5,692,000 in financing from the Clean Water State Revolving Fund for wastewater collection system improvement project.

Project ID #73926 a request from the City of Pilot Point, 102 East Main Street, Pilot Point, Texas 76258, received on November 18, 2021, for \$34,458,435 in financing from the Clean Water State Revolving Fund for wastewater treatment plant and collection improvement project.

TRD-202104836

Ashley Harden

General Counsel

Texas Water Development Board

Filed: December 6, 2021



Request for Applications: Texas Flood Social Vulnerability Index Research Project

The Texas Water Development Board (TWDB) requests applications leading to the possible award of an interagency contract to develop an index for social vulnerability that is directly related to flooding. TWDB plans to execute an interagency contract with a Texas public university or college under the TWDB Flood Planning program from funds appropriated by the Texas Legislature.

To be eligible for a grant, an applicant must be a state university or college, a junior college district, or any service or part of a state institution of higher education.

Summary of the Request for Applications

Posting Date: Friday, December 3, 2021

Due Date (Closing): Thursday, February 3, 2022, at 3:00 p.m.

Anticipated Award Date: May/June 2022

Estimated Total Funding: \$100,000 to \$150,000

Program Purposes and Objectives

The TWDB is requesting applications for the award of an interagency contract with a Texas public university to develop an index for social vulnerability that is directly related to flooding. This work will include:

1. A literature review of existing social vulnerability or similar indices, an assessment of these indices and their potential overlap and incongruence with Texas flood needs,
2. Recommendations on creation of a flood-specific social vulnerability index for Texas, and key factors that will be considered,
3. Subject to a notice-to-proceed, development of a flood-specific social vulnerability index that can be applied to Texas and supplemental materials, including georeferenced GIS data and other information, to be primarily based on existing, available datasets, and
4. Preparation of a technical report, including an executive summary comprising, at a minimum, the following items: a) literature review, b) methods, c) key factors considered and included, d) applicability limitation of existing datasets, and e) conclusion.

The results of this effort are intended to support the TWDB flood planning efforts, and may also support related efforts of outside entities, including but not limited to local communities, other governmental agencies, and research institutions.

How to Apply

Applications should not exceed two pages in length and include the following:

- A narrative outlining the proposed approach to the research project,
- A description of the potential contributing team members and their credentials and relevant experience, and

-- A proposed high-level schedule and overall budget.

Questions regarding this solicitation must be submitted to bid-room@twdb.texas.gov and floodplanning@twdb.texas.gov by Thursday, January 20, 2022, at 3:00 p.m.

Responses to questions will be posted as an addendum to the solicitation by Thursday, January 27, 2022, if applicable.

Applications must be submitted by Thursday, February 3, 2022, at 3:00 p.m. to bid-room@twdb.texas.gov with a copy to floodplanning@twdb.texas.gov.

Limitations on Use of Funds:

Eligible costs are those directly attributed to the project, including staff salaries and wages and other direct costs, as applicable, such as travel, materials, supplies, software, data acquisition, etc. Indirect expenses such as the applicant's overhead and fringe benefits are not eligible for reimbursement. Eligible travel expenses of a grant recipient and any subcontractors are limited to the maximum amounts authorized for state employees by the General Appropriations Act. Any out-of-state travel expenses must be directly related to the approved scope of work in the contract and must be pre-approved by the Executive Administrator, or designated staff.

Evaluation Criteria and Selection Process

Incomplete applications and those that do not meet the requirements of the application as described in this posting may be eliminated from consideration.

Applications will be scored by a review panel according to the following criteria: proposed technical approach to the literature review, proposed technical approach to the creation of the index, alignment of deliverables and objectives with TWDB needs, researcher(s) experience and capabilities, and overall schedule and budget.

TWDB reserves the right to reject all applications and make no awards under this announcement. In addition, TWDB reserves the right to partially fund applications by funding discrete activities, portions, or phases of a proposed project.

Negotiations with Selected Applicants

The applicable scope of work, deliverables, timeline, budget, and contract terms will be negotiated after TWDB awards the selected applicants. Failure to arrive at mutually agreeable terms of a contract with a selected applicant will constitute a rejection of the grant award and may result in funding being awarded to another applicant.

TRD-202104806

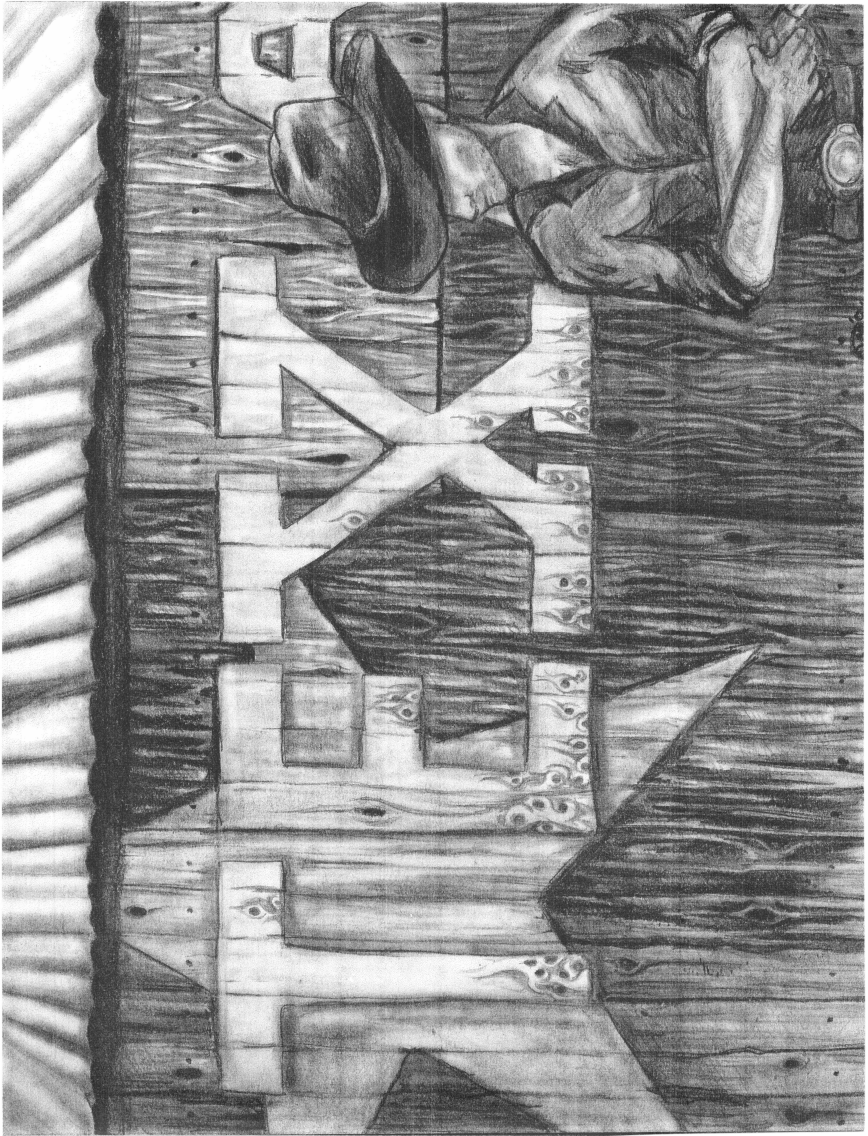
Ashley Harden

General Counsel

Texas Water Development Board

Filed: December 3, 2021





How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 46 (2021) is cited as follows: 46 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “46 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 46 TexReg 3.”

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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